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**TRANSMITTAL
LETTER**

Publication 282

DATE:
April 2004

SUBJECT:

HIGHWAY OCCUPANCY PERMIT GUIDELINES

INFORMATION AND SPECIAL INSTRUCTIONS:

The attached edition of the Highway Occupancy Permit (HOP) Guidelines incorporates changes to laws, regulations, policies, and procedures relating to access and utility permit programs since the September 1993 edition of these guidelines. This edition will promote uniformity in the Highway Occupancy Permit and Bridge Occupancy License programs by incorporating policies and procedures that are necessary and reasonable.

These guidelines were prepared to assist and provide applicants with general instructions when applying for a Highway Occupancy Permit relating to 1) placing or modifying an access, 2) opening the highway surface, 3) placing a utility facility, or 4) modifying a utility facility not related to a Department highway construction project; as well as Bridge Occupancy License processes. These guidelines are intended for general reference only. Questions should be addressed to your local Permit Office.

Numerous changes have resulted from changes in the State Highway Law, MPC and Vehicle Code as well as new technologies since the last revision (e.g., addition of flowable fill and core bore technique).

CANCEL AND DESTROY THE FOLLOWING:

September 1993 edition of this publication and all revisions thereto; including circular letters, strike-off letters, and administrative messages relating to Highway Occupancy Permits that are dated prior to April 1, 2004.

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***HIGHWAY
OCCUPANCY
PERMIT
GUIDELINES***

April 2004

Bureau of Maintenance and Operations

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CHAPTER 1 -- PERMIT OFFICE ADMINISTRATION

1.1 -- GENERAL ADMINISTRATION

Engineering District Permit Offices

Each District Permit Manager is directly responsible for administration of the Highway Occupancy Permit (HOP) programs within their Engineering District consistent with this Manual. This includes:

1. Review each Permit application package consistent with published statewide policy and procedure, to verify the application and plans are complete, accurate, and in compliance with applicable laws and regulations.
2. Verify each non-emergency application and plan is consistent with proposed occupancy site by conducting initial on-site reviews. Conduct follow-up on-site reviews for each emergency application.
3. Participate in pre-application meetings and coordinate project "Scoping" meetings upon request.
4. Coordinate the review of applications and plans with District and Central Office staffs consistent with published statewide policies and procedures.
5. Issue Permits for approved applications only. Promptly notify applicant if application is denied and, upon request, assist and participate in administrative hearings by providing evidence and testimony.
6. Collect prescribed fees, where applicable, and forward for deposit consistent with published procedures.
7. Inspect work performed under Permit authority to monitor compliance with permit.
8. Take corrective action as required, including issuance of Departmental Citations.
9. Ensure permitted work was completed consistent with regulations and the permit and take appropriate follow-up actions, including establishment of the acknowledgment of completion date (which triggers two-year "warranty").
10. Maintain accurate and complete (paper, microfilm, and digital) record of Permits, applications and related documents for prescribed time periods.
11. Participate in meetings with Permittees and their representatives as required and promptly respond to written inquiries.
12. Monitor and re-certify municipalities which issue access or utility HOPs for PENNDOT.
13. Ensure staff is adequately trained and cross-trained on HOP program laws, regulations, policies, and procedures.

Central Permit Office

The Central Permit Office (CPO) is responsible for the statewide administration of the Highway Occupancy Permit (HOP) program. This includes:

1. Develop and revise forms, publications and statewide policies and procedures relating to the access and utility HOP programs and the Bridge Occupancy License (BOL) program, consistent with applicable laws, regulations and court decisions.
2. Coordinate the development of and amendments to Regulations 441 and 459, consistent with applicable laws, regulations and court decisions.
3. Coordinate the development and maintenance of software for HOP and BOL programs, consistent with applicable laws, regulations and court decisions.
4. Maintain pertinent permit/license information on PENNDOT Web Page.
5. Process monthly invoices.
6. Provide direction and guidance to Engineering District staffs consistent with applicable laws, regulations, court decisions, and statewide policies, procedures and program objectives.
7. Provide program information to interested persons consistent with the Right To Know Law (RTKL).
8. Promptly review RTKL requests received from RTKL Officer and coordinate approved RTKL request visitations with Engineering District permit staffs.
9. Process annual invoices (BOL) and issue individual Bridge Occupancy Licenses.
10. Consistent with assigned staff resources, conduct Quality Assurance Reviews for the various Permit programs to verify District staffs are in compliance with laws, regulations, this Manual, other published statewide policies and procedures and published HOP/BOL forms and publications.
11. Ensure staff is adequately trained and cross-trained on HOP and BOL program laws, regulations, policies, and procedures.

The Central Permit Office (CPO) is also responsible for:

1. The statewide administration of the Special Hauling Permit (SHP) program (see Publication 31).
2. Coordinating the development of and amendments to Regulations 179, 187, 191, and 193, consistent with applicable laws, regulations and court decisions.
3. Coordinating the development and maintenance of SHP program software (i.e., APRAS), consistent with applicable laws, regulations and court decisions.

1.2 -- STAFFING

Staff levels are determined by the District Executive, based on the number of applications which need to be processed within established time frames and statewide policy, and also based on the amount of inspection necessary to verify compliance by the public, Permittees, their agents and contractors.

Permit Staff

The following staff is recommended for the review of applications, issuance of Permits and inspection of work.

1. District Permit Manager -- responsible for the overall management of the District Permit Office.
2. Assistant District Permit Manager -- assists the District Permit Manager with the District Permit Office operation, where Permit volumes warrant an assistant.
3. District HOP Technician -- Prepares Permits, Supplements, transmittals and correspondence. Maintains Permit files, ledgers and monitors Emergency Permit Card usage for compliance. Generates and maintains computer report(s), and other technical duties as required.
4. County Permit Manager -- assigned to one or more County organization(s), depending on Permit volumes, to:
 - a. Review applications for compliance with Department Utility and Driveway Regulations, including initial on-site reviews of all non-emergency applications.
 - b. Perform "spot" inspections of Permit projects to assist assigned inspectors and issue Departmental Citations as required.
 - c. Maintain complete and accurate County Office Permit records.
 - d. Responsible for work completion inspections of all Permits.
 - e. Perform routine checks of work sites to verify a Permit (or properly completed Emergency Permit Card) is at the work site.
5. County Permit Inspector -- assigned to perform resident (full-time) inspection on major or critical projects, or spot inspection (non-reimbursable) of other Permit work as required.
6. On-site Inspector -- assigned to perform resident (full-time) inspection on major or critical projects, or spot inspection (non-reimbursable) of other Permit work as required. An inspector (Department employee or consultant) is responsible for verifying that ongoing and completed permitted work is performed in compliance with the applicable Regulation (i.e., Chapters 459, 441, 203) as well as any special Permit conditions that may apply on a particular project. The on-site inspector is also responsible for verifying that only permitted work is performed. If unpermitted work is observed, notify the Permittee/violator by Citation (Form M-945 C) of its responsibilities for compliance with the regulations and Permit.

District Staff

Other District Office staff members involved in the review of applications involving extensive or critical operations include:

1. Traffic Unit -- provides technical assistance in reviewing applications that:
 - a. Involve a local road, a Medium Volume driveway or a High Volume driveway. This would include review of a Traffic Impact Study.
 - b. Are requested by the Permit Manager, to review an operational or safety concern.
 - c. Include a detour or complex Work Zone Traffic Control Plans.
2. Design Unit -- provides technical assistance in reviewing applications involving:
 - a. Utility facility in limited access highway right-of-way.
 - b. Nonutility work in limited access highway right-of-way.
 - c. Construction of sidewalk or curb by municipality.
 - d. Independent roadway improvement (e.g., auxiliary lane).
 - e. Installation of highway lighting in highway right-of-way.
3. Utility Relocation Unit -- assists in reviewing applications involving:
 - a. A Utility facility in limited access highway right-of-way.
 - b. The administration of Design Manual, Part 5, which includes the issuance of a Highway Occupancy Permit -- Utility Relocation (Form D-4181-P), if a utility facility relocation or adjustment is required within the limits of a PENNDOT highway construction project.
4. S.I.P. Engineer -- assists in reviewing applications involving:
 - a. An aboveground facility in a recognized accident cluster area.
 - b. An accident damaged pole.
5. Hydraulics/Plans Unit -- provides technical assistance in reviewing applications involving the flow of drainage (e.g., into or through highway right-of-way or onto adjacent property).
6. Bridge Unit -- reviews applications for a Bridge Occupancy License, provides technical assistance in reviewing applications involving an overhead or undergrade structure, work near a bridge footing, and any proposed blasting plan for impact on structures.
7. Geotechnical Engineer -- assists in reviewing applications involving mine activity, and activities which affect support of the highway, and all slope work for impact on the highway.
8. Construction Unit -- assists in identifying potential conflicts with contractors where Permit work could conflict with contract construction work, advises Permit Unit so that conflict can be avoided or cost of conflict can be mitigated.
9. Maintenance Unit -- Program 213 coordination (e.g., planned surface improvements, road widenings, overlays).

Central Office Staff

Central Office staff members (e.g., administrative, engineering, legal) participate in the review of applications involving limited access highways as well as unique or critical designs or operations. *Note: FHWA approval is also required for permanent HOPs involving an Interstate highway.*

The Office of Chief Counsel, Permits Section staff may be contacted – directly by District Office staffs initially – on legal matters relating to an individual HOP application or Permit, such as a highway right-of-way issue; a third-party issue; co-preparation of a HOP agreement; co-preparation of nonroutine or critical correspondence; co-preparation for an administrative hearing or court case; co-collection of a delinquent reimbursable Permit inspection invoice; acceptability of "proof" of ownership for an access application; re-denial of a HOP application; a nonroutine or critical Citation (e.g., filing a complaint before a District Justice); certification of a document; if an applicant/permittee is represented by counsel; applicability of the PA Right To Know Law; and clarification of legal provisions of Regulations 441 and 459.

Consultant Staff

If there are insufficient Department staff resources available for application review or resident inspection, each District may use one of the available open-end agreements to enter into a contract with a consultant firm for application review and/or inspection services only.

1.3 – PUBLIC TRAINING

District Permit Managers will meet with representatives of non-Department agencies (e.g., public Utilities, municipal Utilities) if requested, to inform the agencies of their responsibilities, PENNDOT's requirements and what actions may be taken if laws, regulations and Permit conditions are not followed.

District Permit Managers or their designated representative will attend project "Scoping" meetings, pre-bid meetings, pre-construction meetings, semi-final restoration meetings, final inspection meetings and other meetings pertaining to the Highway Occupancy Permit Programs, to explain PENNDOT's requirements and address potential and actual problems.

1.4 -- AUTHORITY

PENNDOT has responsibilities to accommodate both applicants/Permittees and the traveling public. PENNDOT's Regulations strive to strike a reasonable balance if the needs of individuals or groups are in conflict with the needs of the traveling public.

Highway Occupancy Permits

PENNDOT is authorized under Sections 411 and 420 of the State Highway Law to issue Highway Occupancy Permits for occupancy of State highway right-of-way, or opening the surface, or placing a facility or structure, or opening an access.

PENNDOT's Permit issuance authority should not be confused with PENNDOT's maintenance responsibilities. For example, while PENNDOT generally maintains curbed highway sections within municipalities from curb-to-curb only, its Permit issuance authority extends to the right-of-way line (in the case of utilities) and beyond (in the case of access or drainage) where work outside the right-of-way may have an adverse effect on the State highway.

The following HOP Regulations govern occupancy of and access to State highways:

- Chapter 441: Access to and Occupancy of Highways by Driveways and Local Roads.
- Chapter 459: Occupancy of Highways by Utilities.

Bridge Occupancy Licenses

PENNDOT is authorized under Section 702 of the State Highway Law to issue Bridge Occupancy Licenses, as regulated by Regulation 459.10a. Bridge Occupancy License inquiries should be directed to the District Bridge Engineer (if a pending application) or the Central Permit Office (if an annual rental invoice).

Traffic Control

Work Zone Traffic Control within State highway right-of-way must be consistent with Chapter 203/212.

Policy

The above laws and regulations will be applied uniformly and without prejudice towards any person's race, sex, age, religion, handicap or nationality.

Following is an excerpt from a 1990 Commonwealth Court opinion (*Popple v. PennDOT*), which provides guidance on PENNDOT's authority to interpret its regulations:

"...when reviewing the validity of an agency's interpretation of its own regulations, that interpretation controls unless erroneous or inconsistent with the regulation, or inconsistent with the statute under which the agency promulgated the regulation".

New Technologies

In order to “fast track” innovations that are shown to improve productivity without decreasing safety or damaging the highway/bridge infrastructure, qualifying new technologies that are proposed for use under HOP Permits *between* revisions to the Permit Regulations (Chapters 441 and 459, respectively) *may* be authorized by the Deputy Secretary for Highway Administration for statewide use under Highway Occupancy Permits without the necessity for District Executives to repeatedly assess individual requests for waivers or modifications relating to the new technology. Initially, one or more pilots (authorized under individual District Executive waivers or modifications) are desirable to verify the new technology does not decrease safety or adversely affect the highway/bridge infrastructure. Experience-based conditions relating to the use of these new technologies may then be incorporated into the statewide authorization, and ultimately these Regulations as they are revised under the normal rulemaking process.

Each individual HOP application must still request a modification/waiver under the Permit Regulations in order to be permitted a modification/waiver. In accordance with Regulation 459.12(b), Permits issued for the modified procedure shall be signed by the District Executive. In addition, the Permit will be predicated on the Utility complying with the conditions set forth in Regulation 459.12(b)(1) through (3) relating to indemnification, bonding and insurance, unless excused in writing, and permit conditions, which may include use restrictions, special traffic control devices or safety features (see Regulation 459.12(b)(4)).

Flowable Fill

While “flowable fill” was not an approved backfill material when Regulation 459 was amended in 1989, “flowable fill” is now acceptable backfill material which can preclude subsidence and minimize lane closure durations (see Publication 408, Section 220). A compaction plan is not required for “flowable fill” to be authorized.

Flowable fill backfill for utility trenches was approved initially by Special Provision to Publication 408 and is now included in Publication 408, Section 220, consistent with the following Permit requirements:

- a. Flowable fill may be authorized for all Utility trench backfill in lieu of or in conjunction with Regulation 459.8(g).
- b. Flowable fill may be used in trenches up to subgrade elevation, and in small utility openings (less than 36 square feet) to the top of the sub-base.
- c. The one-foot cutback that is required for *pavement* openings and all other requirements of Regulation 459.8 (h) & (i) still apply, unless a modification is granted.
- d. Outlet base drains may be required by the District to provide drainage of the embankment or sub-base as necessary.
- e. Utility owners whose facilities have been identified prior to excavation and exposed during the excavation of the trench should be notified by the Permittee and given the opportunity to polywrap or otherwise insulate their facilities.

Fiber Wrap

Specific fiber wrap systems have been approved, subject to the following:

- a. The application identifies the fiberglass restoration system.
- b. The application states that the restored pole will not exceed 100% of the new pole strength as determined by the American Standards Institute (Specification 05.1-1992).
- c. The pole wrap system is not being used for other than a deteriorated pole. A fiberglass pole wrap system may not be approved for an accident-damaged pole.
- d. The pole to be wrapped is placed consistent with the Americans with Disabilities Act (ADA).

Light Weight Steel Poles

Specific light weight steel poles have been approved, subject to the following:

- a. The application identifies the steel pole.
- b. The application states that the steel pole will not exceed 100% of the new pole strength as determined by the American Standards Institute (Specification 05.1-1992).
- c. The pole is placed consistent with the Americans with Disabilities Act (ADA).

Core Bore/Vacuum/Flowable Fill Process

A specific core bore process has been approved, subject to the following:

Process. The “Core Bore Process” is demonstrated in a PowerPoint document (available upon request) and involves the following steps – which combine several technologies into one process:

1. Pavement is saw cut full depth, with a bit ranging from 10” to 18” in diameter; resulting in a “core”.
2. The core is removed and saved for reuse (if structurally sound).
3. A protective steel ring is placed to protect the edge of opening from damage.
4. Vacuum equipment is used to excavate compacted material from bottom of base course down to beneath utility facility.
5. Utility work is performed (e.g., leak repair, service connection).
6. Utility facility is protected with fine material.
7. Self-mixing flowable fill material is placed from top of fine material to bottom of base course (fill is designed to be traffic-bearing in 90 minutes).
8. Non-shrink grout is placed (grout is designed to be traffic-bearing in about 90 minutes).
9. The removed core (or a generic equivalent replacement core) is placed in the remaining opening (original alignment and orientation is maintained if removed core is used) forcing the grout to the surface to fill the annular space and core extraction hole.
10. The restored opening is sealed.

Benefits. There are several benefits to this process compared to traditional utility opening and highway restoration methods:

1. Overall process (repair and restoration) time reduced
2. Less time to excavate roadway surface and base
3. Less inconvenience to vehicular traffic during work (e.g., typically only one lane is closed)
4. Reduced exposure time of workers and traveling public within work zone
5. Controlled size of opening (by bit diameter)
6. Elimination of callbacks due to trench subsidence
7. Technologically advanced tools and equipment lower chance of collateral damage to roadway
8. Road openings are smaller in size
9. Circular hole prevents stress cracks due to elimination of corners
10. A more controlled operation, with less variability in the materials and the overall process
11. No excavation settlement due to non-shrink characteristics of flowable fill
12. No cutback necessary due to prevention of excavation settlement and collateral damage.
13. Less intrusive due to the involvement of less equipment and personnel in the process
14. Existing material (original core) placed back in bore hole whenever feasible

Modifications. Several Chapter 459 regulatory requirements that apply to traditional utility opening restorations are not necessary for this new process and may be modified upon request, as discussed below.

Pavement cutback. Because (1) a steel ring is used to protect the edge of the opening, (2) material is excavated using vacuum technology, and (3) the opening is restored with flowable fill, it is reasonable to waive the regulatory requirement for the pavement to be cut back one foot, under authority of Section 459.12, when the “Core Bore Process” uses a core bit larger than 10” (c.f., 459.8(h) & (i)). When a 10” bit is used, the opening is a “test hole” by definition and a one foot cutback may already be eliminated under Regulation 459.8(g)(6).

Bituminous pavement overlay. Because of the benefits associated with the “Core Bore Process” compared to traditional restoration methods, it is reasonable to waive the regulatory requirement for a bituminous pavement less than five years old to be overlaid if there are four or more emergency openings within 100 linear feet (cf., 459.8(n)(2)). If the pavement is older than five years, District staffs should continue to exercise their discretion and not require an overlay, under Regulation 459.8(n)(3).

Extending opening to pavement joint. Because of the benefits associated with the “Core Bore Process” compared to traditional restoration methods, it may be reasonable to waive the regulatory requirement for the opening to be extended up to three feet to a bituminous concrete pavement joint (cf., 459.8(n)(5)). This determination will be made by District staff on a case-by-case basis (considering age and condition of pavement).

Applicability. The approved “Core Bore Process” may be used by any Utility that requests to use this process on its Permit application, including applications for emergency work.

Any Utility may propose another non-propriety restoration process utilizing other technology, provided it agrees to participate in a pilot to demonstrate to the Department’s satisfaction that both the public safety and the highway infrastructure will be improved.

Regulation Outline Format and Text Reference:

Following is a guide that may be used when citing specific regulation text:

441 or 459 -- Chapter

1 -- Section

(A) -- Subsection

(1) -- Paragraph

(i) -- Subparagraph

(A) -- Clause

(I) -- Subclause

1.5 -- PUBLIC INQUIRIES -- (FOIA and RTKL)

Persons requesting information under the "Freedom of Information Act" (FOIA) should be advised this is a Federal statute that does not apply to State Governments or meetings. The FOIA (5 U.S.C. 552) establishes a presumption that records in the possession of agencies and departments of the Executive Branch of the U.S. Government are available to the public. The FOIA sets standards for determining when Government records must be made available and which records may be withheld.

PA citizens requesting information under PA's "Right To Know" Law (RTKL) are referred to the PENNDOT Web Site (see footer) or to the following address link:

<http://www.dot.state.pa.us/Internet/SECINET.nsf/InfoRTKL?OpenForm>

This site provides current information on PENNDOT's policies and procedures relating to the "RTKL", consistent with the governing Management Directive (205.36).

Department records, including correspondence, memos, internal comments, and engineering reviews are considered confidential until a final decision is made (i.e., until an application is either approved or denied) and may not be released without the approval of the RTKL Office.

Correspondence to or from the Office of Chief Counsel may not be shared with the public, without prior approval of the Attorney, since such correspondence may qualify under the attorney-client privilege and may not be released without the approval of the RTKL Office.

Section 3754 of the Vehicle Code provides for the confidentiality of Department and State Police accident prevention investigations, such as in-depth accident investigations and safety studies and information, records and reports used in their preparation, which may not be released without the approval of the RTKL Office.

Bridge inspection reports, bridge analyses, and the information contained therein are traditionally considered to be confidential and may not be released without the approval of the RTKL Office.

