

# Risk Management For Golf Facilities: Are You At Risk?

*Some ideas for minimizing your exposure.*

by JOHN M. FOTIADES

**B**EWARE has become the byword when it comes to injuries, illnesses, and liabilities at a golf facility. In this litigious society, settlements and verdicts from lawsuits are soaring, as are workers' compensation claims and insurance premiums. The cost to defend a suit, pay a claim, contest a citation, or pay a fine, can be devastating. So what can you do to minimize your liability exposure?

## Risk Management Plan

Begin by initiating a risk management plan. Risk management is the

process of identifying, evaluating, and managing existing or potential hazards or conditions that may lead to injury, illness, damage, or liability. For our purposes, a hazard or risk is a potential source of danger. Any successful risk management plan should have the following minimum criteria:

*Management Commitment:* Management should be committed to, and provide authority, personnel, resources, and full support for the successful implementation of any risk management plan. Everyone should understand that safety is of paramount importance.

*Employee Involvement:* Employee involvement and feedback in decisions affecting safety and health practices is also essential to the success of any risk management plan. It is the employee who may often know best what can be done to make a job practice, work area, or an existing condition safer.

*Inspection:* Identifying and evaluating hazards is the most important step of any successful risk management program. This inspection process is especially important because an unrecognized hazard cannot be managed. All areas of the golf course, clubhouse,



*Children, because of their ages and inexperience, are owed a special duty of care for their protection and safety. Measures should be taken to keep them from potentially dangerous situations.*

maintenance facility, outbuildings, work practices, and conditions should be reviewed and examined during the inspection.

Routine daily inspections are intended to detect substandard conditions that may change from day to day. Maintenance personnel often can correct problems detected during routine inspections. Periodic inspections, conducted at least semiannually, should be handled by a professional experienced in identifying and evaluating hazards and safety requirements. This more specific inspection is intended to detect permanent substandard conditions, such as design concerns or non-compliance with regulations.

**Hazard Prevention and Control:** Preventative measures must be implemented when an inspection reveals a hazardous condition that could cause illness, injury, damage, or pose a liability. Some common corrective measures involve training and educating employees, implementing administrative and workplace controls (e.g., equipment design, job rotation, new techniques), personal protective equipment, improving security, upgrading or replacing equipment, and formulating emergency plans.

**Training and Communication:** Establish a training program to ensure that employees receive required and necessary training. Outside workers and golfers also should be informed of what is expected of them for their own protection and safety.

**Record Keeping:** All employment and medical records, training logs, Occupational Safety Health Administration (OSHA) logs, inspection forms, checklists, inventories, corrective measures, accident reports, meeting notes, hazard communication, emergency evacuation plans, and other record-keeping areas must be documented. These records must be made available for current and future reference, inspection purposes, and to show a good-faith effort for safety concerns should a legal dispute arise.

### **Risk Management Includes . . .**

Risk management at golf facilities covers numerous subjects, including OSHA standards, the Americans with Disabilities Act (ADA), the employment process, maintenance practices, equipment operation, pesticide usage, golf course design, practice areas, shelters, rules of play, security, food and beverage service, nuisances, and emergency medical treatment. Liability con-

cerns also exist with wetlands and other environmental issues, buildings and structures, renovation work, and non-golf recreational activities (e.g., jogging, swimming). A risk management plan designed to manage hazards should address and prioritize each of these concerns in order to limit liability and to control insurance premiums and other costs. Effective risk management looks beyond compliance with specific legal requirements to address all haz-



*OSHA standards govern workplace and equipment safety to protect employees. A written training program also should be established to ensure that all employees are properly trained.*

ards that could lead to injury, illness, damage, or liability.

### **OSHA**

The Occupational Safety and Health Act and Administration (OSHA) were created to save lives, prevent injuries, and protect the health of workers. OSHA standards, which apply to all golf facilities in the United States, cover hazardous and toxic materials (e.g., pesticides, gasoline), egress and walking/working surfaces, personal protective equipment (PPE), sanitation, fire protection, medical and first aid, equipment, machine guarding, tools, emergency plans, and evacuations.

Even where OSHA standards do not address a specific situation, employers are responsible for complying with the Act's *general duty* clause, which states that each employer "shall furnish to each employee a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employees." In addition, employers

also are responsible for conducting inspections, responding to hazards, posting OSHA and other employee information posters, and providing safe tools and equipment and a right-to-know station. Employers must also maintain injury and illness logs and provide training, including emergency and fire prevention plans, first aid, and the use of personal protective equipment.

A hazard communication plan also must be developed. Most frequently cited violations of OSHA standards involve the hazard communication standard. The purpose of this standard is to ensure that information concerning the hazards of all chemicals in the workplace and appropriate protective measures is transmitted to employers and employees. This plan includes having employees learn how to read container labels and Material Safety Data Sheets (MSDS) and how to select and use the proper PPE.

