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STANDARDS: THEY'RE GOOD FOR YOU AND THEY DON'T HURT

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STANDARDS: WHY WE CARE

- *Why are they good for you*
- *Why don't they hurt*
- *Why/how do they help*

WHY ARE THEY GOOD FOR YOU

- **Practical issue:**

- Someone else has already done analysis of what works, what doesn't
- Provides a baseline for beginning design and construction

- **But you knew that already**

WHY ARE THEY GOOD FOR YOU – PART 2

- **Accidents happen**
- **And when they do - - -**
 - Evidence that your agency was in compliance with its own internal standards may be evidence that your agency was not negligent – *Spivey v. NYC Transit Authority, slip op. 31945 (U), (NY Sup. Ct. 2009)*

WHY ARE THEY GOOD FOR YOU – PART 2 (cont'd)

- Evidence that your agency was in compliance with industry standards will support a finding of no liability in a case involving an accident. *Sledd v. Washington Metro. Transit Auth.*, 439 A. 2d 464,468-469 (D.C. Ct. App. 1981)

WHY ARE THEY GOOD FOR YOU – PART 2 (cont'd)

- Evidence that your agency was in compliance with a federal standard means that state law negligence claims may be preempted. *SCRRA v. Superior Ct. of Los Angeles*, 163 Cal. App. 4th 712, 731-32, 736-37 (Cal. Ct. App. 2008)
 - Even where there is no express federal standard regarding the activity in question, state law negligence claims may be preempted where related federal standards have substantially subsumed state regulation of the activity. *Id.* at 734-735.

WHY THEY DON'T THEY HURT

- **Establish a base line, not a ceiling**
- **Not a limit on creativity in design, but a spur to find new ways to satisfy criteria while building the next, better mousetrap**

BUT IN FAIRNESS.....

- **Standards CAN hurt your agency if you don't follow them:**

- Failure to comply with an internal agency standard CAN be evidence of the agency's "duty of care".
- Failure to comply with an industry standard can be evidence of negligence (*St. Louis – San Francisco Ry. Co. v. White*, 369 So. 2d 1007, 1011 (Fla. Dist. Ct. App. 1979))

BUT IN FAIRNESS.....

(cont'd)

- Pursuant to 2007 amendment, FRSA does not preempt state law tort claims if agency violates a federal standard of care. *Lundeen v. Canadian Pac. Ry. Co.*, 532 F.3d 682, 688 (8th Cir. 2008); *Veit ex rel. Nelson v. BNSF Corp.*, 249 P.3d 607, 620 (Wash. 2011)

IN CONCLUSION

To modify slightly the title:

Standards –

- **Are good for you because they create a common understanding of good and safe practices**
- **They don't hurt as long as you follow them**
- **They CAN hurt if you don't**

QUESTIONS?

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