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CHAPTER 2 -- APPLICATION SUBMISSION

2.1 -- REQUIRED APPLICATION INFORMATION

The initial formal step in the issuance of a Highway Occupancy Permit (HOP) is the submission by the “owner” (e.g., a property owner in Regulation 441 or a utility facility owner in Regulation 459) of a properly completed Application – M-945 A or M-950 A – to the PENNDOT County Permit Office in the County where the proposed work will be performed.

Note: There is no statutory or regulatory “grandfather” right or privilege in PA relating to occupancy of State highways or bridges. As a general rule, a Highway Occupancy Permit (HOP) or Bridge Occupancy License (BOL) is required for every highway/bridge occupancy as prescribed in Sections 411, 420 and 702 of the State Highway Law and PENNDOT Regulations 441 and 459.

A properly completed application is one that is in full compliance with the Regulations, particularly Section 441.3 or 459.3, as applicable. Submit completed applications to the Permit Office at least 30 days in advance of the anticipated start of routine utility work and work on Minimum Use driveways, and 60 days for substantial utility projects or driveways. Upon receipt of an application, by the District or County Office, the date received will be documented in writing. Formal applications may not be submitted by "fax" or other wire methods not approved by the Central Permit Office. Under current software, applications shall be submitted in person or by mail.

The following application information needs to be correctly completed by the applicant before being forwarded to the County Office. Department staff will assist Permit applicants while also verifying each application complies with applicable laws, regulations and statewide policy.

Form M-945 A (Application for Highway Occupancy Permit)Name of Applicant

Driveway applications must be submitted in the name of the property owner, as defined in Regulation 441.1.

Utility applications must be submitted in the name of the *utility facility* owner or operator providing the utility service, as defined in Regulation 459.1. Also see Regulation 459.3(b) and the next section (i.e., applicant not in the business of providing utility service).

If an application proposes occupancy along one or more bridges, the Permit will not be issued until the Bridge Occupancy License is issued. Also, non-public service applicants do not qualify for a Bridge Occupancy License under the "public benefit" criteria in Regulation 459.10a (b)(1). If a Bridge Occupancy License application is not approved, the applicant can pursue a stream/ravine crossing (and modify its drawings accordingly). Applicants proposing to occupy a bridge must submit Application Form M-906A to the District Bridge Unit.

An application may not be in the name of a contractor, nor in the name of a person only being serviced by the facility.

Address -- Applicant's complete current address.

Phone -- Current telephone number (8:00 a.m. to 4:00 p.m., weekdays).

County -- Where proposed work is to be performed.

Township/Borough -- Where proposed work is to be performed.

Date Work Is Scheduled To Begin -- Date applicant expects to begin proposed work.

Approximate Date When Work Will Be Completed -- Date applicant expects work to be completed.

If Utility (Line 1) -- Enter length of proposed work to be completed in each highway area.

If Utility (Line 2) -- Check off exact type of work to be performed. One block must be checked and EPC number and entry must be completed if EPC repair block is checked.

If Driveway -- Enter total number of each type of vehicle trips in the correct field(s). A single vehicle entering and exiting a property is counted as two trips.

Persons with disabilities – Check the appropriate Y/N Block. See PA Vehicle Code, section 3354(d) for laws relating to parking regulations for persons with a disability and disabled veterans. See in particular section 3354(d)(3)(iii), which requires appropriate signs to be posted as a Permit prerequisite.

State Route Location -- Enter exact S.R., Segment, and Offsets.

- a. If application is for a utility and opening is (1) less than 36 square feet, (2) crossing the road, or (3) a single pole is being placed, list the centerline offset. If trenching parallel or placing more than one pole, list the beginning and ending Segment(s) and Offsets.
- b. If application is for an access, list driveway by centerline offset. If curb and/or a parallel pipe culvert are to be installed, list by beginning and ending Segment(s) and Offsets.

Description Of Proposed Work -- Enter a concise and accurate description for each State Route field that is used (four maximum on paper application). Description fields will have a corresponding inspection charge in the fee fields.

Engineering District -- District where proposed work will be performed. No Permit may be issued for occupancy or work in more than one Engineering District.

441/459 Ref. No. -- Unit Fee -- Number of Units -- Item Fee -- These items must be consistent with Regulations 441.4/459.4, plans and descriptions of proposed work.

Permit Fee \$ -- Must be total of above application and inspection fees.

Account Number -- Check or Money Order No. -- One of these fields must be completed, unless exempt from Permit fees under Regulations 441.4(c)/459.4(c).

Name Of Applicant's Consultant(s) -- Must be completed if plan was not developed by applicant.

Applicant's Status -- Underline the correct status and add State if incorporated.

Signed On -- Date application was signed.

Name Of Applicant -- List legal name of applicant (e.g., corporation name). The District Permit Office may require proof of ownership.

Witness Or Attest -- This signature is required. Any person other than the applicant may sign this section. Title of individual is to be printed below signature.

By -- Signature of property owner or designated corporation representative authorized to bind the corporation. Title of individual is to be printed below signature.

Applicant Facility Owner Not in the Business of Providing Utility Service

An applicant for a utility Permit must be the owner or operator of a utility facility. See Regulation 459.3(b). PUC-regulated utilities are only one type of allowable permittee. Privately-owned facilities are eligible for permits if they directly or indirectly serve the public or any part thereof. See Regulation 459.1 (definition of “Utility Facility or facility”). If the applicant is not in the business of providing utility service, special provisions apply to secure the performance of duties under the Permit and indemnify the Department in the event of actions against it. See Regulation 459.3(b)(2).

Utility facility or facility is specifically defined to include privately owned, as well as publicly or cooperatively owned lines, facilities and systems. See Regulation 459.1. The line, facility or system must “directly or indirectly serve the public or any part thereof.” The Department interprets this “serving the public” requirement in a broad manner, subject to the facility being of the type set forth in the definition and to the restrictions set forth in Section 459.3(b) relating to who may execute applications. Subject to these restrictions, if the facility in any way directly or indirectly results in service to the public or any part thereof, the “serving the public” requirement is met.

To fall within the definition of utility facility, the line, facility or system must be for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, coal, water, steam, waste, storm water not connected to Department drainage facilities, and other similar commodities including fire and police signal systems and street lighting systems. See Regulation 459.1. Although clearly very extensive, there may be requests that aren’t for production, transmission or distribution, or don’t fall within any of the listed types of commodities.

There are two basic types of applicants – those in the business of providing utility service and those not in the business. If a corporation, authority, political subdivision or other person in the business of providing utility service owns, operates or intends to operate the facility, the application must be submitted by that party. See Regulation 459.3(b)(1). This is the typical situation subject to the general permitting rules and regulations.

An application may not be submitted in the name of contractors of the owner or operator of a utility facility, nor in the name of persons only being serviced by a facility. See Regulation 459.3(b)(1). These prohibitions apply to facilities owned or operated by those in the business of providing utility service, as well as those owned or operated by those not in the business. Mere contractors or customers cannot be an applicant. The applicant must be a facility owner or operator that is producing, transmitting or distributing a commodity.

In the case of a facility owner who is not in the business of providing utility service, the applicant must be the owner of the facility at the time of construction. See Regulation 459.3(b)(2). A developer whose land is located outside a utility’s service jurisdiction is an example of a facility owner not in the business of providing utility service. In view of the broad interpretation of “utility facility or facility” as explained above, many other private parties will also be facility owners not in the business of providing utility service.

If a facility owner is not in the business, the applicant automatically indemnifies and holds harmless the Department from claims by anyone claiming residual property interests in the permitted area. See Regulation 459.3(b)(2). The applicant is also subject to the following requirements that do not specially apply to facility owners in the business of providing utility service:

1. The applicant must provide the Department with satisfactory evidence of ability to completely discharge construction, maintenance and financial duties imposed by the regulations, see Regulation 459.3(b)(2)(i). Examples of such evidence would be prior permit work successfully performed and maintained by the applicant; the name of the contractor who would actually perform the work and any maintenance (assuming the contractor is a responsible one); a list of the applicant's assets; and/or an analysis of the profits that are expected, if any, from the facility.
2. The applicant must provide the Department with satisfactory evidence that the proposed facility will not be inconsistent with the structural integrity of the right of way, the Department's maintenance responsibilities, or the safe and convenient passage of traffic, See Regulation 459.3(b)(2)(i). This would reasonably entail a narrative tied to the construction plans, including for example, that the facility would be encased, located at a depth not to interfere with Department activities, and placed by drilling, boring, driving or tunneling across improved areas of the highway rather than trenching across improved areas.
3. The applicant must submit a detailed traffic control plan for the permitted work, see Regulation 459.3(b)(2)(ii).
4. The applicant must cause the permit to be recorded in the appropriate recorder of deeds office, see Regulation 459.3(b)(2)(iii). In most situations, the permit would be indexed to the applicant's deed or other document showing ownership or the right to use the property abutting the highway.
5. The applicant is not authorized to place a facility longitudinally within the pavement. The applicant is also not authorized to place a facility longitudinally within the shoulder unless the applicant provides detailed plans which verify there is no feasible space outside the shoulder for placing the facility. See Regulation 459.3(b)(2)(iv). Longitudinal use along another person's property may implicate private property rights. Until and unless further general guidance is given, the Office of Chief Counsel should be contacted by the District Permit Manager in these situations.
6. If subsequent to completion of the work authorized by the permit, an entity in the business of providing utility service assumes operation and maintenance of the facility, the Department may, upon proper application, approve assignment of the permit to the provider of the utility service, which will release the applicant from the construction, maintenance and financial duties imposed by the permit. See Regulation 459.3(b)(2)(v).

The above requirements are mandatory if the applicant is not in the business of providing utility service (i.e., these requirements must be met.) If properly administered, these requirements are sufficient to prohibit private facilities that would be injurious to the highway, the traveling public or the Department, and to adequately protect those interests when private facilities are permitted.

The following security measures may be required within the discretion of the District Permit Manager (for a facility owner not in the business of providing utility service):

1. Indemnity agreement satisfactory to the Department, see Regulation 459.3(b)(2)(i)(A). Use Form M-945 I.
2. Insurance in a form and amount acceptable to the Department, see Regulation 459.3(b)(2)(i)(B). Use Form M-945 X, as a minimum.
3. Surety bonds in a form and amount acceptable to the Department to guarantee restoration of the permitted area in a manner satisfactory to the Department for at least two years after the acknowledged completion of the work, see Regulation 459.3(b)(2)(i)(C). Use Form M-945 K; however, Form M-945 L is also acceptable.
4. Surety bond in a form and amount acceptable to the Department to guarantee necessary maintenance costs for the facility and the right of way in which it is located for a period of at least two years after the acknowledged completion of the permitted work, see Regulation 459.3(b)(2)(i)(D). Use Form M-945 K; however, Form M-945 L is also acceptable.
5. The deposit of sufficient currency in an escrow account acceptable to the Department to fully secure the obligations in 3 and 4 above as an alternative to surety bonds, see Regulation 459.3(b)(2)(i)(E). This option would require an agreement between the applicant, the Department, and an escrow agent (usually a bank).
6. The use of bonded contractors as well as consultants and engineers having professional liability insurance. See Regulation 459.3(b)(2)(i)(F).

Implementing these discretionary provisions will be appropriate if there is a question on the ability of the applicant to fulfill the construction, maintenance and financial duties imposed by the regulations. Whether to apply any of these provisions will depend upon the evidence submitted by the applicant on its ability to completely discharge those duties.

In connection with or separate from the stated security measures permitted by Regulation 459.3(b)(2), the Department could require an agreement or condition statement if the permit will authorize a substantial amount of work within the highway right-of-way. See Regulation 459.5(b). The legal agreement or condition statement could address any special construction, maintenance, future relocation, and security requirements not thought to be adequately addressed by the general and special conditions of the permit regulations. See Regulations 459.7, 459.8, and 459.9.

Form M-950 A (Application for Minimum Use Driveway)

See *Publication 312 Guidelines*.

Name Of Applicant -- Permit applicant must be property owner. Permit Office staff may require the applicant to furnish proof of ownership. See Regulation 441.1 definition.

Address -- Applicant's complete current address.

Phone -- Telephone number where applicant can be reached during driveway construction.

Fee -- Consistent with Regulation 441.4.

Check Number -- Complete if applicable.

Application Is Made To -- Place an "X" in correct block.

Date Work Scheduled To Begin -- Anticipated date of construction.

Date Work Scheduled To Be Completed -- Anticipated date work on driveway to be completed.

County -- County in which driveway will be constructed.

Township/Boro -- Cross-out municipality type which does not apply and enter municipality name (i.e., city, township, boro).

Route No. -- Enter correct S.R. or Traffic Route.

Name Of Nearest Intersection -- Enter name of nearest street identified by a street sign.

Distance To Nearest Intersection In Feet -- Enter the distance from the middle of the proposed driveway to the middle of the street.

Posted Speed Limit -- Enter posted (maximum legal) speed. If highway is not posted, PENNDOT staff will determine thru-traffic safe-running speed in the area.

Indicate North -- Draw an arrow pointing to the north in relation to the highway at the driveway intersection.

Roadway Sight Distance (LT) -- Standing 10 feet back from edge of existing pavement and with an eye height at 3.50 feet above the proposed access grade, measure distance that a vehicle at 3.50 feet above the pavement approaching from the left can be seen.

Roadway Sight Distance (RT) -- Perform the same measurement as in "LT", but for a vehicle approaching from the right.

NOTE: Form M-950 S identifies two additional sight distance measurements required for vehicles proposing to make left turns into a driveway, to facilitate safer movements.

Driveway Radius (LT) -- Identify proposed left radius consistent with Regulation 441.9.

Driveway Radius (RT) -- Same as in "LT" above, but to the right. Both the left and right radius will normally be the same (i.e., an access should be at a right angle to the roadway to facilitate safer movements).

Driveway Width -- Identify proposed width of driveway consistent with Regulation 441.9.

Persons with disabilities – Check the appropriate Y/N Block. See PA Vehicle Code, section 3354(d) for laws relating to parking regulations for persons with a disability and disabled veterans. See in particular section 3354(d)(3)(iii), which requires appropriate signs to be posted as a Permit prerequisite.

By -- Applicant's signature is required.

Date -- Enter date application is executed by applicant.

2.2 -- HOP PLAN REQUIREMENTS

Minimum Use Driveways

Department Form M-950 A should be used for a Minimum Use driveway submission. A properly completed Form M-950 A is acceptable as both an application and plan. Application Form M-945 A is not required (but may be used) to obtain a permit for a Minimum Use driveway.

Plans for Other Than Minimum Use Driveways

Regulation 441.3(i) lists minimum plan requirements for Low, Medium and High Volume accesses. An explanation of each plan requirement follows, and is arranged by reference to the respective paragraphs in Regulation 441.3(i).

1. In addition to illustrating highway features such as pavement, right-of-way and medians, plans are to be dimensioned (e.g., widths and lengths where practical). Show existing, proposed and relocated utilities. Show highway appurtenances such as stop signs, speed limit signs and existing highway drainage structures.
2. Show and reference existing and proposed buildings (including outside dimensions). Label proposed use of building (e.g., a bank, service station, or office building).
3. Use arrows to denote traffic circulation. Show parking stalls to help identify internal traffic patterns and to verify that parking is not permitted in highway right-of-way (cf. Regulation 441.6(17)(ii)). For drive-in-service developments, request information listed in Regulation 441.8(f)(3). Also show disability parking spaces and signs.
4. Show design features for existing and proposed driveways, depressed curbs and dimensions, acceleration and deceleration lanes including lengths, widths, radii and tapers.
 - a. More than one width dimension may be required if driveway contains tapers and/or medians.
 - b. Radii need to extend a full quadrant (i.e., 90 degrees) not just a segment.
 - c. Grades may be either a profile or labeled with a percent of grade (e.g., one inch per foot slope is approximately an 8% grade).
 - d. Driveways need to be constructed at 90 degrees to centerline whenever feasible (cf. Regulation 441.8(b)(1)). The proposed driveway angle must be labeled (e.g., 90 degrees, 45 degrees, 87 degrees).
 - e. Traffic island lengths, widths, distances from centerline, radii, and radius from centerline or left turn lane need to be shown.
 - f. Cross section sketch or table needs to show depths of wearing course, binder, B.C.B.C., and subbase material in flexible pavement; and depth of concrete subbase, and depth of overlays if existing slab is overlaid, in rigid pavement.
 - g. Plan must identify exact locations where all traffic signs, signals, markings, etc. will be placed.
5. Show distances from each existing and proposed driveway consistent with Regulation 441.3 (*plans for other than minimum use driveways* – paragraph (5)):

- i. A single statement is satisfactory for this location requirement (e.g., Wayne St. 450 feet).
 - ii. Same as 5 (i).
 - iii. These features must be shown on plan.
 - iv. Attach a complete property plat showing all property lines.
 - v. All buildings and appurtenances (e.g., overhangs, canopies, and covered walkway) need to be shown.
6. Sight distances in each direction must be shown for each access.
 7. The application requires total property A.D.T. to be shown but the plan must show A.D.T. expected for each driveway.

NOTE: Driveway classification is determined from anticipated access A.D.T. for the property, as defined in Regulation 441.1 (i.e., one vehicle = two trips = A.D.T. of two):

Minimum Use = less than or equal to 50 A.D.T.

Low Volume = 51 to 1500 A.D.T.

Medium Volume = 1501 to 3000 A.D.T.

High Volume = 3001 A.D.T. and higher

Additional plans such as a Traffic Control Plan, Drainage Impact Report (a.k.a. Drainage Control Report), or Traffic Impact Study may be required as determined by Regulation 441 or the District Permit Office.

Review by Local Agencies

Regulation 441.3(j) provides for local agencies to review driveway applications within their jurisdictions. PENNDOT staffs have a list of local agencies who have requested the opportunity to review and comment on driveway applications submitted to PENNDOT.

Each submission of an application for a driveway within one of these jurisdictions must be accompanied by evidence (e.g., dated letter or signed and dated plan) which indicates that the location and type of access being requested has been submitted for review by that agency.

Where an affected municipality has requested in writing a desire to review a particular application, the applicant will also be required to furnish evidence that the access proposal has been submitted to that municipality for review.

PENNDOT will consider any comments or recommendations resulting from that review prior to making a final decision on the access permit application.

Access Management

Some local agencies have developed ordinances to apply access management principles. Following are excerpts from a document regarding Access Management entitled "State of the Practice, Final Technical Memo":

The Transportation Research Board's (TRB) Access Management Manual defines access management as the systematic control of the location, spacing, design, and operation of driveways, median openings, interchanges, and street connections to a roadway. It also involves roadway design applications, such as median treatments and auxiliary lanes, and the appropriate spacing of traffic signals. The purpose of access management is to provide vehicular access to land development in a manner that preserves the safety and efficiency of the transportation system. It incorporates the delicate balance between constitutional rights, private property rights and state regulations. The principles of access management seek to limit and consolidate access along major roadways, while promoting a supporting street system and unified access and circulation systems for development. The TRB Manual identifies 10 principles:

- *Provide a specialized roadway system – it is important to design and manage roadways according to the primary functions that they are expected to serve;*
- *Limit direct access to major roadways – roadways that serve higher volumes of regional through traffic need more access control to preserve their traffic function;*
- *Promote intersection hierarchy – an efficient transportation network provides appropriate transitions from one classification of roadway to another;*
- *Locate signals to favor through movements – long, uniform spacing of intersections and signals on major roadways enhances the ability to coordinate signals and ensure continuous movement of traffic at the desired speed;*
- *Preserve the functional area of intersections and interchanges – the critical area is where motorists are responding to the intersection – i.e. decelerating, maneuvering into the appropriate lane to stop or complete a turn;*
- *Limit the number of conflict points – drivers make more mistakes and are more likely to have collisions when they are presented with the complex driving situations created by numerous conflicts. Traffic conflicts occur when the paths of vehicles intersect and may involve merging, diverging, stopping, weaving or crossing movements;*
- *Separate conflict areas – drivers need sufficient time to address one potential set of conflicts before facing another;*
- *Remove turning vehicles from through-traffic lanes – turning lanes allow drivers to decelerate gradually out of the through lane and wait in a protected area for an opportunity to complete a turn, thereby reducing the severity and duration of conflict between turning vehicles and through traffic;*
- *Use nontraversable medians to manage turn movements – they minimize left turns or reduce driver workload and can be especially effective in improving roadway safety; and*
- *Provide a supporting street and circulation system – a supporting network of local and collector streets accommodate development, and unify property access and circulation systems.*

Access management principles should be incorporated into transportation and land use planning to increase safety options for the traveling public.