Although OSHA does not cite employees for violations, it does require that they comply with health and safety standards, including reading the OSHA poster, using personal protective equipment and reporting hazardous conditions. Employees also must report any injury or illness and promptly seek needed medical attention. Employees' rights under OSHA include the right to request information regarding hazards or toxic exposure and to receive appropriate training.

OSHA provides a consultation service and otherwise conducts workplace inspections that may lead to citations and fines to ensure that employers provide a safe and healthful workplace.

### **Duty of Owner and Negligence**

An owner or operator of a golf facility has a duty to exercise reasonable care for the safety and protection of others and to make reasonable and timely inspections, correct defects (e.g., defective cart brakes) and disclose any dangers (e.g., signage — wet slopes, work area) that others may not be aware of. Although an owner must anticipate the normal actions of the game, he cannot be required to foresee every possible accident. If these duties are breached, liability may attach where that conduct injures another. General examples of duties include supervising orderly play and maintaining the premises in a safe condition. The highest degree of care owed is to participants in recreational activities, such as golf; the lowest is due to trespassers —



*A golf course owner or operator has a duty to exercise reasonable care for the safety and protection of others. Daily inspections of the golf course help to identify potential hazards. This inspection is a critical component of a risk management plan.*

except for children, to whom a special duty of care is owed.

A breach of this duty, to exercise reasonable care for the protection and safety of others, may result in a claim of negligence. In order for a claim to be successful, there must be a legal, enforceable duty of care owed (e.g., duty to provide safe premises), and a breach of that duty which results in injury and damages.

### **Duty of Golfers and Others**

Participants and others have a duty to exercise reasonable care for their own protection and safety. They may assume the risk of injury from ordinary hazards inherent in the game, such as being struck by an errant ball. Golfers have a duty to warn those within a foreseeable danger zone of errant shots. *Fore!*, the universal cry of golfers, may not by itself relieve one of liability. Such might be the case where an errantly struck ball injures a fellow golfer who is playing the same hole and is within reach. Golfers and others do not assume liability for extraordinary risks caused by another's negligence, such as where golfers have to cross a public way.

### **Defenses**

The best defense is a risk management plan consisting of sound safety practices and policies. There are legal

defenses that can be used should there be a claim of negligence. Assumption of the risk, and contributory or comparative negligence, may be valid defenses if an injured person knew, or should have known, of the risk or danger (e.g., errantly struck ball, entering a prohibited area) as one that was open and obvious, but proceeded anyway. Addi-

tionally, dangerous conditions or conduct often are considered an integral part of the game, such as the errantly struck ball. Unless there is an improper, intervening cause (e.g., design flaw), there is no duty. Assumption of the risk or comparative negligence will apply.

Waivers, such as those that appear on the back of a ticket or rental agreement, are an attempt to limit liability. To be valid, it must be shown that an injured party knew or should have known of the waiver and intended to relinquish the right to claim damages for an injury. Not all states recognize waivers, and in some, they are unenforceable against minors and where injuries result from intentional or reckless misconduct.

Workers' compensation provides that employers assume the costs of most work-related injuries and illnesses to employees, regardless of fault. However, negligence may be alleged, at least where an employer is without workers' compensation insurance, or where an injury is caused by someone other than the employer.

### **Training and Communication**

A written training program should be established to ensure that all employees are properly trained. The plan should detail what is to be covered and expected of each employee. Educating golfers also is an essential component of any safety program. The program



*Properly designed fuel storage tanks demonstrate the facility's commitment to safe and environmentally sound operations. These tanks are in the initial stages of installation.*

should communicate what is expected of them while they are at the facility (e.g., safety rules for play, cart operation).

Employee training may be required, such as by OSHA or state regulation (e.g., pesticide applicator's license), or otherwise should be part of any risk management plan. Training is especially crucial for new or reassigned workers and must include safety practices, identifying hazards or potential hazards that could cause injury, and the corrective actions that can be taken to protect themselves and others.

Training should be conducted by qualified personnel or others. Have regularly scheduled meetings regarding all aspects of workplace safety. Set ground rules and appoint a facilitator to conduct and oversee the meetings. Keep accurate meeting notes and try to reach decisions whenever possible. Follow up to ensure that decisions and corrective measures are implemented. Communicate the message *Safety First* on a daily basis.

### **Safety Committee**

A risk management plan should start with the appointment of a safety com-

mittee that consists of members from the management team, employees, and others who may have expertise in this area. If you cannot have a safety committee, then either appoint a safety director or seek the assistance of a risk management professional. Goals of the safety committee should include: assisting management in establishing and maintaining a safe facility and environment; establishing procedures for safety inspections, accident investigations, and first aid; evaluating corrective measures; and developing and prescribing training guidelines. The safety committee should meet regularly and maintain accurate and detailed notes from those meetings.