Access Management ordinances often categorize highways by their functional classes. The Federal Functional System classifies highways as follows (PENNDOT Maintenance Functional Class (MFC) is also shown):

<u>Description</u>	<u>Rural</u>	<u>Urban</u>	<u>Fed Aid</u>	<u>MFC</u>
➤ Interstate	01	11	Yes	A
➤ Other Freeways and Expressways	N/A	12	Yes	B
➤ Other Principal Arterial	02	14	Yes	B
➤ Minor Arterial	06	16	Yes	C
➤ Major Collector	07	17	Yes	D
➤ Minor Collector	08	N/A	No	D
➤ Local	09	19	No	E

Functional Classifications

Interstate System. The Interstate system consists of all presently designated freeway routes meeting the Interstate geometric and construction standards for future traffic. The Interstate System is the highest classification of arterial roads and streets and provides the highest level of mobility, at the highest speed, for a long uninterrupted distance. (Maintenance Functional Class "A")

Other Arterials. These consist of limited-access freeways, multi-lane highways, and other important highways supplementing the Interstate System that connect as directly as practicable, the Nation's principal urbanized areas, cities, and industrial centers; serve the national defense; and connect at suitable border points with routes of continental importance. (Maintenance Functional Class "B" and "C")

Collectors. The collectors provide both land access service and traffic circulation within residential neighborhoods, commercial and industrial areas, and downtown city centers. Collectors connect local roads and streets with arterials and provide less mobility than arterials at lower speeds and for a shorter distance. (Maintenance Functional Class "D")

Locals. The local roads and streets provide a high level of access to abutting land but limited mobility. (Maintenance Functional Class "E")

By law and regulation, access is strictly controlled on the Interstate System, freeways, and other limited access highways in PA, whereas permitted access is expected onto State highways classified as "Local" (consistent with Regulation 441). Access management ordinances administered by various Local Agencies will naturally not be identical to statewide access permit regulations administered by PENNDOT, particularly in regards to access to non-limited access highways classified as "Arterials" and "Collectors".

Regulation 441 and Access Management

Regulation 441 has traditionally included access design principals that are now also included as access management principles. For example, Traffic Impact Study reviews of major traffic generators ensure optimal access design, Section 441.9 Figures promote reasonable and consistent access design based on access ADT, Section 441.7(c) relating to specific location restrictions, Section 441.8(c) relating to driveways adjacent to intersections, 441.8(e) relating to multiple driveways, Section 441.8(h) relating to sight distance, Section 441.8(j) relating to auxiliary lanes, Section 441.8(l) relating to driveways relative to ramps, and Section 441.8(m) relating to median openings all include criteria important to safe and operationally sound highway access.

The process for promulgating State Regulations in PA is multilateral, complex and subject to oversight by the Executive and Legislative branches (initially) and the Judicial branch (ultimately), as well as the Attorney General, the Independent Regulatory Review Commission (IRRC), the public and persons directly affected by a proposed rulemaking, who are afforded an opportunity to participate in the rulemaking process and to have their comments seriously considered by the State Agency. This rulemaking process ensures that all affected persons have an opportunity to participate; therefore, various reasonable viewpoints are accommodated in the final rulemaking.

Regulation 441.6(2)(i)(F) currently stipulates that all work authorized by the permit shall be subject to ordinances enacted by local municipalities which contain more stringent minimum safety requirements than this chapter (i.e., Chapter 441). Thus, if a municipality enacts an *ordinance* which contains a *safety* requirement which is more stringent than Chapter 441, the permittee must comply with PENNDOT's permit and the local safety ordinance and (unless a waiver/modification is granted) Chapter 441.

Form M-949 Utility Sketch Series

M-949 A (Single Pole Placement)

This plan is an acceptable alternative to an applicant's own plan, provided all required information is completed and all minimum distances are met or exceeded. Any new installation not placed adjacent to the right-of-way line must be justified (e.g., steep slope, ditch behind pole, meets required distance behind guiderail or curb). Accident damaged or cluster area poles must be placed consistent with Design Manual, Part 5. No more than three separate Form M-949 A plan sets may be submitted with a single paper application, provided all poles are in the same municipality.

M-949 B (Multi-pole Placement)

This plan is an acceptable alternative to an applicant's own plan for an installation of four or more poles, provided all required information is completed for each pole and all poles are in the same municipality and are physically connected by a common conductor.

Note: On an application to remove existing aboveground facilities, a tab sheet may be submitted in lieu of a plan or Form M-949 A or B, provided no subsurface facility or appurtenance – other than electrical ground wire -- is being placed, removed, adjusted or relocated. The tab sheet should identify the SR, Segment, and Offset for each pole to be removed, along with each pole number.

M-949 C (Surface Opening Not More Than 500 Linear Feet)

This plan is an acceptable alternative to an applicant's own plan for an opening not more than 500 feet in State highway right-of-way, provided the entire opening is in the same municipality. Typical uses would include an opening less than 36 square feet for emergency repairs or service connections; crossings -- either boring or open cut method (if approved); boring pits; and longitudinal openings up to 500 linear feet. Multiple openings are also acceptable on this plan. The typical information on the back of this form must also be completed. Use the back of this form to justify open cutting (e.g., show location of all other affected utilities in the area).

If openings in the pavement or shoulder are over 100 linear feet, additional plan requirements may apply, consistent with Regulation 459.3(e). See the following section.

Additional Plan Requirements

Occupancy of more than 500 feet in the pavement or shoulder, or both, must contain all of the required information listed in Regulations 459.3(d)(3) and 459.3(e). For example, such plans must be drawn to a scale of one inch equal to no more than 50 feet. If the installation or placement of a facility involves more than 100 linear feet of pavement or shoulder opening, the plans shall also contain cross sections at all locations where a significant change occurs in the roadway cross section (e.g., cut to fill, uncurbed to curb, widening). These plans must also include detailed information explaining why a proposed facility cannot be placed outside the pavement or shoulder and shall identify utility facilities and other structures that will be affected.

A Traffic Control Plan may also be required as determined by the District Permit Office. Special circumstances which require a Traffic Control Plan include:

1. When a figure from Chapter 203/212 will not or cannot apply to the proposed operation.
2. Applications from facility owners who are not in the business of providing utility service are required to submit a detailed Traffic Control Plan as required under Regulation 459.3(b)(2)(ii).
3. When a closed lane will also be used to store material or equipment. (The Permittee is not authorized to close a portion of the pavement or shoulder to traffic for the primary purpose of storing material.)

An applicant should submit copies of applicable figures from Chapter 203/212 to provide the Permittee's work crew direct access to the traffic control requirements.

CHAPTER 3 -- APPLICATION REVIEW

3.1 -- APPLICATION REVIEW POLICY

Reviews of nonroutine Highway Occupancy Permit (HOP) paper application packages are processed consecutively within the Department (i.e., one reviewer completes its review before the paper package is forwarded to the next reviewer). Consecutive reviews of paper application packages cannot realistically be eliminated *among* County, District and Central Office reviewers (under current software). Well designed Web-based software is needed to process applications, permits and licenses electronically and concurrently.

One disadvantage of concurrent reviews of paper applications is that it is counterproductive for all reviewers to expend resources to review every submission if there are significant initial comments that would greatly change the design. In this event, individual reviewers would not have the benefit of knowing the comments made by other reviewers. This disadvantage can be addressed if a project "Scoping" meeting has occurred during the pre-application phase of the project.

Applications that *are not* complete and accurate – as determined during the initial on-site review by HOP staff -- will be returned for completeness and correction before District Office review. Applications that *are* complete and accurate will be thoroughly reviewed by all affected District reviewers before the application is approved, denied or returned to the applicant for amendment(s). Thorough reviews promote efficiency and reduce the application review cycles which occur if an application is returned before all reviewers review the package (e.g., additional amendments are often identified after the amended application is forwarded to the remaining reviewers if the remaining reviewers have not had an opportunity to review the current application package).

Certain types of HOP applications need to be reviewed by Central Office. Within Central Office, the Central Permit Office (CPO), the Bureau of Highway Safety and Traffic Engineering (BHSTE), the Bureau of Design (BOD), and the Office of Chief Counsel (OCC) may be involved in the review process depending upon the nature of the submission. FHWA staff must also review and approve: (1) all non-utility applications involving limited access highways on the Interstate system; (2) any utility application involving a limited access highway that is not in accordance with Design Manual, Part 5; (3) any proposed longitudinal occupancy of a limited access highway; (4) any access to/from a limited access highway; and (5) any permanent occupancy involving an Interstate highway.

Necessary reviews by the FHWA will continue to be done consecutively after the Central Office review so that FHWA staff reviewers are aware of the Department's comments or concurrence. Similarly, final drafting and approval of documents by the Office of Chief Counsel may need to occur after design features and other matters have been approved by other reviewers before any necessary agreement can be finalized.

3.2 -- HOP APPLICATION REVIEW POLICY

Following is Department statewide policy for processing HOP and BOL applications in an equitable manner, consistent with law:

General Rule: All HOP and BOL applications need to undergo a thorough and expedient review on a first-come-first-served basis, except as noted below:

Exception 1: Public Emergency.

Applicants requesting authorization to replace or repair a facility or structure or perform work requiring a permit or license because of a bona fide emergency or accident affecting the public safety or convenience should follow the Emergency Permit Card (EPC) procedures as specified in Regulation 459.6. Prompt assistance will be provided consistent with Regulation 459.6. The follow-up HOP application will be processed -- after the emergency -- under the general rule above.

Exception 2: Winter Heat Conversions.

Applicants requesting a permit to make a conversion at their customer's request (e.g., to change heat or water heater type) during winter months to provide uninterrupted service, will be provided prompt assistance.

Exception 3: Priority Utility Applications.

Consistent with Regulation 459.3(d)(5), utility applications identified as *priority* will be reviewed before other pending applications from the same applicant are reviewed. Other applications which have already been reviewed should not be delayed. Applications from other utility owners should not be delayed. If an applicant identifies all of its applications as being "priority", that applicant's applications may then be processed in the same manner as they would be if none were marked "priority".

Exception 4: Department Error.

Applicants requesting replacement permits, licenses or Supplements due to a confirmed PENNDOT error will be provided prompt assistance.

Access Application 60-day Deemer

1. Applications for access to nonlimited access highways, which are complete and correct, will be processed by PENNDOT staff within sixty days.
2. Act 247 of 1968, 53 P.S. 10508(6) and Act 170 of 1976, 53 P.S. 4104, involve municipalities (*except for Philadelphia and Pittsburgh*) that have enacted a subdivision and land development ordinance or municipalities that have enacted an ordinance requiring a building permit. These Acts, as reenacted and amended by Acts 42 and 43 of 1986 require PENNDOT within 60 days of the date of receipt of an Access Application (Forms M-945 A or M-950 A) to do one of the following:
 - a. approve the Permit,
 - b. deny the Permit,
 - c. return the application for additional information or correction to conform with Regulations, or
 - d. notify the municipality and applicant in writing that no Permit is required.

If PENNDOT fails to take any action within the 60-day period, the Permit is **deemed** to be issued (in those municipalities that qualify under the legislation noted above).

The 60-day review period will begin to *run* on the date an application is received by the affected PENNDOT Permit Office. The date of receipt will be documented on the application in the field titled "Department Use Only" each time the paper application is received by PENNDOT. If PENNDOT has to return the application for additional information or correction, the application return notification (Form M-945 AR or M-950 AR) will serve as documentation for acting on the application during the 60-day period. If the application is (re)submitted, a new 60-day review period will commence.

These Acts further provide that the plat or building permit "shall be marked to indicate that access to the State highway shall be only as authorized by a Highway Occupancy Permit". PENNDOT issues Permits consistent with its own regulations and is responsible for enforcement of these regulations only, regardless of the property owner's compliance with municipal requirements. Municipalities may include this statement even if no State highway abuts the property. The requirement that a plat or building permit be so marked ensures that a property owner receives notice of its legal obligation to obtain a Highway Occupancy Permit for access to a State highway. These Acts do not require that the property owner secure an access Permit before obtaining municipal approval, although some municipalities may impose this requirement by ordinance. This notice requirement does not modify existing laws or regulations with regard to delineating when a HOP is required.

Requirements for building permits vary among municipalities. If PENNDOT were to require a Highway Occupancy Permit every time a property owner obtained a building permit, some property owners would need a new HOP for each home improvement which requires a building permit (e.g., placing new siding on a house, converting a carport into a garage, building an addition on a house). Also, property owners would be subject to varying HOP requirements, based on their municipality's building permit ordinances.

These Acts afford PENNDOT an opportunity to determine whether a HOP is required, due to a property owner's improvements having an adverse effect on a State highway. However, if the improvements do not affect any State highway, access or traffic, then PENNDOT will not pursue the property owner to apply for an access Permit.

Where a property that will be subdivided contains both existing and proposed driveways, the existing driveways will also be reviewed to bring them into regulatory conformity if necessary. Such review furthers the purposes of the Driveway Regulations, which is to secure a safe and operationally sound State highway system. Exercise of the authority to require an Access Covenant under Regulation 441.6(16) is pointless unless both existing and proposed driveways are considered. Even if the existing driveways were previously permitted, this fact does not exempt them from Department-mandated modification or elimination under Regulation 441.6(1)(ix).

3.3 -- PRELIMINARY REVIEW OF APPLICATIONS BY COUNTY STAFF

The purpose of the initial on-site review is to verify that the application and plans are complete and accurate and actually depict existing site conditions.

1. If the application and plans are complete and accurate, the County Permit Manager or its subordinate will forward the application package to the District Permit Office for additional review and processing.
2. If the application and plans are not complete and accurate, the entire package will be returned to the applicant using the appropriate application return letter (Form M-945 AR or M-950 AR), which will identify -- on the checklist -- all known additions or corrections to be made by the applicant.

If an application is returned twice for additional information and the same requested information still is not provided, the application will be denied.

Access Applications

Upon receipt of a Permit application involving an access onto a State highway, the County Permit Manager or a subordinate will perform an initial on-site review of the proposed work site. The purposes for this review include the following:

1. To verify the application package contains applicable information required under Regulation 441.3.
2. To verify that information depicted on the plans actually matches field conditions. This includes verifying that existing features were not omitted from the plans (e.g., existing accesses, poles, drainage, curb, guiderail).
3. To verify that measurements (e.g., sight distances, grades) are not in conflict with the regulations, when measured consistent with statewide policy.

Driveway classification determinations. Nationwide, Traffic Engineers (including consultants and PENNDOT District Traffic Units) use the Institute of Transportation Engineers' (ITE) publication entitled "Trip Generation" to determine the number of trips generated by specific types and sizes of land uses. This publication contains information on numerous types of facilities and information is continually added to this publication to address new types of land use. If an applicant's driveway classification is suspect (e.g., if access for an ice cream stand is identified as Minimum Use), and the applicant is unwilling to modify its application, the application will be forwarded to the District Traffic Unit to resolve the matter. Past experience and local data will also be considered, as appropriate.

Sound Land Use

Amendments to the Pennsylvania Municipalities Code (MPC) through Acts 67 & 68 of 2000 require Commonwealth agencies, such as PENNDOT to *consider* local land use planning in reviewing funding and permitting applications. Sections 619.2 and 1105 of the MPC state the conditions for Commonwealth agencies to *consider and rely upon* local comprehensive plans and zoning in the review of these applications. The Land Use Questionnaire (Form M-950 MPC) asks six land use related questions of the HOP applicant. As specified in the MPC, where general consistency exists among certain local planning documents, the *Department has the authority to consider land use and to rely upon such in the approval or denial of the application.*

Generally, the changes to the MPC grant State agencies *authority to consider and rely upon* local comprehensive plans and zoning ordinances when reviewing funding or permitting or infrastructure. This means that PENNDOT has authority to link HOP issuance and denial determinations to conflicts between proposed off-site highway improvements under the HOP application and the local comprehensive plan and zoning ordinances. This linkage may be accomplished through consideration of the metropolitan planning organization's and the Department's Transportation Improvement Plan for the region, as well as existing transportation infrastructure concerns based upon inconsistencies between the land use proposed by the HOP applicant and the local comprehensive plan and zoning scheme.

Form M-950 MPC must be submitted for *Low, Medium and High Volume Driveway applications*. This action allows the Department to meet the statutory requirement "*to consider*" land use issues as part of the driveway application review process, where applicable. Form M-950 MPC accurately reflects the MPC requirements.

District Permit Managers are encouraged to use the MPC authority to approve or deny applications based on zoning considerations. District Permit Managers will notify the municipality as required if Form M-950 MPC identifies a zoning conflict. To date, relatively few applications have met all requirements under the MPC to enable the Department to "*rely upon*" zoning conflicts as part of the Department's driveway application review.

Utility Applications

The purposes and procedures for reviewing utility applications are basically the same as for reviewing access applications. When an application is received, the County Permit Manager or its subordinate will perform an on-site review and either forward the application to the District Permit Office for further review and issuance or return the package to the applicant for corrections and/or additions.

The main difference between the utility review and the access review is with the items to be checked and verified during the on-site review. Some typical on-site review items include:

1. Are correct S.R., Segment(s), and Offset(s) given?
2. Can the utility facility be better located?
3. Is a new aboveground facility placed as close to the right-of-way line as practical?
4. Is proposed longitudinal occupancy as close to right-of-way line as practical, or was acceptable justification included?
5. Was existing guiderail and type properly identified on plan?
6. Is aboveground facility placed at the minimum distance behind curb (consistent with Design Manual, Part 5, Chapter 7) or guiderail (consistent with RC standards, Design Manual, Part 2, Chapter 12 and Form M-949 A)?
7. Will the aboveground facility be placed in an unauthorized area (e.g., drainage ditch, ADA facility, in front of curb)?
8. Are emergency openings as depicted on plan (e.g., size, number, and location)?
9. Was required temporary restoration placed?
10. Will proposed facility be in conflict with bridges or highway appurtenances?

3.4 -- HOP FEES

Application, Issuance, and General Inspection Fees

The Permit applicant will be charged a fee for costs incurred by PENNDOT for the issuance and inspection of a Highway Occupancy Permit consistent with Regulations 441.4 and 459.4.

The general inspection fee for subsurface utility facilities is calculated only on the total linear feet of opening, not on the total linear feet of facility.

Regulation 459.4 allows the Utility to be charged only one inspection fee for longitudinal openings which simultaneously occupy two or more highway areas. PENNDOT will also allow transverse openings to be charged only the higher area fee (i.e., pavement fee).

In determining whether an opening is less than 36 square feet, do not include the one-foot cutback that is required for pavement openings under Regulation 459.8 (h) & (i).

Fees for storm water not connected to Department drainage facilities will be charged under Chapter 459 (see 459.1 *utility facility* definition). Fees for storm water that is connected to Department drainage facilities will be charged under Chapter 441.

In order for two or more poles (up to ten) to be assessed only a \$20 inspection fee, the facilities must be physically connected (i.e., share the same conductor).

Fee Exceptions

Consistent with Regulations 441.4 and 459.4, the following persons are exempted from Occupancy Permit application/issuance fees and general inspection fees. However, Permittees who qualify for certain fee exemptions under subsection (c) are still required to pay for additional application fees and additional inspection fees under subsection (d).

In order for an emergency test hole to be exempt from the inspection fees under Regulation 459.4(b)(6), the application shall identify the EPC and entry numbers.

Permit fees are not assessed for the following:

<u>Regulation</u> <u>441.4(c)</u> <u>Reference</u>	<u>Applicant</u>
1.	The Commonwealth of PA.
2.	PA political subdivisions. This includes public schools and colleges who derive their revenue from tax dollars.
3.	Governmental authorities organized under the laws of PA.
4.	The Federal government.
5.	<i>Charitable organizations ... (HOP applications submitted under current Chapter 441 only).</i>

<u>Regulation</u> <u>459.4(c)</u> <u>Reference</u>	<u>Applicant</u>
1.	The Commonwealth of PA.
2.	PA political subdivisions, except when placing a facility longitudinally within more than 100 total linear feet of pavement. In that case, the application and inspection fees for pavement openings will be charged under Subsections (a), (b), and (d).
3.	Governmental authorities organized under the laws of PA, except when placing a facility longitudinally within more than 100 total linear feet of pavement. In that case, the application and inspection fees for pavement openings only will be charged under Subsections (a), (b), and (d).
4.	The Federal government.

Regulation
459.4(c)
Reference

Applicant

5. Utility facility owners for:
- i. The installation or maintenance of highway lighting at the request of PENNDOT or political subdivisions.
 - ii. The replacement or renewal of their facilities prior to a Department maintenance project after notice from PENNDOT. In order to qualify for a free Permit, the application must include documentation that a facility is being replaced or renewed "after notice from" PENNDOT of a Department maintenance project.
 - iii. The removal of poles and attached appurtenances.
 - iv. Facilities moved at the request of PENNDOT or political subdivisions. In order to qualify for a free Permit, the application must include documentation that a facility is being moved "at the request of" PENNDOT.
 - v. Reconstructing or maintaining their facilities which occupy the right-of-way under private status. (The Utility must provide the Agreement Number and date of Agreement whereby private status was granted by PENNDOT in order to be eligible under this exemption. The private status can then be verified through the Bureau of Design -- Utility Relocation Section.)

A political subdivision or a governmental authority will be assessed an application fee and a general inspection fee when placing a longitudinal opening over 100 linear feet in the pavement. The general inspection fee will be based only on the total longitudinal opening in the pavement. A political subdivision or governmental authority will not be charged a general inspection fee for occupancy of either the shoulder or outside the shoulder.

Additional Fees

Additional fees may be charged by PENNDOT consistent with Sections 411 and 420 of the State Highway Law and Regulations 441.4(d) and 459.4(d) as explained below:

1. Additional Application Fees. -- Additional application fees may be charged when PENNDOT determines that the cost of reviewing the application will exceed the application and inspection fees by a "substantial" amount. When it is anticipated that such additional application review costs will be incurred, process Form M-945 H (in the case of a utility facility) or Form M-950 H (in the case of a driveway). After Form M-945 H or M-950 H is signed by the Applicant and received by the District Permit Manager, formal review of the application may begin. Additional application fees may be assessed only for costs incurred after the Effective Date of Form M-945 H or M-950 H. The following guidelines may be used to determine if there may be additional "substantial" costs:
 - a. Work involving more than 500 linear feet of pavement or shoulder, or both.
 - b. Work involving more than 1,000 total feet of surface openings within State highway right-of-way.
 - c. An "accident damaged" or "cluster area" aboveground facility.
 - d. An access application which warrants a Traffic Impact Study or Drainage Impact Report.
 - e. Work involving construction of acceleration, deceleration or left turn lanes.
 - f. An application returned more than once for incompleteness or correction, if resubmitted.
 - g. Work involving an unusual situation which requires the need for extreme care.
 - h. Other circumstances for which PENNDOT may reasonably require reimbursement.

2. Additional Utility Inspection Fees. -- Under Regulation 459.4(d)(2), additional inspection fees may be charged when PENNDOT determines that the permitted work is of sufficient magnitude or importance (e.g., substantial work project) to warrant assignment of one or more inspectors on a more than spot inspection basis. The following guidelines may be used to determine if there may be additional "substantial" costs:
 - a. Work involving a subsurface facility in limited access highway right-of-way.
 - b. Work involving trench openings of more than 500 linear feet in the pavement or shoulder, or both, on a nonlimited access highway.
 - c. Work involving an unusual situation which requires the need for extreme care.
 - d. Work authorized under Regulation 459.12 (relating to modification of conditions).

3. Additional Access Inspection Fees. -- Under Regulation 441.4(d), additional inspection fees may be charged when PENNDOT determines that the permitted work is of sufficient magnitude or importance to warrant assignment of one or more

inspectors on a more than spot inspection basis. The following guidelines may be used to determine if there may be additional "substantial" costs:

- a. Work involving construction in limited access highway right-of-way.
- b. Work involving construction of acceleration, deceleration or left turn lanes.
- c. Work involving construction of pavement widening or construction of type 6 or better shoulders.
- d. Work involving construction of drainage facilities in the right-of-way (e.g., new installation or connection to existing facilities).
- e. Work involving an unusual situation which requires the need for extreme care.

Charge Calculation and Processing

When an inspector is assigned, the Permit will so indicate and all time will be documented on "Application Review/Permit Inspection Costs", Form M-371 A.

If invoices are not paid, the debt will be referred to the Attorney General for collection.

Supplement Fees

PENNDOT will charge a Supplement fee under Regulations 441.4(a) and 459.4(a).

1. Time extension. -- A \$10 fee is assessed for each 6-month time-extension. For example, if a Permittee is issued a Supplement to extend the work period under the Permit for a period of one year, the Supplement fee would be \$20.00.
2. Amend a Permit. -- A \$10 fee is assessed when the Permittee proposes to make a change to a Permit (e.g., change of name or address). If there is a request for additional work, the applicable general Permit inspection fees will be charged in addition to the Supplement fee.

Method of Payment

Fees shall be paid (under current software) in the form of a check or money order (cash is not acceptable).

Refund of Fees

Regulations 441.4(e) and 459.4(e) authorize PENNDOT to refund the *general* Permit *inspection* fees on unused Highway Occupancy Permits. In order to be eligible to receive such a refund, the Permittee shall deliver a written request with the Permittee's copy of the Permit to the issuing District Permit Office on or before the Permit's expiration date.

1. A refund processing fee of \$10 will be deducted from the general Permit inspection fees.
2. The Permit application/issuance fee is not refundable on unused Permits.
3. Supplement fees are not refundable.

If the Permittee qualifies for a refund on an unused Permit, a refund request will be processed by the District Permit Office.

Uncollectible Check(s)

A check or money order is deemed to be uncollectible once it has been returned to PENNDOT via the State Treasury.

Any Permittee who has submitted to PENNDOT an uncollectible check as payment for a Highway Occupancy Permit will be notified (by certified mail) by the District Permit Office to replace the uncollectible check immediately with a certified check or money order for the amount of the Permit(s) plus an additional \$20 penalty fee per check as authorized under Section 619-A (2)(I) of the Administrative Code.

If the Permittee does not replace the "uncollectible" check within one week after the mailing date of the letter, the District will revoke the Permit(s), under authority of Regulations 441.10(b)(2) and 441.10(c) as well as 459.11(b)(2) and 459.11(c).

Township Fees

Under authority of 53 P.S. Section 2322, second class townships are required to assess Permit fees for utility facilities occupying Township roads as outlined in Regulation 459.4. PENNDOT has a duty to determine utility permit fees to be assessed by second class townships in accordance with this law (53 P.S. section 2322). In 1979, PENNDOT determined that all second class townships would use PENNDOT's regulatory fee schedule, consistent with legislative intent to promote statewide uniformity:

"The township shall collect a fee as determined by the Department of Transportation for processing the application and another fee for making the inspection."

For additional information, contact the Pennsylvania State Association of Township Supervisors, 4855 Woodland Drive, Enola, PA 17025, (Phone: 717-763-0930).

3.5 -- RECORDING A HIGHWAY OCCUPANCY PERMIT

Certain types of Highway Occupancy Permits must be recorded before the Permit can be issued (see Regulations 441.4(f) and 459.4(f)). This recording procedure will give future purchasers of the affected property notice of a deed restriction as well as future maintenance responsibilities that run with the land.

Applicants should anticipate the requirement to have their Permit recorded -- prior to issuance -- for the following:

1. If Permit authorizes the construction of a driveway where the Permittee is required to construct and/or maintain drainage facilities (e.g., detention/retention ponds).
2. If Permit authorizes drainage from a property owner to connect to existing State drainage facilities of any type (e.g., pipe, ditch, inlet, outlet).
3. If Permit contains Drainage Releases (Form M-947) under Regulation 441.3(h).
4. If Permit contains an Access Covenant (Form M-946) under Regulation 441.6(16).
5. If Permit restricts access (e.g., right-turns only).
6. If Permit contains an Agreement under Regulations 441.5(f) or 459.5(b).
7. If Permit contains an Indemnification Agreement (Form M-945 I & M-950 IC or Form M-950 I & M-950 IC).
8. If Permit requires the installation and maintenance of signs or pavement markings.
9. If Permit grants a modification issued under Regulation 441 or 459.
10. If Permit issued to a facility owner who is not in the business of providing utility service under Regulation 459.3(b).
11. If Permit involves the alteration or closing of existing access in conjunction with a new access.

Note: If land will be conveyed to PENNDOT, the executed deed and the title information must be reviewed and accepted by the Right-Of-Way Administrator prior to: (1) recording, and (2) issuance of the permit.

3.6 -- ADDITIONAL HOP APPLICATION REQUIREMENTS

In addition to a properly completed application, certain circumstances may require the submission of additional forms or information, as discussed below.

Restoration Security

a. Utility Restoration security may be required under Section 420 of the State Highway Law and Regulation 459.5 (e.g., Forms M-945 K and M-945 L). To ensure State highways are adequately protected, applicants that do not have a "blanket" Form M-945 K on file with the Central Permit Office should anticipate the requirement to provide security for individual Permits consistent with the following criteria:

1. Substantial work projects (reference Regulation 459.5(b)).
2. Work involving a subsurface facility in limited access highway right-of-way.
3. Work involving trench openings of more than 500 feet in the pavement and/or shoulder of a nonlimited access highway.
4. Work involving a situation which requires extreme care, as determined by PENNDOT.
5. When backfill (other than flowable fill) is placed outside shoulders in layers more than eight inches in depth (reference Regulation 459.8(g)(3)(ii)).
6. In the case of a facility owner who is not in the business of providing utility service (reference Regulation 459.3(b)(2)).
7. Work authorized under Regulation 459.12 (relating to modification of conditions).

Section 420 of the State Highway Law (36 P.S. Section 670-420) requires the amount of highway restoration security for surface opening(s) to be based on highway restoration costs. The computation sheet for highway restoration security (Form M-945 J) will be used by District staffs as a guide for establishing a minimum security amount, adjusted for inflation.

b. Access Restoration Security. Section 420 of the State Highway Law grants PENNDOT authorization to condition issuance of driveway and local road Permits on the posting of appropriate security. The State Highway Law doesn't impose a two-year limit on security for other than "surface openings". However, the duration of all Permit security will be two years after PENNDOT's acknowledgment of completion of Permit work. Security amounts will be based on PENNDOT's anticipated cost to complete unfinished construction or to modify unpermitted construction; and may include anticipated inspection costs, inflation, and attorney's fees.

Following are guidelines for applicants to anticipate the requirement to provide security on an access Permit:

1. Work involving inspection on a more than spot inspection basis, under Regulation 441.4(d).
2. Work involving auxiliary lanes (e.g., acceleration, deceleration, left turn standby) or additional thru-lanes.
3. Substantial work requiring an agreement, under Regulation 441.5(f).
4. Work involving a situation which requires extreme care, as determined by PENNDOT (e.g., work involving a waiver/modification under Regulation 441).

c. Acceptable forms of security are:

1. An irrevocable letter of credit (LC), in a form acceptable to PENNDOT. A LC is preferred by PENNDOT as a simple and convenient form of security that provides PENNDOT with adequate protection. The issuing Bank will simply pay PENNDOT for any expenses actually incurred in connection with the Permit upon demand consistent with the LC. The standard Forms M-945 L (if a utility) or M-950 L (if an access) should be used; although it is not unusual for the LC to be retyped by the PA Commercial Bank on its letterhead.
2. An individual bond, executed by the Permittee and its insurance company naming the Commonwealth as an obligee. While this is an acceptable and standardized form of security, it does require that PENNDOT make a claim against the Permittee's insurance company in order to collect. In the event the obligor fails to pay, a lawsuit must be initiated in order to recover amounts expended by PENNDOT in connection with the Permit. Forms M-945K (if a utility) or M-950 K/K1 (if an access) may be used, without modification.
3. An escrow account, in a form acceptable to PENNDOT. This form of security would require the Permittee to deposit cash or certificates of deposit with a Bank to secure its obligation to complete the work, restore the highway, and pay inspection costs as well as attorney's fees. Although it does provide a high level of security to PENNDOT, it requires Permittees to obligate large amounts of cash, and requires added time to prepare an individualized escrow agreement which must be pre-approved by the Office of Chief Counsel, Permits Section staff.

d. The regulations specify that security (when required) be obtained as a prerequisite to issuance of a Permit. PENNDOT may, upon written request showing good cause, allow restoration security to be submitted to PENNDOT after issuance of the Permit, provided the security document is received by PENNDOT at least 30 days prior to the start of work. Applicants who submit substitute security (e.g., escrow) are advised that work under the Permit cannot begin until their security undergoes special review and is approved, as to form and legality, by PENNDOT's Office of Chief Counsel.

Although a Permittee's contractor may also be named on an individual security document along with the Permittee, a security document which does not name the Permittee is not acceptable.

Do not contact the Central Office (directly or indirectly) concerning the status of security documents submitted for Chief Counsel review within the preceding two weeks.

The best means of assuring that a timely, favorable final decision results from Chief Counsel review is to ensure all security documents are complete and accurate initially, and submitted to the District Office at least 30 days in advance of the proposed start of work.

Indemnification

- a. Utility Indemnification Agreement (Form M-945 I & M-950 IC) is required under:
1. Section 459.3(b)(2)(i)(A) relating to applicants not in the utility service business. In the case of applicants who are not in the business of providing utility service, the Indemnification Agreement (Form M-945 I & M-950 IC) will satisfy the indemnity requirement in Clause (A). Other requirements for insurance (Clause B), restoration security (Clause C), and facility maintenance (Clause D), shall be executed in an amount at least as high as may be required to cover PENNDOT's exposure under the Permit.
 2. Section 459.12(b)(1) relating to modifications of Regulation 459 conditions. Whenever a modification is granted, the District Executive may, if requested, decide to excuse the applicant from executing an Indemnification Agreement (Form M-945 I & M-950 IC), submitting new or additional security (i.e., could the modification result in additional damage to the highway?), and providing a Certificate of Insurance (Form M-945 X) for the life of the facility.
- b. Access Indemnification Agreement (Form M-950 I & M-950 IC) is required under:
1. Section 441.3(h) relating to inability to obtain a drainage release, where a drainage release or satisfactory drainage controls are not feasible.
 2. Section 441.5(e)(1)(v) relating to applicants requesting a waiver of *regulatory* design requirements.
 3. Section 441.8(j)(5) relating to placing an auxiliary lane in front of another person's property.

Thus, the Form M-945 I Indemnification Agreement (& M-950 IC) is to be used for Regulation 459 -- Utilities, and the Form M-950 I Indemnification Agreement (& M-950 IC) is to be used for Regulation 441 -- Access. These forms may not be modified.

Section 4 of the agreements requires insurance that covers both property and personal injuries in an amount equal to the limits contained in the *Sovereign Immunity Act* (presently \$250,000 per individual and \$1,000,000 in the aggregate per occurrence). Evidence of required insurance must be submitted to the District Permit Manager initially and upon the future sale or transfer of any interest in the property.

Section 10 of the agreements require a covenant to be added to the deed stating that the Indemnity Agreement's obligations attach to the land and pass with it on any transfer. If application is made for a waiver/modification, the applicant must present a copy of a deed to the site showing the addition of the covenant. If land is being conveyed to PENNDOT, the executed deed and the title information must be reviewed and accepted by the Right-Of-Way Administrator prior to: (1) recording, and (2) issuance of the permit. The applicant then has five working days to provide documentation from the Recorder of Deeds Office demonstrating such filing.

Insurance

If insurance is required under Regulations 441 or 459, the amount of insurance shall be at least \$250,000 per person and at least \$1,000,000 per occurrence. Insurance policies shall include coverage for public liability and property damage.

Under Regulation 441, when it is determined that evidence of insurance is required, either a properly executed Certificate of Insurance (Form M-950 X) or a copy of the property owner's Certificate of Insurance must be submitted.

Under Regulation 459, when it is determined that evidence of insurance is required and the Permittee does not have a current "blanket" Certificate of Insurance on file, a properly executed Certificate of Insurance (Form M-945 X) must be submitted.

Certificates of Insurance alone are not *verifiable* evidence of insurance coverage because coverage limitations, policy provisions, endorsements, waivers and exclusions that exist in the actual policy are not listed on these certificates.

Following are criteria that can be used to anticipate whether evidence of insurance will be required under Regulations 459.7(11), 459.7(12), 459.5(d) -- generally -- and in other sections of Regulation 459, as noted:

- a. Work involving a facility in limited access highway right-of-way.
- b. Work involving trench openings of more than 500 feet in the pavement and/or shoulder of a nonlimited access highway.
- c. Work involving an unusual situation which accentuates the need for extreme care.
- d. Work authorized under Regulation 459.12 (relating to modification of conditions).
- e. If blasting within the right-of-way as required under Regulations 459.7(12)(ii) and 459.7(13). (Note -- no blasting is permitted within 50 feet of the nearest part of a bridge, box or culvert.)
- f. If openings exist overnight, as required under Regulation 459.8(d)(2)(iii).
- g. If a Permit is issued to a facility owner who is not in the business of providing utility service (cf., Regulation 459.3(b)(2)(i)(B)).
- h. Work involving seismic surveys by the vibroseis method.

If 30 days advance written notice to cancel insurance is delivered to PENNDOT, consistent with Section (c) of Form M-945 X, unless a new Certificate of Insurance is received prior to the cancellation date, no further work may be performed under the Permit, and no time-extension Supplement will be issued until a new certificate is filed.

Photodocumentation

Photodocumentation required under Regulation 459.5(g) will not be waived. Photodocumentation must display the pre-construction condition of the pavement and shoulders and should display curbs, guiderail and other highway appurtenances such as bridge approaches and signs.

PENNDOT may create substitute photodocumentation if the Permittee's second submission is found to be unsatisfactory. No work may be started until acceptable photodocumentation is received by the District Office.

Traffic Control Plan

Under Regulation 459.3(f), a Traffic Control Plan shall be submitted when:

- a. Work is performed on a limited access highway.
- b. It is necessary to close a portion of a travel lane during darkness when work is not in active progress.
- c. Work will require closing a highway (e.g., traffic detour).
- d. Required for other special circumstances.

Special circumstances which require a Traffic Control Plan include:

1. When a figure from Chapter 203/212 will not or cannot apply to the proposed operation.
2. Applications from facility owners who are not in the business of providing utility service are required to submit a detailed Traffic Control Plan under Regulation 459.3(b)(2)(ii).
3. When a closed lane will also be used to store material (cf. Regulation 459.8(f)) or equipment (cf. Regulation 459.7(6)).

Applicants need to submit four copies of applicable figures from Chapter 203/212 to provide the Permittee's work crew direct access to the traffic control requirements.

Requirements for a Traffic Control Plan are in Chapter 203/212, Section 203.21(a)(3); Regulation 441, Section 441.3(f)(3); and Regulation 459, Section 459.3(f)(4).

Requests to use municipal roads as part of a detour route need to be accompanied by a letter from the affected municipality approving the use of local roads and must acknowledge that the municipality will hold PENNDOT harmless for any damage incurred by such use.

Traffic Impact Study

Regulation 441.8(a)(1) requires that all driveways be designed to accommodate the amount and type of traffic they will serve considering the type and character of roadway the driveway will access. Regulation 441.3(k) authorizes PENNDOT to make such investigations and require such additional information from applicants as it deems necessary.

Traffic Impact Study guidelines are posted on the PENNDOT Web Site (see footer).

The final Traffic Impact Study report shall be submitted to the involved municipality and PENNDOT for review. Traffic Impact Study reports which do not contain essential information or which were not done consistent with PENNDOT guidelines will be returned to the developer for correction and resubmission.

Drainage Impact Report (a.k.a. Drainage Control Report)

A Drainage Impact Report (for other than Minimum Use access) is required under Regulation 441.3(g) in order (1) to enable the appropriate review agencies to identify the potential impact of proposed site development, and (2) to determine if existing drainage facilities are adequate or if new or additional facilities will be required.

Not all developments will have a significant enough impact to require a Drainage Impact Report. The use of reasonable engineering judgment is necessary in making this determination. Applicants should anticipate the need to submit a Drainage Impact Report under the following conditions:

- a. The proposed site development may cause a significant increase in flow rate or flow velocity of water onto the highway or into Department drainage facilities. This would include drainage that initially flows away from the highway but may affect the highway downstream.
- b. The proposed site development may cause an increase in flow rate or flow velocity of water onto another owner's property (as a result of action authorized by the Permit), either abutting the site development or across the highway.
- c. In an area of known drainage or flooding problems.

If it has been determined that a Drainage Impact Report is required for a proposed site development, it is the responsibility of the applicant to ensure the report is developed consistent with Department guidelines.

Drainage Impact Report guidelines are posted on the PENNDOT Web Site (see footer).

Design Manual, Part 2 hydrologic and hydraulic criteria must be used if the applicant is designing for PENNDOT drainage facilities, such as storm pipes or culverts. However, other recognized methods (such as the U.S. Soil Conservation Service method) are acceptable for designing other storm water management facilities, such as detention basins.

A Drainage Impact Report must be prepared under the supervision of a registered professional engineer (licensed by the State Registration Board for Professional Engineers), except as noted below:

- a. Registered Landscape Architects (registered by the State's Board of Landscape Architects) cannot be excluded from preparing and submitting Drainage Impact Reports and storm water management plans under their own seal if they are approved to do so by the Bureau of Professional and Occupational Affairs.
- b. Professional Land Surveyors cannot be excluded from preparing and submitting Drainage Impact Reports and accompanying plans under their own seal if they are approved to do so by the Bureau of Professional and Occupational Affairs.
- c. Other persons authorized by law.

When PENNDOT approves a Drainage Impact Report that contains any of the following, the Permit needs to be recorded prior to issuance:

- a. Where the Permittee will construct and/or maintain drainage facilities.
- b. Permits authorizing drainage to connect to existing State drainage facilities of any type (e.g., pipe, ditch, inlet, outlet).
- c. Permits containing Drainage Releases (Form M-947) under Regulation 441.6(16).

Drainage Release (Form M-947)

Under Regulation 441.3(h), an applicant is required to submit a Drainage Release (Form M-947) -- for other than a Minimum Use driveway -- if it can reasonably be anticipated that there will be an increase in the flow rate or flow velocity of water onto another property as *a result of action authorized by the Permit*.