### **Summary**

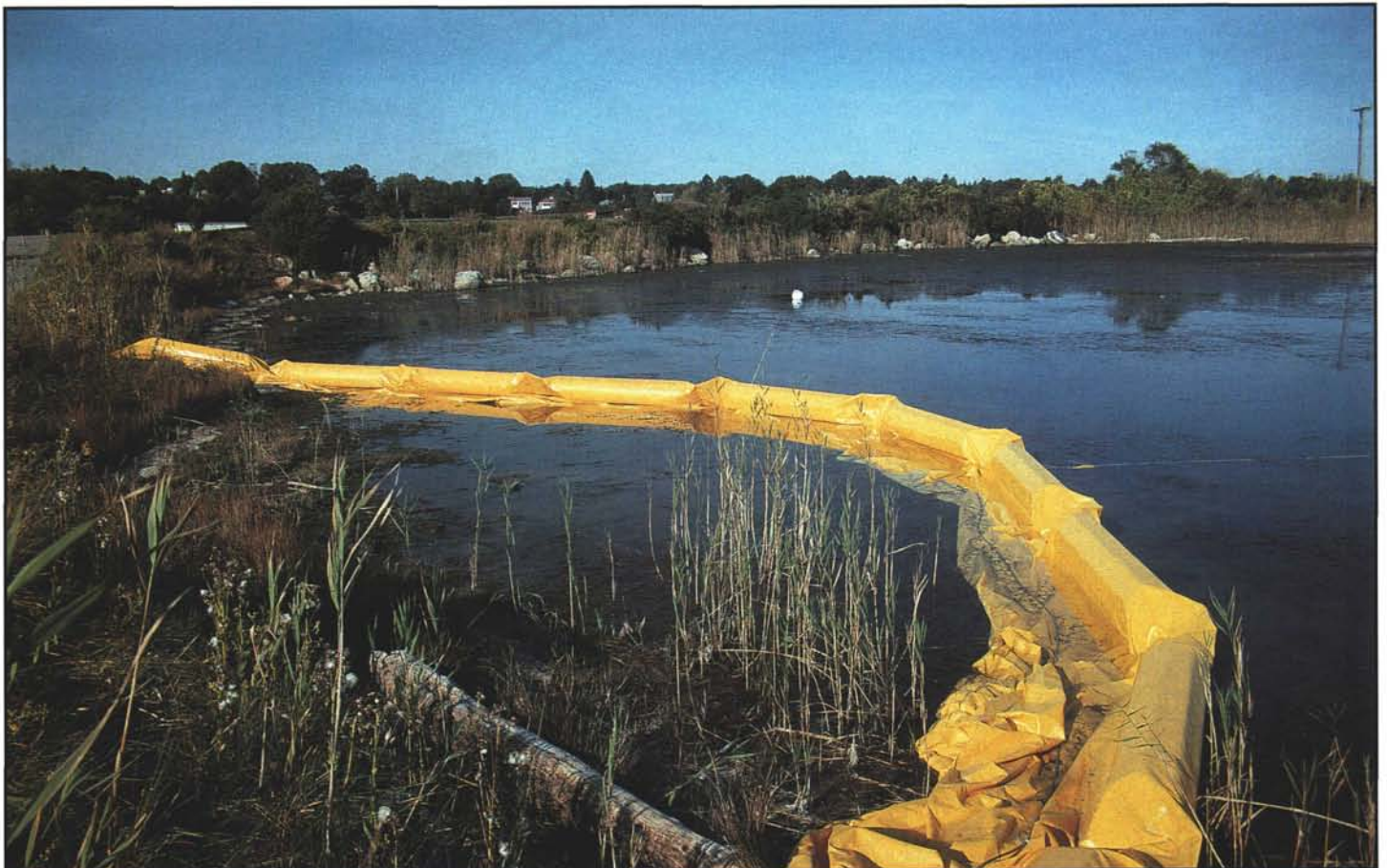
Liability can affect anyone associated with a golf facility. However, exposure to liability and damages can be greatly reduced by the use of an effective risk management plan. Although no golf facility can be free from all hazards, conditions, or practices that may create injury or liability, management should work to uniformly protect the health and safety of all employees, members, golfers, guests, and others.

Establishing and maintaining a risk management plan can result in lower injury rates, and a reduction in injury rates can lead to reduced costs (e.g., workers' compensation). Additionally, a successful risk management plan often will lead to an improvement in employee morale, reduced absenteeism, and increased productivity and work quality.

Preventative risk management — think of it as installing a traffic light before, not after, an accident has occurred. Remember, one successful lawsuit or fine can buy an awful lot of safety.

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*A containment device is used to protect wetland areas from siltation caused by nearby construction work.*