A Drainage Release will be required if a Drainage Impact Report confirms that an increase in flow rate or flow velocity will be generated onto another property.

If the affected property owner(s) will not execute a release, an alternative solution to using the Indemnification Agreement (Forms M-950 I & M-950 IC) would be to have the applicant design for a zero increase in flow. This can usually be accomplished by detention or retention of the proposed increase in flow.

When a Drainage Release is executed, both the Permit and the Drainage Release need to be recorded.

Access Covenant (Form M-946)

An applicant may be asked to execute an Access Covenant when it is determined that -- at a future date -- a property may be subdivided, resulting in an unacceptable number or location(s) of driveway(s), consistent with Regulation 441.6(16).

Examples would include:

1. Where future development may add additional streets. Evidence of this would be where the plan shows dedications.
2. Where future development may change cul-de-sacs to through streets.
3. Where the developer may subdivide and sell "out parcels" which would generate requests for additional driveways.

The Access Covenant will restrict access to the currently approved locations if the property is later subdivided or if the land is sold to another person.

The Access Covenant needs to be executed and recorded before a Permit may be issued.

Additional Application Information

Regulations 441.3(k) and 459.3(j) require PENNDOT to determine the genuineness, regularity and legality of every application and authorize PENNDOT to reject an application if not satisfied of its genuineness, regularity or legality, or the truth of any statement contained in the application. These Regulations also authorize PENNDOT to make such investigations and require such additional information as PENNDOT deems necessary.

Additional information would include engineering studies to help identify necessary measures to (1) protect the traveling public, (2) ensure the structural integrity of the highway system, (3) preserve proper drainage, (4) provide operational characteristics satisfactory to PENNDOT, and (5) satisfy other regulatory purposes as outlined in Regulations 441.2 and 459.2.

Studies -- which identify available options and compare their respective advantages and disadvantages and recommend remedies -- may also be required from applicants in order to make a final decision on some applications.

Private Status

"Private Status" is defined in Regulation 459.1 as:

"The status of a utility's facilities, which are situated within public right-of-way by agreement with PENNDOT, after PENNDOT condemned the utility's easement and did not provide a substitute right-of-way." (Emphasis added.)

Regulation 459.4 exempts utility facility owners from application fees and general Permit inspection fees for reconstructing or maintaining their facilities which occupy the right-of-way under private status.

"Historically... non transportation public utilities have been permitted to occupy highway rights-of-way free of cost, subject to and subordinate to the State's police power to control and regulate the highways for the benefit of the public. Such utilities obtain no property rights in the highway and can be ordered by a competent State or municipal agency to relocate their facilities at their own expense..."Delaware River Port Authority v. Pennsylvania Public Utility Commission, 393 Pa. 639, 145 A.2d 172 (1958).

Thus, Regulation 459 provides a fee exemption if PENNDOT has executed a *private status* agreement with the Utility. Such *private status* agreements operate as a Highway Occupancy Permit for purposes of Regulation 459 and Design Manual, Part 5.

The fee exemption facilitates PENNDOT's policy of entering into such agreements with public Utilities in lieu of their relocation outside of the right-of-way as part of a highway improvement project involving the Right-of-Way and Utility Relocation Units. Such agreements operate as a Permit and no additional fee is required. Of course, if an unpermitted utility facility is found to be occupying the right-of-way (not under a private status agreement with PENNDOT), then a Permit, and payment of the applicable fees, is required.

Permit Agreements

PENNDOT may require the applicant to execute an agreement under Regulations 441.5(f) and 459.5(b).

Following are guidelines for anticipating Permit work that *may* require an agreement:

1. Under Chapter 441 Access Regulations:
 - a. Where there will be a *substantial amount of work*, such as auxiliary lanes or drainage facilities extending beyond the property frontage.
 - b. Non-temporary occupancy within limited access highway right-of-way.
 - c. An unusual situation which requires extreme care.
2. Under Chapter 459 Utility Regulations:
 - a. Where there will be a *substantial amount of work*, such as pavement and shoulder openings totaling more than 5,000 feet.
 - b. Non-temporary occupancy within limited access highway right-of-way.
 - c. An unusual situation which requires extreme care.

As part of the agreement, the Permittee may be expected to use prequalified contractors (e.g., base course, pavement and incidental construction work classifications as outlined in Regulation 457.5).

The agreement would also address special coordinating and control concerns inherent with substantial work, including necessary right-of-way to be acquired and conveyed or dedicated, responsibility for future maintenance and repair of the highway, coordination and approval with the local municipality, Department and municipality contribution of work or funds -- in conjunction with a programmed Department project, contractor pre-approval, future highway improvements (e.g., signalization) that may be necessary, and other areas of interest or concern to PENNDOT or the applicant that are not already addressed in the law, regulations or Permit.

Allow at least three weeks for processing of agreements.

3.7 -- MISCELLANEOUS REVIEW OF APPLICATION

Mine Entries and Strip Mining Operations

Permits may be issued authorizing mine entries to be constructed under State highway right-of-way. Such plans will be reviewed by the District's Geotechnical Engineer to verify that the highway will be adequately supported. Allow at least three weeks for processing of any agreement that may be required. General Permit inspection fees are charged consistent with Regulation 459.4(b)(4). Also see Section 419 of the State Highway Law.

DEP Regulations restrict certain blasting operations near highways open to traffic. 25 Pa. Code, Section 87.127(f)(1) requires a 1,000 ft. distance for surface mining of coal and 25 Pa. Code, Section 211.61(m) & (n) require an 800 ft. distance for use of explosives, generally. At lesser distances, traffic needs to be stopped while blasting is in progress.

Seismic Surveys

Permits may be issued authorizing seismic surveys using the vibroseis method only (see Regulation 459.9(f)).

The approved procedure utilizes a vibrator -- off the roadway -- to set up minor shock waves for the seismic survey; virtually precluding damage to the highway. Seismic surveys are not permanent in nature and do not involve the opening of the surface of the highway or any blasting. A Permit may be issued authorizing a continuous seismic survey in two or more counties in the same Engineering District. This is a slow moving operation and needs to be performed consistent with Chapter 203/212. Permit inspection fees are charged consistent with Regulation 459.4.

A Certificate of Insurance (Form M-945 X) will be required to address anticipated property damage complaints from citizens.

Traffic Signal Installations

The District Traffic Unit will determine the current/future need for traffic signals during the review of applications involving local roads or Medium or High Volume driveways. If a traffic signal cannot be justified initially but it is anticipated that traffic signal warrants will be met eventually, a written financial commitment will be requested from the applicant and municipality that they will commit the appropriate funds to construct the signal installation and a traffic signal will be installed when the volume of traffic from the access justifies its need.

A municipality shall also obtain a Highway Occupancy Permit if work involves a change to drainage structures, embankment, curb, sidewalk, highway geometry, pavement, or installation of auxiliary lane(s) in conjunction with a Traffic Signal Permit (Form TE-964). *Emergency and preventive maintenance to existing traffic signal installations would not normally require a Highway Occupancy Permit.* Signalization is to be designed and placed consistent with TC-7800 series standards (Department Publication Nos. 148 and 149).

Highway Lighting

Highway Occupancy Permits are required (under both Sections 411 and 420 of the State Highway Law and Regulation 459.1) for highway lighting occupying State highway right-of-way if such lighting is not owned by PENNDOT. A Permit may be issued only if application is made by a political subdivision or a public Utility. Permit requests from a public Utility will be processed by the District Utility Relocation Unit if the lighting is part of a highway construction project.

Highway lighting shall be designed and placed consistent with the RC-80 series standards contained in Department Publication No. 72M. Also see Design Manual, Part 2, Chapter 2, Section 19 F. and Chapter 5.

All requests within limited access right-of-way require review by PENNDOT Central Office. An Agreement may be required and it may be necessary to record the Permit.

Limited Access Interchanges, Assess Points, and Ramps

Protection for interchange areas is maintained by the establishment of limited access through the entire interchange area. Interchanges on the Interstate system and other freeways provide access to local areas, not to individual developments or parcels. Ramps to and from freeways connect to local area road networks, which in turn perform the function of land service to individual generators. Therefore, all such requests must be consistent with Design Manual, Part 1A, Appendix G. Also see 23 CFR 630. Also see Design Manual, Part 2, Chapter 1.

Limited Access Highways

1. Access. -- An access permit is not the correct instrument for authorizing an access point to a private property owner along a limited access highway. A new access point requires disposal of a property right owned by PENNDOT. When properties are encumbered by limited access lines during the acquisition phase of a highway project, it is common that heavy severance damages are paid for the effect such encumbrances have on the value of the property residues. The determination as to the extent of the effect is a function of the acquisition appraisal process. Historically, PENNDOT has paid significant monies for the right to limit access to properties. Accordingly, when a disposal of access is desired, a "before" and "after" appraisal must be made to determine whether, and if so by what amount, the proposed change in access has enhanced the value of the property. Any enhancement value determined will then serve as the basis for the remuneration requested from the property owner.
2. Drainage Structures. – In order to conform to Title 23, Code of Federal Regulations (CFR), applicants for a permit will not be permitted to encroach or install structures on the right-of-way unless:
 - a. It is in the "public interest", and

- b. The encroachment will not impair the highway (as defined) or interfere with the safe and free flow of traffic and drainage.

Both conditions must be satisfied; it is not permissible to allow right-of-way occupancies solely for the convenience of the permittee. Also, abutting property owners will not be allowed to occupy highway right-of-way with their site improvements if there are reasonable alternatives.

FHWA may allow the placement of rock-lined ditches from an adjacent property to highway drainage systems provided there is compliance with other requirements (e.g., available system capacity). However, a proposal for other encroachments (including pipes and end treatments) must document that the two conditions cited above are satisfied. If this justification is not included with the permit application, it will be promptly returned to the applicant as incomplete.

Consistent with Regulation 441, permits will not normally be issued for occupancy of any limited access highway by drainage structures which alter or connect with a PENNDOT drainage facility. In special cases, PENNDOT, with the written approval of the FHWA, may make exceptions.

An application for a drainage facility not altering or connected to a Department drainage facility that proposes to occupy limited access right-of-way must be consistent with the Design Manual, Part 5, as specified in Chapter 459.

Construction of Sidewalk, Curb, or Drainage Facilities

Free Permits will be issued in the name of a municipality (i.e., borough, city, or township) for the construction of sidewalk, curb or drainage facilities, at no additional cost or expense to PENNDOT. *Note: The Department may also issue a permit to an individual property owner for the construction of such structures within its property frontage limits provided the permit is recorded.*

Curb and sidewalk are to be designed and installed consistent with Sections 630, 676 and 694 of Publication 408, Roadway Construction Standards RC-64M and RC-67M, and Design Manual, Part 2, Chapter 6. Also see Section 416 of the State Highway Law.

Drainage facilities are to be designed and installed consistent with applicable provisions of Design Manual, Part 2, Chapter 2; the Maintenance Manual, Chapter 8.5; Publication 408 and Roadway Construction Standards RC-30M thru RC-43M. Also see Sections 417 and 421 of the State Highway Law.

A municipality shall also obtain a Highway Occupancy Permit if work involves a change to drainage structure(s), embankment, curb, sidewalk, highway geometry, pavement, or installation of auxiliary lane(s).

Applications to construct or modify curb, sidewalk or drainage will be reviewed by District staff to determine the effects on safety, capacity, existing utility facilities and compliance with the Americans with Disabilities Act (ADA).

If the proposed sidewalk, curb or drainage would have an adverse effect on safety or capacity, the application will not be approved.

If the proposed sidewalk, curb or drainage would have an adverse effect on highway drainage, the Permittee will be required to (1) construct all remedial drainage facilities, and (2) record the Permit.

If the proposed sidewalk, curb or drainage will require the relocation of any utility facility, the applicant must submit written acknowledgment from all affected Utilities that the Utilities agree to relocate to the location designated on the plans at no additional cost to PENNDOT.

Following are regulatory references relating to drainage. (Also see State Highway Law, Sections 417 and 421.)

1. Chapter 441:
 - a. 441.3 (g) – Drainage control plan...
 - b. 441.3(h) -- Drainage release.
 - c. 441.4 (f)(1) – Recording...
 - d. 441.6 (6) – Altering drainage prohibited.
 - e. 441.6 (12) – Maintenance.
 - f. 441.6 (15) – Damage to highway.
 - g. 441.10 – Penalties and enforcement actions.
2. Chapter 459:
 - a. 459.1 – Utility facility definition.
 - b. 459.7 (5) – Altering drainage prohibited.
 - c. 459.7 (14) – Maintaining structure or facility.
 - d. 459.7 (16) – Damage to highway.
 - e. 459.11 – Penalties and enforcement actions.

Turnpike Permits

Under Act No. 61 of 1985, Section 19(b), PENNDOT is required to approve the Pennsylvania Turnpike Commission's plans and specifications for construction on the Pennsylvania Turnpike by contract. These items are approved by the Bureau of Design as well as affected Districts.

Pennsylvania Turnpike Commission related work within State highway right-of-way is authorized by a Highway Occupancy Permit, issued by the affected District.

Transverse Pavement Openings

Regulation 459.8(b) identifies five instances where trenching across the improved area may be authorized by the Permit; as follows:

- a. The subsurface is solid rock, as documented with satisfactory evidence such as drill records, or where boring was attempted *twice* without success (except on limited access highways where trenching across the improved area will not be authorized).
- b. There are other facilities located longitudinally under the improved area and their location precludes methods other than trenching, as documented with a detailed plan. The plan needs to show the location and approximate depth of existing facilities. Verify applicant claims as part of the application site review.
- c. Adjacent development in a very congested urban area makes the construction of a tunneling or boring shaft impossible. The plan needs to show the obstacles that prevent the construction of boring pits. Verify applicant claims as part of the application site review.
- d. The highway is unpaved.
- e. PENNDOT's wearing course is older than ten years, and the highway average daily traffic (A.D.T.) does not exceed 500.

Following are two additional situations under which trenching may be authorized across the improved area:

- f. If an applicant requests to open cut across a section of highway which is within the limits of an active or pending Department construction project involving excavation below the subgrade elevation within the existing pavement area or in areas where at least three feet of embankment will be placed above the existing pavement. Continuous inspection will be required to preclude subsidence. Other items to consider would include security, insurance, coarse aggregate material certification and compaction tests.
- g. Drainage pipe culverts. It is not feasible to drill, bore, drive or tunnel storm drainage facilities across a highway. See Section 601 of Publication 408.

Longitudinal Occupancy -- Subsurface

Regulation 459.8(c)(1) states that a utility facility shall be placed outside the pavement and shoulder unless there is no feasible space outside the pavement and shoulder for placing the facility, in which case occupancy within the pavement or shoulder may be authorized by the Permit.

Where it is necessary for a utility to occupy the pavement or shoulder longitudinally, the District has the authority to determine the facility location which will have the least impact on both the traveling public and the structural integrity of the highway.

New facilities not placed adjacent to the right-of-way line will not be approved unless the plans include satisfactory documentation to verify why the facility cannot be placed adjacent to the right-of-way line or as near thereto as is feasible (e.g., slopes too steep to operate equipment, existing utilities, or structures).

Longitudinal Occupancy -- Aboveground

Regulation 459.9(b)(1)(i) states that new poles and other aboveground facilities shall be installed outside the highway Clear Zone as near the right-of-way line as practicable, under the Permit and applicable provisions of Design Manual, Parts 2 and 5.

Regulation 459.9(b)(1)(ii) states that replacement of poles and other aboveground facilities shall comply with the Permit and applicable provisions of Design Manual, Part 5.

Regulation 459.9(b)(1)(iii) states that installation of poles and other aboveground facilities in locations where highway guiderail or curb exists shall comply with the Permit and applicable provisions of Design Manual, Parts 2 and 5.

New facilities not placed adjacent to the right-of-way line cannot be approved unless the plans include satisfactory documentation to verify why the facility cannot be placed adjacent to the right-of-way line or as near thereto as is practicable (e.g., existing utilities, guiderail, curb, certain slopes, structures).

Aboveground Crossings

Several Regulation sections will be considered together to determine if a person may obtain a HOP for an aboveground crossing:

- a. Regulation 459.1 definition of “utility facility” includes the stipulations “*Privately, publicly or cooperatively owned lines, facilities ... which directly or indirectly serve the public or any part thereof.*”
- b. Regulation 459.3(b)(1) prohibits HOP applications from contractors of the owner or operator and persons only being serviced by the facility.
- c. Regulation 459.3(b)(2) provides conditions under which PENNDOT may issue a HOP to a facility owner who is not in the business of providing utility service.
- d. Regulation 459.6 outlines provisions for performing emergency work on permitted facilities (in future years).
- e. Regulation 459.7(3) requires permitted work to conform to PENNDOT standards.
- f. Regulation 459.7(14) requires the permittee to maintain its facility and keep it in good order and repair (in future years).
- g. Regulation 459.7(15) requires a damaged facility to be promptly removed, repaired or otherwise made safe (in future years).
- h. Regulation 459.7(17) requires the permittee to change or relocate its facility at its own cost and expense if it interferes with highway alterations (in future years).
- i. Regulation 459.9(a) stipulates that a Permit will not be issued to install aboveground facilities (as defined under "utility facility") at a location which PENNDOT determines to have a high accident potential.

PENNDOT staff may consider the following when determining if a proposed aboveground facility crossing will have a high accident potential:

- a. Are supporting structures placed outside State highway right-of-way?
- b. Are supporting structures protected from errant vehicles, and vice versa?
- c. Are structures crossing the highway at least 18 feet above the pavement and shoulder, to preclude impact from any vehicle, including buses, fire apparatus, utility vehicles (i.e., cherry pickers), maintenance vehicles with raised beds, and overheight loads on vehicles operating either under Special Hauling Permit authority or illegally (e.g., off route)? *Note: The 18-foot minimum vertical clearance is consistent with Regulation 459.9(c), (relating to wires, cables or conductors).*
- d. Is the crossing structure designed to preclude any type of material from dropping or being thrown onto vehicles, pedestrians, or the surface within the right-of-way?

The District Bridge Unit must approve the structural design. Additional application fees may be assessed under Regulation 459.4(d)(1) to reimburse PENNDOT for the engineering analysis; as documented on Form M-371 A.

Aboveground occupancy by a pipeline crossing is not authorized, except under a Bridge Occupancy License. Pipelines need to be installed at least three feet beneath the surface. See Regulation 459.8.

Slope Easements

Section 210 of the State Highway Law defines a slope easement as an easement for support or protection of the highway. It includes the right to place drainage structures for the protection of the highway as well as contouring the land to support the highway. *Rapetta Appeal 405 Pa. 287, 175 A2d 77 (1961)*. The interest is short of a fee simple title, however, and allows the owner use of the area which is not inconsistent with support or protection of the highway. In an appropriate case, this may include placement of utility and access facilities within a slope area. In this regard, Section 411 of the State Highway Law prohibits occupancy by a utility of any portion of a State highway except under such conditions, restrictions and regulations established by PENNDOT. Likewise, Section 420 of the State Highway Law prohibits the opening of the surface of the State highway without a Permit. In this circumstance, a slope area may be considered an integral part of the State highway, and the Permit process is an appropriate and available mechanism to determine if a proposed occupancy of a slope easement is inconsistent with the support or protection of the highway.

Where slope easements extend outside the State highway right-of-way, a Permit may be required by PENNDOT for (1) adjustments to the slope, or (2) occupancy of the slope.

Although the property owner has *surface rights* within the required limit of slope, these rights are subordinate to the purpose for which the slope easement was taken (i.e., stability and general maintenance and protection of the highway, including drainage facilities).

Applications for slope adjustments adjacent to limited access highway right-of-way require prior approval of PENNDOT's Central Office Bureau of Design and FHWA.

Applications for utility occupancy of slopes adjacent to nonlimited access highways must be accompanied with either (1) a deed for the utility's easement, or (2) a release from the property owner authorizing utility occupancy.

Instances Where Highway Occupancy Permit Is Not Required

- a. A Permit is *not* required for routine maintenance operations, including the following:
 1. Place cable within existing conduit or place wire over nonlimited access highways; if no surface opening is required (also see Regulation 459.3(a)).
Note: Highway Occupancy Permits are required for utility lines crossing over limited access highways even though the supporting structures are located outside the right-of-way, consistent with FHWA aerial jurisdiction.
 2. Enter a manhole, except in limited access highway medians or interchange areas.
 3. Pave or repave a permitted access, as long as the physical design characteristics do not change (e.g., width, radius, grade or drainage) and the access does not violate the requirements of law, Regulation 441 or the Permit.
 4. Regrade or place additional aggregate on a permitted Minimum Use driveway, as long as the physical design characteristics do not change (e.g., width, radius, grade or drainage) and the access does not violate the requirements of law (e.g., ADA), Regulation 441 or the Permit.
- b. A Permit is *not* required for the placing of newspaper receptacles or mailboxes, although their location is subject to PENNDOT maintenance requirements.
- c. A Permit is *not* required for a new access or an adjustment to existing access made by PENNDOT or its contractor as part of a PENNDOT highway construction project. Such access is reviewed, documented and authorized as part of the approved highway construction plans. No HOP application is required for such work which is *not* initiated by or on behalf of the property owner.

Instances Where Highway Occupancy Permit Cannot Be Issued

- a. To authorize a bikeway. Bikeway Permits (Form TE-700) are issued by the Bureau of Design. Bikeways are designed consistent with Design Manual, Part 2, Chapter 16.
- b. To authorize a snowmobile route. A request to designate a State highway as a snowmobile route must originate from a municipality. Direct such requests to the District Traffic Unit (see Publication 46, Chapter 3.7).
- c. To authorize an all-terrain vehicle route. Direct such requests to the District Traffic Unit (see Publication 46, Chapter 3.7).
- d. To authorize outdoor advertising devices. Direct such requests to the District Highway Beautification Unit (Right-of-Way).
- e. To authorize banners or parades. Direct such requests to the District Traffic Unit. See Regulations 201.4 and 201.71 (relating to special events). Also see Section 425 of the State Highway Law and Publication 46.
- f. To authorize advertising signs, bus stop shelters, liquid fuel pumps or tanks, loading platforms, weigh scales or phone booths. PENNDOT has authorized bus stop shelters by written agreements developed by the Maintenance Office and Chief Counsel.
- g. To authorize parking on State highway right-of-way, but Department property may be leased to establish a surface parking lot under Regulation 495.6.
- h. To authorize installations of electrically powered traffic control devices. Direct such requests to the District Traffic Unit. See Section 6122 of the Vehicle Code, Regulation 441.8(o)(2), Publication 46, Chapter 2.2 and Publications 148 and 149.
- i. To authorize occupancy within the area of a public rail-highway crossing in instances where the Pennsylvania Public Utility Commission has taken jurisdiction of the crossing, as documented by a P.U.C. Order. See Regulation 459.7(2)(i)(G).
- j. To authorize monitoring wells within State highway right-of-way. Monitoring wells are administered separately from the HOP programs and may be authorized by a standard written agreement developed by the Office of Chief Counsel.

3.8 -- VIEWING PENNDOT INFORMATION ON-LINE

Viewing PENNDOT Video log “on-line”

Type: www.dot.state.pa.us to bring up PENNDOT’s Home Page

- Click on Special Interest Areas
- Click on GIS
- Click on Pennsylvania State Highway Video Log
 - Select “I Accept” to accept the Disclaimer
 - Select the connection speed
 - Pick a Search Type
 - Follow Prompts (based on selection)

Viewing PENNDOT County Maps “on-line”

Type: www.dot.state.pa.us to bring up PENNDOT’s Home Page

- Click on Traveler Information
- Click on Maps (Cartography)
- Click on Maps in PDF Format
 - Follow Prompts (based on selection)

NOTE: Adobe Acrobat Reader must be installed on PC

NOTE: Ctrl = to Zoom in // Ctrl – to Zoom out

Viewing PENNDOT Publications “on-line”

Type: www.dot.state.pa.us to bring up PENNDOT’s Home Page

- Click on General Information
- Click on Publications
- Click on PENNDOT Publications and Maps
 - Select Pub Number [Link](#) (if available)

3.9 -- HOP SIGHT DISTANCE OVERVIEW

Velocity (V)

Legal Speed

The speed limit is the maximum velocity, in miles per hour, that traffic may legally travel on a section of highway as determined under 67 Pa. Code, Sections 201.6(17) and 201.31--201.35, and consistent with the Vehicle Code, 75 Pa. C.S. Sections 3361--3365.

Section 3362 of the Vehicle Code (Maximum Speed Limits) reads as follows:

- (a) General rule. -- Except when a special hazard exists that requires lower speed for compliance with Section 3361 (relating to driving vehicle at safe speed), the limits specified in this section or established under this subchapter shall be maximum lawful speeds and no person shall drive a vehicle at a speed in excess of the following maximum limits:
- (1) 35 miles per hour in any **urban district**.
 - (1.1) 65 miles per hour for all vehicles on freeways where PENNDOT has posted a 65-miles-per-hour speed limit.
 - (1.2) 25 miles per hour in a **residence district** if the highway:
 - (i) is not a numbered traffic route; and
 - (ii) is functionally classified by PENNDOT as a local highway.
 - (2) 55 miles per hour in other locations.
 - (3) Any other maximum speed limit established under this subchapter.

Section 102 of the Vehicle Code includes the following definitions:

“Urban district.” The territory contiguous to and including any street which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than 100 feet for a distance of a quarter of a mile or more.

“Residence district.” The territory contiguous to and including a highway not comprising a *business district* when the property on the highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.

“Business district.” The territory contiguous to and including a highway when within any 600 feet along the highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

Safe-Running Speed

The safe-running speed is the maximum velocity, in miles per hour, at which drivers may safely operate their vehicles on a section of highway during favorable weather conditions and prevailing traffic conditions, as determined under 67 Pa. Code, Section 201.6(17)(iii).

District Permit staff may determine the Formula Sight Distance (FSD) consistent with Regulation 441.8(h) by using the safe-running speed in the "formula" for "V", where:

$V = \text{Velocity of vehicle (miles per hour)}$.

The safe-running speed method, as outlined on Form M-950 SRS, may be used where the maximum legal highway speed approaching a driveway is not posted.

85th Percentile Speed

The 85th percentile speed is the velocity, in miles per hour, which is exceeded by only 15% of the drivers traveling on a section of highway, consistent with the "Manual of Transportation Engineering Studies," Institute of Transportation Engineers, current edition, and 67 Pa. Code, Section 201.6(17)(ii).

District Traffic staff may determine the Formula Sight Distance (FSD) consistent with Regulation 441.8(h) by using the 85th percentile speed in the "formula" for "V", where:

$V = \text{Velocity of vehicle (miles per hour)}$.

District Traffic staff may require sight distances greater than minimum values derived from the Formula Sight Distance (FSD):

1. if trucks, longer combination vehicles, buses, special mobile equipment or similar specialized vehicles will frequently use the driveway, considering number of lanes, medians and roadway geometry, consistent with Chapter 9 of the AASHTO publication entitled "A Policy on Geometric Design of Highways and Streets," and Design Manual, Part 2.
2. if staff determines another location along the property frontage of the owner will better accommodate the amount and type of traffic that is expected to frequently use the driveway and considering the type, character and 85th percentile speed of the highway which is being accessed.
3. if a local road, consistent with Publication 70M sight distance criteria.

Measuring Driveway Sight Distances

The measurement of available sight distances for a proposed access is a critical component of the access location decision. An applicant's sight distance measurements will be verified by PENNDOT.

For the purpose of measuring driveway sight distances, the drivers' eye heights shall be measured at 3.50 feet above the proposed driveway surface and highway pavement surface. The vehicle heights shall be measured at 3.50 feet above the proposed driveway surface and highway pavement surface. The placement of vehicles measured at the driveway and on the roadway shall be consistent with the operation of the driveway and roadway, as illustrated on Form M-950 S.

Also consider impacts of legally parked vehicles and foliage which may not be present when the sight distance measurements are made. For each direction along the highway, the following lengths shall be the measured sight distances for that direction, as illustrated on Form M-950 S:

- (A) The maximum length of roadway along which a driver at a driveway location can continuously see another vehicle approaching on the roadway. Consistent with driver responsibilities contained in Sections 3112, 3114, 3323, 3344 and 3361 of the Vehicle Code (75 Pa. C.S.), the driver's eyes shall be measured ten feet back from the traveled portion of the roadway.
- (B) The maximum length of roadway along which a driver on the roadway can continuously see the rear of a vehicle which is located in the driver's travel lane and which is positioned to make a left turn into a driveway.
- (C) The maximum length of roadway along which a driver of a vehicle intending to make a left turn into a driveway can continuously see a vehicle approaching from the opposite direction. This sight distance length is measured from the location of the approaching vehicle to a point on the roadway where the left-turning vehicle crosses the path of the approaching vehicle.

Insufficient Sight Distance

If **any** measured sight distance for a proposed access does not exceed the minimum Formula Sight Distance (FSD), the application will not be approved for affected turning movements. Applicants will be advised, in writing, of available options.

Vegetation on Adjacent Property

PENNDOT generally has broad authority to control use of highway right-of-way for **all** transportation purposes. 36 P.S. Section 670-420, 71 P.S. Section 512. PENNDOT "...shall have the absolute right to trim, cut and remove any...shrubs growing within the legal right-of-way of any State highway...insofar as they overhang or encroach upon the legal right-of-way of any State highway." 36 P.S. Section 670-410. Accordingly, PENNDOT may require removal of any shrub or encroachment -- within the right-of-way -- affecting sight distance as a condition of a Highway Occupancy Permit.

In addition, section 6112 of the Vehicle Code reads:

6112. Removal of traffic hazards by property owner.

*(a) General rule.--It is the duty of the owner of real property to remove from the property any tree, plant, shrub or other similar obstruction, or part thereof, which by obstructing the view of **any** driver constitutes a traffic hazard.*

(b) Notice of hazard.--When the department or any local authority determines on the basis of an engineering and traffic investigation that a traffic hazard exists, it shall notify the owner and order the hazard removed within ten days.

(c) Penalty.--The failure of the owner to remove the traffic hazard within ten days after notice under subsection (b) is a summary offense and every day the owner fails to remove it shall be a separate and distinct offense. The offense is punishable by a fine of \$10.

Accordingly, PENNDOT or a local authority may require removal of shrubbery or other similar obstruction affecting sight distance to or from a local road.

However, in the case of a driveway, the owner(s) of the shrubbery or other similar obstruction may need to be notified of PENNDOT's intention to issue a Highway Occupancy Permit requiring removal of the shrub(s) so that the owner(s) may take appropriate action, consistent with law. Thus, the applicant may be required to make timely, advance notification to the owner(s) of shrubbery or other similar obstruction, of PENNDOT's intention to issue a driveway permit requiring removal of the subject shrubbery. Such notification must advise the property owner of his rights under the Administrative Agency Law and the procedural requirements of 67 Pa. Code Chapter 491, relating to administrative proceedings before the Department, as well as filing fees.

3.10 -- BRIDGE OCCUPANCY LICENSE (BOL) PROGRAM

Law

Section 702 of the State Highway Law (36 P.S. Section 670 - 702) authorizes PENNDOT to issue Bridge Occupancy Licenses and collect several fees for the occupancy of a State bridge by the utility facility of a "public service company".

Regulation and Policy

Regulation 459.10a governs Bridge Occupancy. Following are general statewide policies related to these Regulations:

1. License. Regulation 459.10a(a) requires a Bridge Occupancy License (Form M-906 L) in order for a person to attach a utility facility to a State bridge or modify an existing facility. Form M-906 L is issued by the Central Permit Office (under current software) in order to establish an account, enter the License data on the database, and otherwise administer the annual rental fees required under the statute and Regulation 459.10a(b)(3).
2. Application. Regulation 459.10a(b)(1) requires a separate License Application (Form M-906 A) for each utility facility and for each bridge, to be submitted to the District Office Bridge Engineer.

If the application is from a facility owner "not in the business of providing utility service", the application shall identify "how the public will benefit from the occupancy" and shall furnish other information as may be required by Regulation 459.3(b)(2), which is the section governing application for a Highway Occupancy Permit submitted by a facility owner "not in the business of providing utility service".

The following questions will provide information to help determine if the application satisfactorily identifies "how the public will benefit from the occupancy":

- a. Will the property being serviced by the utility be used by the public? For example, is a hospital, school, shopping center, hotel, restaurant or similar business establishment being serviced by the utility?
- b. Do the application and plans coincide with the justification?
- c. Is the applicant being serviced by the utility facility? (See Regulation 459.10a(c)(2)). Is the applicant a customer of the Utility? Will the applicant be invoiced by the Utility for utility service?
- d. How will the facility be maintained?

3. Denied BOL applications. If an application package is:
- a. not in the name of the owner of the utility facility,
 - b. from a facility owner not in the business of providing utility service but does not identify to PENNDOT's satisfaction how the public will benefit from the occupancy,
 - c. not submitted consistent with Regulation 459.10a, or
 - d. unsatisfactory from a structural standpoint, as determined by the District Bridge Unit,

Then, the application will be denied by the District Bridge Engineer, in writing.

4. BOL Fees. Regulation 459.10a(b)(3) specifies an issuance fee, an inspection fee, an accommodation fee and an *annual* rental fee. While governmental Utilities are generally exempt from these fees, governmental *authorities* are not exempt from the annual rental fee.
5. BOL Scope.
- a. The provisions of Regulation 459 are incorporated into Regulation 459.10a(d) License conditions -- where technically feasible -- by substituting License and Licensee for Permit and Permittee, respectively.
 - b. The Licensee is also responsible for complying with DEP Regulation 105, as noted in Regulation 459.10a(d)(2).
 - c. The utility facility installation must be consistent with applicable provisions of Design Manual, Part 5, as noted in Regulation 459.10a(d)(11). In particular, see Design Manual, Part 5, Chapter 7.

CHAPTER 4 -- ISSUANCE OF PERMIT

4.1 -- PERMIT ISSUANCE

After the Permit application is circulated, reviewed and approved by each authorized Department Unit, the Highway Occupancy Permit (Form M-945 P) will be promptly issued by District Permit Office staff, provided the application and plans are complete, accurate and consistent with law, regulation and statewide policy.

Permits may be issued for a period of six months -- or multiples thereof -- as deemed necessary for permitted work to be completed (e.g., work would not be completed in six months if a large utility or access project, or if permanent restoration cannot be completed in six months due to weather).

Each Highway Occupancy Permit will be computer generated consistent with statewide procedures.

Regulation 459 authorizes certain Regulation sections to be altered only by Permit:

<u>Utility Regulations Allow Occupancy Permit To Authorize:</u>	<u>Regulation Reference</u>
Other than rubber tired equipment (Form M-945 U).	459.7(6)(i)
Trenching across highway, where drilling, boring, driving, or tunneling are not feasible.	459.8(b)
Facility less than 3' deep (e.g., traffic signal installations, highway lighting, certain other facilities).	459.8(b)(5)
Facility to be placed in pavement or shoulder.	459.8(c)(1)
Longitudinal trench opening over 200'.	459.8(c)(1)
Plowing within right-of-way.	459.8(e)(1)
Use of retained suitable material.	459.8(g)(2)
Trench backfilling within pavement or improved shoulder with other than 2-RC aggregate.	459.8(g)(2)

The District Permit Manager may apply permit conditions, based on reasonable judgment, to unique situations that are not specifically governed by Regulations or statewide policy.

4.2 -- MODIFICATIONS

Regulation 459.12 provides for an applicant to request, in writing, a modification to the Utility Regulations. Subsection 459.12(a) contains four criteria that must all be met in order for a term or condition of the Regulations to be modified.

If a contractor inquires about whether a specific Regulation may be modified, they will be referred to the Applicant/Permittee. It is risky for a contractor to assume any Permit requirement will be modified. It would be unfair to unsuccessful bidders if the successful bidder is granted cost-saving exceptions solely because they were anticipated.

Prior to issuing a Permit which contains a modification, the District Executive will determine whether to require the applicant to:

1. execute an Indemnification Agreement (Form M-945 I & M-950 IC);
2. submit new or additional security (e.g., could the modification result in damage to the highway?); and
3. provide a Certificate of Insurance (M-945 X) for the life of the facility.

The "third parties" subsection (d) text clarifies that if a modification is granted under Regulation 459.12, abutting property owners or other interested parties do not have the right to impose additional conditions on the Permittee (although they may have a right to intervene or protest a modification of conditions, if it affects their interest adversely).

If a modification is granted, the Permit will contain a detailed description of the modification.

4.3 -- DISTRIBUTION AND RETENTION OF PERMIT, PLANS AND RECORDS

Once a Permit is printed and signed by the District Permit Manager (or District Executive in the case of a Permit authorizing a waiver/modification under Regulation 441 or a modification under Regulation 459.12); the Permit, application, plans and related documentation will be distributed. The Permittee Copy of the Permit is forwarded to the Permittee along with a copy of PENNDOT approved plans, attachments and security documents.

Under Regulations 441.6(1)(iii) and 459.7(1)(iii), the Permit shall be maintained by the permittee (or licensee) as “a permanent record ...”

See Regulations 441.6(1) and 459.7(1) in their entirety for the regulatory “scope of permit” provisions.

4.4 -- SUPPLEMENTAL HIGHWAY PERMIT (ELECTRONIC FORM M-945 S)

A Supplement (electronic Form M-945 S) is issued to authorize an amendment to the Permit. A Supplement must be applied for by the Permittee within 30 days after the Permit expiration date.

A Supplement may be issued for:

1. Changes to the Permit. Typical examples are: increase or decrease in the permitted work, changes in location of the permitted work, open cutting in lieu of boring, changes in the work zone Traffic Control Plan.
2. Time-extensions. Ideally, no time-extension Supplement will have to be issued since the initial Permit should provide sufficient time for work authorized under the Permit to be completed. If highway conditions have not changed and if satisfactory justification is provided, a time-extension Supplement may be issued for either six months or one year to allow Permit work to be completed. If a second time-extension is authorized on a Permit, it may include a condition that no future time-extensions will be authorized without satisfactory reasons being provided, and that all work must be completed by the revised Permit expiration date.
3. A Department error (no fee is charged to correct a Department error).

The Supplement must be issued before any changes to the original Permit may be authorized. Also, no work may be performed on an expired Permit until a Supplement is issued. However, the Permittee is responsible for performing such work as is necessary to protect the traveling public, while waiting for a Supplement to be issued.

The Supplemental Permit issuance fee is \$10.00 for each change and for each 6-month time-extension unless exempt due to a Department error or under Regulations 441.4(c) or 459.4(c). When a Supplement is issued for a change in work, additional inspection fees will be assessed, consistent with Regulations 441.4 or 459.4.

Insurance. The applicant needs to verify the expiration date(s) are still valid on submitted Insurance Certificates when requesting a time-extension Supplement.

Under Regulations 441.6(1)(iii) and 459.7(1)(iii), the Permit (and Supplemental Permit) shall be maintained by the permittee (or licensee) as "a permanent record ..."

4.5 – CANCELLATION OR ASSIGNMENT OF PERMIT

Cancellation -- Refund

An *unused* Permit may be cancelled provided that:

1. The Permittee contacts the issuing office, in writing, requesting cancellation and stating the reason(s) why the Permit was not used.
2. The request is postmarked or delivered to the District Permit Office on or before the Permit's expiration date.
3. The Permittee Copy of the unused Permit is submitted with the request.
4. The Permit was not issued for Emergency Permit Card use.

If a cancellation request meets all of the above provisions, the District Permit Office may initiate the processing of a refund.

The application/issuance fee cannot be refunded. Also, there is a ten-dollar refund-processing fee. Therefore, a refund can be processed only on those unused Permits which cost at least ten dollars more than the application/issuance fee.

Assignment of Permit or License

A Permit may be assigned to a new owner of a permitted facility or property by executing Form M-948, Assignment of Permit or License. Form M-948 is designed in four sections that must be completed, with original signatures, by the present Permittee (Assignor), the new owner (Assignee), the District Permit Office and Central Permit Office.

District Permit Office staff will review the first two sections for completeness and accuracy and determine whether (1) there are any special conditions listed on the Permit or any Supplements, and (2) PENNDOT acknowledged completion of the permitted work. If the acknowledged completion occurred within two years of the assignment and security is still in effect (or if security is warranted otherwise), the new owner (Assignee) must provide security acceptable to PENNDOT as a condition for approving the assignment. Assignment requests which do not include a copy of the Permit will be returned.

The same criteria that PENNDOT uses to determine who may apply for a permit/license are also used to determine who may obtain a permit/license via the assignment process. See Regulations 459.3(b) and 459.10a(b)(1).

Assignment requests cannot be processed if work was not completed consistent with the Permit or if the Permit is still active. Requests to change the permittee's name on an active Permit may be done via a Supplement, if both the existing and new owner acknowledge acceptance of the change (e.g., co-signatures on the application).

Upon approval, the completed Form M-948 will be returned to the District Permit Office for distribution.

If a Utility/developer proposes to assign numerous utility/access permits due to a change of name or ownership, a "blanket" assignment may be processed. If there is a change in name, Form M-948 must be executed along with a letter -- on the Utility/developer's letterhead -- requesting that all permits issued before the date of name change be transferred to the new name (Assignee). If there is a change of ownership, follow the above procedure except a letter will be required from *both* the existing Utility/owner requesting the transfer and from the new Utility/owner agreeing to accept transfer of all permits issued before date of transfer.

4.6 -- MUNICIPAL PERMIT AGREEMENTS

Under Section 420 of the State Highway Law PENNDOT *may* delegate its Permit issuing authority to a municipality which agrees to issue "Permits" in compliance with Regulations, or municipal ordinances approved by PENNDOT. Municipal ordinances shall contain standards which are *at least as high* as those contained in Regulations 441 and 459.

Model Ordinances must be completed, approved and executed, before a municipality may enter into a standard Agreement to issue Permits for PENNDOT.

These municipal agreements are administered by each District Executive.

4.7 -- UTILITY PERMIT ISSUERS

There are three governmental entities that may be authorized to issue a HOP for a utility facility (see Regulation 459.1 "Permit" definition):

1. A HOP, Form M-945 P, issued by PENNDOT's District Permit Office.
2. A HOP issued by a municipality under a municipal permit issuance agreement (see previous section).
3. A 'Utility Relocation Occupancy Permit, Form D-4181-P', issued by PENNDOT's District Utility Relocation Unit:

*An authorization to occupy highway right-of-way when a utility facility **relocation** is required by a **highway construction project**, granted either by written agreement or by a highway occupancy permit—utility relocation (Form D-4181-P) under the Design Manual, Part 5.*

Clearly, Permit Form D-4181-P should be issued **ONLY** when a utility facility **relocation** is required by a **highway construction project**.

The term "**relocation**" is defined in Design Manual, Part 5, as the "adjustment, replacement, or relocation of utility facilities as required by a highway construction project, such as: removing and reinstalling the facility, acquiring necessary right-of-way, moving or rearranging existing facilities, changing the type of facility and any necessary safety and protective measures. It shall also mean constructing a replacement facility functionally equal to the existing facility, where necessary for continuous operation of the utility service, the project economy, or sequence of highway construction".

The term "**highway construction project**" is defined in Design Manual, Part 5, as the "construction, reconstruction, widening or resurfacing of a State Highway, within the existing legal right-of-way or within a new required right-of-way, by contract or by Department forces".

In Highway Construction Projects where there is no Detailed Alternatives Design analysis, Design Manual, Part 5 provides that the project design will proceed from Preliminary Alternatives Development and Review directly into Final Design or directly into Final Design without any studies. Utility relocation activities commence immediately following Final Design Approval.

The transfer of Permit issuance responsibility from the District Permit Unit to the District Utility Relocation Unit is clearly not simply a matter of when the Utility Relocation Unit decides to notify Utilities of an upcoming highway construction project, or simply a matter of when the District decides to begin managing the upcoming highway construction project in the Contract Management System (ECMS). Rather, consistent with Design Manual, Part 5, this transfer of responsibility occurs during the alternatives analysis stage, or if there is none, after final design approval for the upcoming highway construction project.

Exemption from fees is a separate, but related issue as to which entity will issue the HOP. Department Regulation 459.4(c) reads, in part:

459.4(c) Exemptions. Permit application fees and general permit inspection fees are not required from the following:

* * * * *

(5) Utility facility owners for:

* * * * *

*(ii) The replacement or renewal of their facilities prior to a Department **maintenance project** after notice from the Department.*

This fee exemption is not based on a directive or relocation letter issued by the Department, but rather replacement or renewal action taken by the Utility on its own initiative, prior to a PENNDOT **maintenance project**.

The Maintenance Manual, Publication 23, describes a variety of Department maintenance projects, including safety, reconstruction and widening projects sponsored by Department Maintenance Forces that may require the replacement or renewal of utility facilities. (For example, see Chapter 5 (Shoulders); Chapter 7 (Paved Surfaces); and Chapter 8 (Drainage) for typical maintenance activities). The term 'Department Maintenance Project' is delineated by maintenance activities described in the Maintenance Manual and is clearly different from a Highway Construction Project as defined in Design Manual, Part 5.

* * * * *

(iv) Facilities moved at the request of the Department or political subdivisions.

If the request to move a facility is due to a PENNDOT maintenance project, the District Permit Office would issue the HOP for a utility in State highway right-of-way.

If the request to move a facility is due to a highway construction project, the District Utility Relocation Unit would issue the HOP for a utility in State highway right-of-way.

If the request to move a facility is due to a local maintenance or construction project, the political subdivision would issue the HOP for utilities in local highway right-of-way. Second Class Townships would issue a free permit, consistent with the Department's extension of these regulatory fees to Second Class Townships, consistent with law.

Of course, if there is a perceived conflict between a Regulation and a Publication, the Regulation (as interpreted by an Agency's Central Office staff which promulgated the Regulation and has knowledge of regulatory intent) will govern. Duly promulgated Regulations have the force and effect of Law.

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CHAPTER 5 -- RESOLUTION OF PROBLEMS

5.1 -- ACCESS AND DRAINAGE PROBLEMS

Unpermitted/Noncomplying Access

Authority. Under Section 2002(a)(10) of the Administrative Code, 71 P.S. Section 512(a)(10), PENNDOT has exclusive authority and jurisdiction over State highways.

Under Section 420(b)(2) of the State Highway Law and Regulation 441, no person shall (1) open an access onto a State highway or (2) open the surface of, or (3) occupy a State highway without a Permit.

PENNDOT may restrict an access constructed without a Permit or in violation of Regulation 441 consistent with the following statewide policy. Also see Regulations 441.6(1) and 441.10.

1. Limiting and blocking. There are two ways to restrict an unpermitted/noncomplying access:
 - a. Limiting (resolved by "work and bill", if violation is correctable by this method). This method *limits* the location and/or width of a particular access by selectively restricting access to/from portions of the property which abuts a State highway. The Department may limit access through traffic control device signing, the HOP process, or by physical means. (See *Longo, Id*).
 - b. Blocking (resolved by court order or by "work and bill", but the appropriate level of concurrence is required prior to blocking any access location). This method *prohibits* vehicular ingress and egress by blocking either (1) a particular access which PENNDOT determines to have an adverse impact on the highway, or (2) the entire length of property which abuts a State highway.
2. Long-existing access. A long-existing access is an access which was constructed or last altered more than five years ago. If a long-existing access does not pose an operational or safety problem, then PENNDOT will not pursue blocking the access, unless the owner or operator of the driveway or local road fails to apply for a Permit -- at PENNDOT's request -- or fails to comply with the requirements of a Permit.

Note: *An access last altered by or at the direction of PENNDOT (i.e., authorized on a construction project plan) does not change the status of a long-existing access, nor does such a PENNDOT-initiated alteration trigger the need for the property owner to apply for a HOP.*

3. Questions. In cases where an unpermitted/noncomplying access was constructed or altered within the last five years and the property owner is not willing to apply for a Permit, two questions will be asked:

Q 1: Does the owner have access at any other location on the property?

A 1: If the owner has reasonable access at another location, the owner will be notified, by a Citation (Form M-945 C), of the violation and of the need to obtain a Permit. If reasonable efforts are unsuccessful, PENNDOT will either "limit" the access (e.g., by "work and bill") or -- if "limiting" will not correct the violation -- block the unpermitted/noncomplying access, for the protection of the traveling public. PENNDOT need only allow reasonable (i.e., safe and operationally sound) access, not unlimited access.

If the owner has no other access, then the following question will be asked.

Q 2: Does the driveway pose an operational or safety problem?

A 2: If the District Traffic Unit determines a driveway poses an operational or safety problem, PENNDOT will either "limit" the access (e.g., by "work and bill") or -- if "limiting" will not correct the violation -- block the unpermitted/noncomplying access, for the protection of the traveling public.

If the driveway poses no operational or safety problem, PENNDOT will issue a Citation (Form M-945 C), notifying the property owner to obtain a Permit. If reasonable efforts are unsuccessful, PENNDOT will either "limit" the access (e.g., by "work and bill") or -- if "limiting" will not correct the violation -- block the access.

4. Costs. The owner will be billed by PENNDOT for restricting and unrestricting the access, once costs are documented.
5. D.E. concurrence. The District Executive will be consulted about each access location under staff review for corrective action, before the "limiting" or "blocking" an access. If approval is received to block an access, the property owner will be notified by certified mail that if he/she does not submit an application for a Permit within 30 days, the access will be blocked, and that he/she will be billed for all costs incurred by PENNDOT.

This statewide policy is intended to balance the conflicts that exist between access traffic and highway traffic. Its successful implementation requires not only reasonable engineering judgment, but also includes legal and administrative considerations which will collectively result in a recommended course of action for resolving problems associated with unpermitted/noncomplying access locations.

Pipe Maintenance -- Responsibility

Authority. PENNDOT has statutory authority to maintain adequate highway drainage (State Highway Law, 36 P.S. Section 670 - 417) and to regulate the use of State highways (State Highway Law, 36 P.S. Section 670 - 420).

Pipe culverts placed under a driveway to accommodate the property owner enable safe vehicular access without adversely affecting highway drainage. If the driveway did not exist, a pipe culvert would not be necessary to maintain highway drainage. Pipe culverts can become blocked and cause more potential problems than driveways with swales. Use swales, where feasible, across driveways. If swales are not feasible, pipes may be allowed.

Pipe culverts placed under a driveway benefit the property owner as well as the traveling public. A pipe culvert can reduce the property owner's cost of maintaining the driveway. Maintenance of a pipe culvert installed under an access is the property owner's responsibility (under Regulation 441.6(12)). Although PENNDOT may initially install a pipe culvert under a driveway as part of a construction or maintenance project, it is primarily the *property owner's responsibility* to maintain the pipe culvert just as it is primarily the property owner's responsibility to maintain safe sight distance and to remove snow from the driveway. These responsibilities are not limited to "permitted" driveways; thus, whether or not a valid Permit exists does not alter the fact that the owner is responsible for access maintenance.

Persons owning property abutting a State highway have a constitutional right of reasonable (i.e., safe and operationally sound) access to public roads. However, along with this right there is also a responsibility to provide continued safe and operationally sound access to motorists and a responsibility not to adversely affect the rights thru-traffic has to safe and operationally sound highway movement.

Of course, if a nonfunctioning pipe culvert is creating a hazardous roadway condition, PENNDOT may -- after appropriate notice -- take action to eliminate the hazard (and invoice the property owner for all costs). Under Regulation 441.10, PENNDOT has authority to remove, sever or block drainage structures constructed or altered without a Permit or in violation of the Regulations.

Where drainage structures (other than a cross pipe under a Minimum Use driveway) are permitted in Department right-of-way or are permitted to connect to Department drainage facilities, the Permittee is responsible for future maintenance. Permits that allow the above types of drainage need to be recorded.

Also see the PENNDOT Maintenance Manual, Department Publication 23, Chapter 8.

Drainage Problems -- Responsibility

If an icing, debris or drainage problem is caused by an improperly constructed or maintained driveway, following is statewide policy for having the problem corrected.

If a driveway is channeling drainage onto the roadway, the District will notify the property owner to have the problem corrected as soon as feasible. This is true regardless of whether the driveway was authorized by Permit. It is not necessary to determine first whether a Permit exists because:

1. State Highway Law, Section 420(e), makes it a summary offense for any person to:
 - a. Violate any rule or regulation (i.e., Regulation 441) promulgated under authority of Section 420 of the State Highway Law.
 - b. Willfully, destroy, injure or damage any State highway, by any method or device.
2. The existence of a Permit does not make drainage into the right-of-way legal.
 - a. If the drainage is damaging the right-of-way, (e.g., washing some of the shoulder material onto the highway) damage is occurring to the highway. If the landowner fails to fix it, after being told to do so, he/she is violating Section 420(e) of the State Highway Law by willfully allowing the damage to continue, whether or not a Permit exists.
 - b. Regulation 441.7(a) states that driveways shall be located, designed and maintained in such a manner as not to interfere or be inconsistent with the design, maintenance and drainage of the highway. A driveway that is draining onto the highway, or damaging the shoulder, is not being maintained in a manner consistent with the highway's drainage.
 - c. If no Permit exists, Section 420(e) of the State Highway Law is still applicable as it is hard to visualize a situation where a driveway is discharging sufficient drainage to cause a safety hazard (e.g., icing), without disturbing the shoulder.
 - d. Even if there is a Permit, if the drainage problem causes a clear and present danger to the traveling public (e.g., icing) prompt corrective action needs to be initiated.
 - e. However, if feasible, the Permittee/property owner will be given notice of PENNDOT's intention to repair or correct the violation, and an opportunity to make corrections at its own expense, or to file suit to prevent further action by PENNDOT.

If responsibilities for correcting driveway drainage problems overlap, the District Permit Manager will pursue compliance with the Driveway Permit and Regulation 441, while the Maintenance Manager will resolve drainage problems affecting the right-of-way.

Also see the PENNDOT Maintenance Manual, Publication 23, Chapter 8.

5.2 -- DEPARTMENTAL CITATIONS

The Citation Form (M-945 C) is designed to assist Department staff in documenting Occupancy Permit violations, as well as violations of State Highway Laws, Regulations and the Vehicle Code. The Citation will also assist field staff to notify a violator -- in writing, as required herein and by Regulations 441.10 and 459.11 -- of violations and necessary corrective action. A Citation also provides written notice to all concerned persons about a violation.

Since Regulations 441 and 459 require oral notice of violations to be followed with written notice within ten days, the Citation Form documents violations consistent with the Regulations. Citations also provide documentation for hearings and court proceedings.

Whenever feasible, the Citation Form will be completed at the site of the violation and the violator will be given its appropriate copy at this time. The "work crew leader" copy would not be mailed unless there is no violator at the site. If the Permittee/Owner is other than the person performing the work, the "Permittee Copy" will be forwarded to the Permittee/Owner. Citations involving Permit violations will be issued to the Permittee, not its consultant or contractor.

The violator will be given reasonable time to correct a non-safety violation (e.g., up to 24 hours). Where a safety violation is not corrected immediately, all permitted work will be stopped until the violation is corrected. Typical safety violations would include O.S.H.A. violations (e.g., improper shoring or inoperable backup warning alarms) or Work Zone Traffic Control violations.

5.3 -- HIGHWAY OCCUPANCY PERMITTEE DISPUTE REVIEW PROCESS

Purpose

This dispute review process was established to promote the uniform application of the HOP work requirements, to resolve disputes over work in an impartial and timely manner, to improve communication among PENNDOT and Permittees, to help establish PENNDOT's position on disputed regulations, policies and procedures, and to provide the Permittee with an informal alternative to requesting a formal administrative hearing.

Scope

This statewide policy applies to all Notices of Dispute (Form M-945 Y) submitted by Permittees, relating to disputes arising out of work performed under a Highway Occupancy Permit. This informal process does not apply to denials of applications, eligibility to apply for Permits or insurance and indemnification requirements.

Responsible Organizations

The District issuing the Permit, as specified below. The Bureau of Maintenance and Operations is responsible for serving with the Office of Chief Counsel as participants on the Permittee Dispute Review Panel. The Panel is authorized to resolve disputes consistent with existing laws, regulations, standards, statewide policy and procedure.

Policy

- A. Settlement of disputes. The District shall promptly respond to all "Notices of Dispute". The District shall:
 - 1. Promptly review each "Notice of Dispute", and take prompt action.
 - 2. Act on unresolved disputes as directed by the Permittee Dispute Review Panel. The Panel shall be chaired by the District Executive or an Assistant District Executive. Other voting Panel members shall be the Director of the Bureau of Maintenance and Operations and the Chief Counsel or their designees.
- B. Administrative hearings. Formal appeals brought before a Hearing Officer shall be defended by the District and the Office of Chief Counsel.

Responsibilities

- A. District:
 - 1. Responsible for the disposition of disputes either by its unilateral determination or by direction of the Permittee Dispute Review Panel.
 - 2. Convene and participate as a member of and perform consistent with the direction of the Panel.
 - 3. Assure comprehensive and adequate documentation of all items that are related to the dispute and furnish copies of same for Panel.

- B. Office of Chief Counsel (Counsel):
Provide legal advice, participate in Panel hearings, and assist the District in discussions, as requested.
- C. Bureau of Maintenance and Operations (Bureau):
Provide advice and assist the District in discussions, as requested; and participate in Panel hearings.
- D. Permittee Dispute Review Panel (Panel):
 - 1. Determine PENNDOT's position on disputes for which Panel review has been requested by the District or by the Permittee (if request for review is approved). Panel functions as sole and final internal authority for Permittee dispute review.
 - 2. Panel membership:
 - a. District -- District Executive or Assistant D.E. (Chairman) -- voting.
 - b. District -- nonvoting member (assigned to take minutes and draft report).
 - c. Bureau -- Director (or Designee) -- voting.
 - d. Counsel -- Chief Counsel (or Designee) -- voting.
 - 3. Establish Panel's position on disputes by majority vote.

Procedure

- A. District:
 - 1. Whenever a "Notice of Dispute" is received, assign a Dispute File Number.
 - 2. Review each "Notice of Dispute" within five workdays of receipt by Permit Office. Whenever feasible, promptly resolve dispute and notify Permittee.
 - 3. Assure the collection and documentation by inspection forces of information relevant to the circumstances of the dispute.
 - 4. Assure and document timely communication between the involved parties to provide the opportunity for the Panel to consider all reasonable options.
 - 5. The District Permit Manager shall complete items 1, 2 and 3 of the "Department Use Only" section on the rear of the form and place his/her recommendation in item 4, including underlying reasons. Obtain concurrence of Permit Manager's recommendation from District Executive or Assistant District Executive.
 - 6. If the District position is consistent with law, regulation, statewide policy and procedure, deny request, in writing, within five workdays of receipt of "Notice of Dispute".
Include in the letter of denial the following paragraphs:
"Please be advised that the "Notice of Dispute" that you submitted on (*date*), is denied for the following reasons:

If you are of the opinion that your request has merit and can be substantiated before the Department, you may contest the District's decision by requesting a meeting with the Permittee Dispute Review Panel. This request shall be filed with the District Executive. The granting of such a meeting shall be at the Panel's discretion."

7. A Panel meeting may be requested by the District Executive or by the Permittee subsequent to an initial denial. When a Panel meeting is requested, the District shall forward a "Chronological Description" of the dispute incident (with references to, and copies of, correspondence, diary entries, regulations, policies, etc., that are relevant to the dispute) to the Counsel and the Bureau.
 8. Review Permittee requests for Panel review and either concur or deny, based on "Chronological Description" of dispute incident.
 9. Schedule Panel meetings for:
 - a. Disputes which are undecided after five workdays.
 - b. Subsequent requests by the Permittee for Panel review after initial request is denied, provided at least two Panel members vote in concurrence with Permittee's subsequent request.
 10. Act on disputes as directed by the Panel.
 11. Assist Counsel, as requested, in the defense of formal appeals to be heard by the Hearing Officer.
- B. Office of Chief Counsel (Counsel):
1. Review Permittee requests for Panel review and either concur or deny, based on "Chronological Description" of dispute incident.
 2. Provide legal evaluations and memoranda as required.
 3. If the dispute proceeds to Administrative Hearing, conduct the legal defense before the Hearing Officer and Commonwealth Court.
- C. Bureau of Maintenance and Operations (Bureau):
1. Review Permittee requests for Panel review and either concur or deny, based on "Chronological Description" of dispute incident.
 2. Consider policy changes recommended by the Panel.
- D. Permittee Dispute Review Panel (Panel):
1. Meet in response to requests from the District, or from the Permittee -- at the Panel's discretion -- if a majority of the Panel concurs.
 - a. Panel meetings will be held at the District Office. The Bureau and Counsel representatives may attend Panel meetings in person or, at their discretion, by phone or video conference.
 - b. The Permittee's consultant and contractor may be present at the Panel meeting, but may not serve as a representative for the Permittee without a written request from the Permittee, approved by the Panel Chairman at least one day prior to the Panel meeting. The Permittee (and/or its consultant or contractor, when duly approved as the Permittee's representative) may have an attorney present.
 - c. The Panel meeting will follow the following format:
 - i. Permittee presents its position, orally and with documents.
 - ii. Permittee is questioned by both District and Panel on its position.
 - iii. District presents its position, orally and with documents.
 - iv. District is questioned by both Permittee and Panel on its position.

- v. Permittee is excused from room, while Panel confers with District about what has been presented. District is then excused from room.
 - vi. Panel members deliberate in private, considering relevant statements and documents in arriving at a reasonable decision.
 - d. The Panel shall, whenever feasible, render an oral decision on the same day the presentations are completed. Panel decisions shall be made in writing, within one week, and shall be signed by the Chairman.
 - e. The Panel is not authorized to award compensation to the Permittee or fine the Permittee.
2. Issue a report with copies to the Panel members -- not the Permittee -- in the following format:
 - a. Permit number.
 - b. Permittee.
 - c. Date of Panel meeting.
 - d. Those in attendance.
 - e. Copy of "Notice of Dispute".
 - f. Permittee's position.
 - g. Department's position.
 - h. Comments on any special problems.
 - i. Legal evaluation written by Counsel, including an interpretation of Department requirements as they relate to the particular dispute.
 - j. Decisions and recommendation of the Panel, with Minority Report (if such exists).
 - k. Action to be taken by PennDOT:
Dated: _____ for the Panel
Chairman _____
3. Notification to Permittee:
 - a. Dispute has been resolved in Permittee's favor, with details of that resolution, or
 - b. Dispute has been resolved in District's favor. In this case advise the Permittee to bring itself in compliance with PENNDOT's decision, within the Permit's scope of work. If the Permittee fails to comply, revoke the Permit consistent with established procedures.
4. Recommend to the Bureau, if changes to policies are considered advisable, with a description of the dispute circumstances and the recommended changes.
5. Maintain report file, as a confidential record, for five years.

5.4 -- ADMINISTRATIVE HEARINGS

Background

Final Decisions. The Administrative Agency Law provides citizens the opportunity to be heard concerning final decisions by Commonwealth agencies. For example, a property owner whose application for access to a State highway has been denied may request an administrative hearing. However, an applicant whose application is returned for additional information does not qualify for an administrative hearing, since such action by PENNDOT does not qualify as a final decision triggering a right to a hearing.

Denying Applications for Insufficient Sight Distance

If minimum sight distance requirements specified in Regulation 441.8(h) cannot be met within the existing property frontage:

- a. The first step is to consider each option outlined in Regulation 441.8(h)(3). These options explore whether the design of the access or roadway can be modified to allow compliance, or whether use of the access can be restricted to comply with the regulation.

The denial "option" will be exercised by PENNDOT as a last resort. Abutting property owners have a constitutional right of "reasonable" access to public highways. No one Court decision provides comprehensive rules for determining what is "reasonable" access, but these decisions have shaped PENNDOT's long-existing statewide policy that any access which is not safe and operationally sound is considered unreasonable and, therefore, subject to denial.

- b. If one of the options will bring the access into compliance, the District Permit Manager may advise the applicant that PENNDOT will issue a Permit, but only under specific conditions or restrictions. If the applicant agrees, then the Permit may be issued once it is recorded in the County Court House. If the applicant will not accept a restricted access or special conditions, the application will be denied.
- c. If none of the options will enable the access to be constructed and operated consistent with the Regulations, the applicant will be notified, in writing, that the application is denied.
- d. If other access to the property is available or already in use, any application for additional access which does not fully comply with the Regulations will be denied.

Waiver of Regulatory Design Requirements

An applicant may request a waiver/modification of a *regulatory* design requirement (other than sight distance) under Regulation 441. The Deputy Secretary previously delegated HOP waiver authority to each District Executive for waivers – involving non-limited access highways -- of HOP:

- a. design requirements,
- b. median openings, and
- c. Level of Service.

In order for a waiver to be approved for any design requirement in Regulation 441, each of the following five conditions (specified in Regulation 441.5(e)) must be satisfied:

- a. no other reasonable access is available to or from the property;
- b. the applicant has done all that can reasonably be done to satisfy the design requirements;
- c. if additional land is required, the applicant provides satisfactory evidence that it cannot be purchased at a reasonable price;
- d. no traffic problem (i.e., no unacceptable operational or safety problem) will be created; and
- e. the applicant executes an indemnity agreement satisfactory to the Commonwealth.

Waiver delegation is further conditioned by the following:

- a. Waivers are **not** permitted for insufficient sight distance.
- b. The proposed modification satisfies the intent of the term or condition to be modified.
- c. The proposed modification represents the minimum feasible deviation from the term or condition to be modified.
- d. The reason for the requested modification is the impracticality of meeting the exact term or condition rather than mere economic benefit to the applicant.

The waiver/modification of *regulatory* design requirements is an exercise of engineering discretion on the part of PENNDOT. If the District Executive or higher Departmental authority decides to grant or deny a waiver/modification, the applicant will be notified of this decision. The applicant may also need to furnish an Indemnification Agreement and insurance policy.

The granting of a waiver/modification will be a rare and unusual occurrence rather than a regular method for authorizing driveways which would otherwise not comply with the Regulations. It would be granted only if the District Executive or higher Departmental authority determines that neither public safety nor the highway/bridge infrastructure would be adversely affected by granting the waiver/modification.

Median openings. Regulation 441.8(m) requires the applicant to prove that the operating characteristics of the highway system will be improved by the median opening, and it requires the installation of a left turn standby lane to separate and protect left turning vehicles.

Level of Service. Level of Service (LOS) waiver requests will be considered using the same criteria listed above for design waiver requests. In addition, all design alternatives (e.g., dual turning lanes) need to be explored. Where appropriate, LOS issues should be addressed in the Traffic Impact Study and other application submissions.

Mirrors are not a remedy. Although Department Publication 46, Chapter 6, Section 7 authorizes mirrors under certain conditions (e.g., highway intersections), mirrors are **not** an acceptable remedy for insufficient sight distance (e.g., mirrors do not improve the sight distance for approaching motorists to see a vehicle waiting to enter or exit a driveway).

Waiver Delegation Not Applicable to Limited Access Highways

This statewide policy does not delegate waiver authority to applications that require Central Office and/or Federal Highway Administration (FHWA) reviews of proposed highway occupancy permit work on any limited access highway.

CHAPTER 6 -- UTILITY EMERGENCIES

6.1 -- EMERGENCY OVERVIEW

Because emergency repairs need to be made promptly to existing utility facilities to protect the public and to avoid long utility service disruptions, PENNDOT's Utility Regulations contain a special Permit procedure for emergency repairs. (See Regulation 459.6.)

"Emergency" is defined in Regulation 459.1 as ... *an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy.*

"Emergency repair" is defined as ... *repair to a utility facility undertaken under Regulation 459.6 to repair damage resulting from a vehicle accident or collision with the facility, a failed component or storm damage. The term does not include service connections or disconnections unrelated to vehicle accident, a failed component or storm damage.*

PENNDOT's Emergency Permit Card (EPC) procedures afford utility owners the opportunity to respond promptly to bona fide emergencies, prior to obtaining a Permit. Unfortunately, some persons attempt to use these emergency procedures for non-emergency work, or otherwise fail to apply for a Permit to avoid relocating aboveground facilities, overlaying multiple pavement openings, or associated fees and costs. The EPC establishes an audit trail to address this reality.

Emergency Repairs to Shared Utility Facilities

Regulation 459.7(9) establishes that sharing utility facilities is encouraged by PENNDOT and may be authorized under one Permit. The sharing of utility facilities is encouraged because sharing results in less aboveground facilities and less surface openings and restorations within highway right-of-way. Naturally, when a shared utility facility must undergo *emergency repair*, not every Utility which is sharing the facility will work simultaneously at the emergency site; nevertheless, *emergency repairs* to a facility may ultimately be authorized under one Permit, in accordance with the following policies:

1. Either the permittee/owner or one of its "sharers" may perform the initial *emergency repair* under authority of their assigned EPC. The Utility performing the *emergency repair* needs to complete their EPC, consistent with Regulation 459.6. However, the formal Permit application needs to be submitted by the permittee/owner, consistent with Regulation 459, and needs to identify the EPC No. and Entry No. under which the *emergency repairs* (that require a Permit -- see Regulation 459.3(a)(3)) were done.
2. Either the permittee/owner or one of its "sharers" may also remove a utility facility that is being replaced under authority of their assigned EPC. For example, in the case of so-called "stub" poles, third-party agreements between Utilities (e.g., NJUNS initiative) typically have the last Utility that transfers its conductor to the new pole also remove the damaged pole "stub". Prompt removal of "stub" poles is in the public interest.

6.2 -- ISSUANCE OF AN EPC

A utility owner may apply for Emergency Permit Cards (EPC -- Form M-940) by submitting an Application for Highway Occupancy Permit (Form M-945 A) to each District Permit Office in which the Utility's facilities are located. The number of Emergency Permit Cards (EPCs) issued to each person will depend on their needs and personnel assigned to emergency repair operations. The EPC is valid for one year or 25 emergencies, whichever occurs first.

The EPC fee is \$5.00 per card for a corporate Utility. A governmental Utility is issued EPCs at no charge. EPCs cannot be charged to a Utility's Permit Account Number (under current software).

If a utility owner is eligible for an EPC, District Permit Office staff will issue the EPC.

6.3 -- USE OF AN EPC

Emergency Permit Cards (EPCs) are required to be completed only for activities identified in Regulation 459.3(a).

Prior to any emergency placing of a utility facility or opening of the highway right-of-way surface, utility owners are required to contact PENNDOT by using the telephone number provided on the Emergency Permit Card. PENNDOT shall be immediately notified by telephone, when emergencies occur during the hours of 8:00 A.M. to 4:00 P.M., Monday thru Friday. Emergency work occurring at other times shall be reported to PENNDOT on the following workday. Before placing a utility facility or opening the surface within the right-of-way, the Utility work crew shall enter the following information on the Emergency Permit Card:

1. Date emergency work is started.
2. Time emergency work is started.
3. Location of emergency work site (S.R., Segment, Offset; or house number; or distance from intersection).
4. Description of repair work.

In addition, the Permit applicant is required to insert the Highway Occupancy Permit application number on the Emergency Permit Card once an application is submitted. A Highway Occupancy Permit shall be applied for within 15 days to confirm and set forth, in detail, any work performed in an emergency situation.

Only the completed and original EPC shall be accepted as legal authorization to perform work (requiring a Permit) prior to the issuance of the Permit.

All work performed under authority of an EPC shall conform to Regulation 459.

Service connections or disconnections or scheduled work are not emergency repairs (as defined) and therefore are not authorized under an EPC.

Follow-up.

Follow-up work may be performed on an emergency which has been entered on the EPC provided the applicant contacts the District Permit Office at the start of each additional workday until necessary repairs are completed on a damaged facility. Otherwise, a new EPC line entry is required. Only one such line entry is required on the EPC for each emergency work location but all authorized workdays must be documented.

The applicant's copy of the EPC shall be returned to the District Permit Office within 15 days after either the twenty-fifth emergency repair authorized by the Card or one year from the Card issuance date, whichever occurs first.

6.4 -- VIOLATION OF AN EPC

If a utility owner violates any of the rules pertaining to Emergency Permit Card (EPC) use, the following measures may be taken to correct the violation:

1. Issuance of a Citation (Form M-945 C).
2. Confiscation of the Card.
3. Revocation of the Card.

Examples of a major EPC violation include:

1. Failure to complete an entry on the Card before starting work.
2. Failure to have an original EPC at the work site.
3. Performing work other than emergency work.
4. Failure to call the District to report the use of a Card.
5. Failure to apply for a Permit within 15 days after the emergency call in.

In the event of repetitive violations by a Utility, District staff may arrange a meeting with the Utility management staff prior to issuing replacement EPCs.

CHAPTER 7 -- INSPECTION OF WORK

7.1 -- ASSIGNMENT OF ON-SITE PERMIT INSPECTORS

Independent inspection of Permit work is necessary to verify that the Permittee complies with applicable laws, Regulations and Highway Occupancy Permit (HOP) conditions, thereby protecting both the public and PA's highway and bridge infrastructure.

Applicants should anticipate "full-time" (i.e., on more than a spot inspection basis) inspection for permitted work involving:

- a. A subsurface facility in limited access highway right-of-way.
- b. Trench openings of more than 500 feet in the pavement or more than 1,000 feet in the shoulder.
- c. A situation which requires extreme care, as determined by PENNDOT (e.g., work adjacent to the shoulder, work in a slope "fill" area which provides lateral support to the highway, work in an established "Clear Zone", work involving unique Work Zone Traffic Control, work requiring mud or dust control, and similar situations).

The frequency of inspection is based on the type, size, and location of an operation within State highway right-of-way.

The primary responsibilities of the on-site inspector shall be to verify that the Permittee complies with the following:

- a. Highway Occupancy Permit (M-945 P), plans, and attachments.
- b. Department Driveway/Utility Regulations.
- c. Work Zone Traffic Control Regulations (Chapter 203/212) and Traffic Control Plan.
- d. Highway Material Manuals (Publications 34, 35, 41, 42).
- e. Publication 408 Specifications.
- f. Roadway Construction Standards (Publication 72M).

Note: The PA Vehicle Code (i.e., Section 3326) contains laws governing movement of traffic through work areas.

Under Regulations 441.6(1)(i) and 459.7(1)(i), the permittee is primarily responsible for complying with all Permit conditions. The primary responsibility for *verifying* whether Permittees adhere to laws, Regulations and Permit conditions shall rest with the District Permit Manager through staff assigned to inspect work done under the Permit.

7.2 -- INITIAL ON-SITE REVIEWS

The County Permit Manager or his/her subordinate will field view the proposed work site as part of the initial application review, for the following reasons:

- a. To determine up-front if the application and plans are complete and accurate (so that an application *might* be returned only once due to incomplete or incorrect information).
- b. To verify up-front that the application package is in full compliance with applicable laws and regulations.
- c. To identify issues up-front, so there is adequate time to address any issues.

7.3 – “SUBSTANTIAL” PROJECT MEETINGS

The District Permit Manager or an appointed subordinate may attend the following meetings on “substantial” projects.

1. Scoping Meeting. This pre-application meeting will be conducted at the *future applicant's request*. Project “Scoping” meetings can help to identify issues and concerns early in the development process and will provide interested persons an opportunity to offer recommendations. See Publication 282, Appendix B (posted on the PENNDOT Web Site (see footer)).
2. Pre-bid Meeting. This meeting will be attended by the Permittee, its consultant, *interested contractors* and, if requested, representatives of PENNDOT. The general purpose of this meeting is to familiarize interested contractors with the particulars of the project. PENNDOT's purpose in attending this meeting is to review PENNDOT's Regulations, Work Zone Traffic Control requirements and Permit conditions.
3. Pre-construction Meeting. This meeting will be attended by the Permittee, its consultant, the Permittee's contractor(s), and representatives of PENNDOT. PENNDOT representatives may include the District Permit Manager or an appointed subordinate, County Permit Inspector, and Assistant County Maintenance Manager.

The District representative may review pre-construction issues in addition to answering specific questions relating to the project. A minimum two-week notice is required for Department staff to attend a pre-construction meeting.

4. Semi-final Restoration Meeting. This on-site meeting will be attended by the Permittee, its consultant, the Permittee's contractor(s), and representatives of PENNDOT. The purpose of this meeting is to review the project, after the permitted facility, access or structure has been placed, to determine the extent of permanent highway restoration that will be required. This on-site review involves walking the entire project; "windshield" evaluations are not adequate.

The District Permit Manager, after receiving input from the other Department representatives, will determine the amount and type of restoration that is required to *restore the right-of-way to at least the same condition as existed before the start of work* under the Permit. The required restoration will be based on the restoration specified in the Permit and Regulations, plus any additional damage occurring since the start of work under the Permit (e.g., pavement scarring, guiderail damage or removal, shoulder damage from traffic, damage to drainage infrastructure, damage to signs, signals and markings).

PENNDOT will prepare a detailed set of final restoration notes listing all restoration to be performed, the type of restoration (e.g., 1-1/2" ID-2 wearing course full lane width, type 6 shoulder, eight-foot width) and limits of restoration (e.g., S.R., Segment, Offset to S.R., Segment, Offset). These notes will be forwarded to the Permittee within one week after the semi-final meeting (see Regulation 459.8(n)). The Permit may notify the Permittee that the semi-final meeting is required and that two weeks notice is required.

5. Final Inspection Meeting. This on-site meeting will be attended by the Permittee, its consultant, the Permittee's contractor(s) and representatives of PENNDOT. This meeting will be held after the Permittee or its contractor(s) has performed all final restoration.

The purpose of this meeting is to review and verify the Permittee's final restoration is consistent with the semi-final notes and to identify any highway areas that were not restored consistent with the Permit, Regulations and the semi-final notes.

This meeting is necessary since the Highway Occupancy Permit cannot be "closed out" until all Segments of the highway and disturbed structures are restored to a condition *at least equal to that which existed prior to the start of work* under the Permit.

7.4 -- COORDINATION WITH SPECIAL HAULING PERMIT MOVEMENTS

If work performed under authority of a Highway Occupancy Permit authorizes either:

1. a lane to be closed for *more than four hours*, which results in less than 16 feet of remaining pavement width, or
2. traffic to be detoured for *more than four hours*,

then, notify the District Permit Office APRAS Coordinator so that vehicles operating under an oversize or overweight Permit may also be detoured in advance onto permitted routes.

Consistent with Publication 408, Section 901.3(m), such notification needs to be made:

1. at least 14 days before *beginning and changing* the lane closure or detour, and
2. at least 7 days before *ending* the lane closure or detour.

Special Hauling Permits are valid for at least five workdays.

The APRAS Coordinator can create one (or more) Restriction(s) to ensure permitted vehicles are not routed through the temporary HOP project restriction.

7.5 -- ON-SITE PERMIT INSPECTOR COMMUNICATIONS

Project communication is an important duty of the on-site Permit Inspector since the inspector is the "middle man" in the communication chain; the communication links being: District Permit Manager -- County Permit Manager -- on-site Permit Inspector -- Permittee (or designated representative, usually a consultant). When a link in this chain is broken, communications break down. The on-site Permit Inspector needs to communicate directly with the Permittee's contractor only if a safety hazard develops when the Permittee or its inspector-in-charge (see Regulation 459.7(4)(v)) is not at the work site.

NOTE: When this Publication refers to the on-site Permit Inspector, it includes both Department inspectors and its consultant inspectors, unless otherwise noted.

The on-site Inspector and the Permittee's project supervisor should meet on the first work day to review responsibilities and authority concerning the project construction, testing, safety, Work Zone Traffic Control, etc.

Before permitted work begins, the Permittee's project supervisor should:

- a. Check all bi-directional vehicles for backup alarms.
- b. Check all construction personnel for required attire (e.g., colored vests, hard hats and safety equipment).
- c. Review the work areas to assure the required Work Zone Traffic Control set up or attached Traffic Control Plan is being utilized.
- d. Check to ensure Permittee's contractor has material for shoring (if required).

A completed row on Form M-371 A must be signed **DAILY** by the Permittee's designated representative.

In case any dispute arises between the Permittee and PENNDOT's inspector, PENNDOT's inspector has the authority to suspend work until the question at issue may be referred to and be decided by the District Office.

7.6 -- UTILITY DETERMINATIONS

The following determinations have been made in response to questions asked by persons who have contacted the Central Office for clarification of PENNDOT's Utility Regulations. These determinations are keyed to the applicable section of the Regulations to assist Permit staff in making determinations in similar situations. These determinations are not intended to amend or modify any conflicting statute or Regulation.

Section 459.1 -- Pavement

Parking lanes in a curbed section of highway are part of the pavement. Intersecting driveways and local roads are not considered to be part of a pavement; however, driveways and local roads are to be restored to at least their pre-construction condition. See Section 459.8(n)(1).

Where some properties are curbed and others are not, project the curb line through the uncurbed properties (consistent with the Maintenance Manual, Chapter 7).

Section 459.1 -- Shoulder

Width of shoulder in an uncurbed highway section must be determined using criteria contained in the definition. Criteria include:

- a. Existing improved portion (i.e., prior to start of work) or
- b. graded portion (i.e., as constructed).

A paved shoulder or paved portion of a shoulder has a "hard" surface (e.g., Portland cement concrete; bituminous concrete, seal coat or surface treatment). An unpaved shoulder or unpaved portion of a shoulder does not have a "hard" surface (e.g., turf, earth, aggregate stabilized and dust oil).

Sidewalk is not part of a shoulder; sidewalk is considered as an "other" highway area.

Section 459.3(a) -- Work Within Right-Of-Way Requires Permit

All work within the right-of-way involving the placing of a utility facility or structure or the opening of the surface requires a Permit unless specifically exempted under Regulation 459.3(a). Such work behind curb but within the right-of-way is not exempted from the requirement to obtain a Permit under either this Regulation or Section 411 of the State Highway Law, which prohibits occupancy by a utility of any portion of a State highway.

Section 459.3(b)(1) -- Facility Owner/Operator in the business

Applicants are required under this paragraph to be "in the business of providing utility service" and must own, operate or intend to operate the facility. Contractors and customers of the facility owner/operator are specifically prohibited from being the applicant.

Section 459.3(b)(2) -- Utility Service Jurisdiction

A municipality's "utility service jurisdiction" extends to all areas within the municipality within which it by authority of State law *may* place or require the placement of a utility facility within its boundaries. Also see 53 P.S. section 47051 (Borough Code sewer ordinance authority).

Section 459.3(b)(2)(iv) -- Pavement Occupancy

Applicants who are not in the business of providing utility service are not authorized to place a facility longitudinally within the pavement. Longitudinal occupancy of the shoulder may be authorized if the applicant justifies that occupancy outside the shoulder is not feasible.

Section 459.3(f) -- Work Zone Traffic Control Plan

Special circumstances which require a Traffic Control Plan include:

- a. When a figure from Chapter 203/212 will not or cannot apply to the operation.
- b. Applications from facility owners who are not in the business of providing utility service are required to submit a detailed Traffic Control Plan in all cases as required in Section 459.3(b)(2)(ii).
- c. When a closed lane will also be used to store material or equipment.

Have applicant submit copies of appropriate figures from Chapter 203/212 to allow for the Permittee's work crew to have direct access to the appropriate traffic control requirements.

Section 459.5(a) -- Permit at Work Site

While the original EPC must be at the work site, either the original or a copy of the Permit and relevant (i.e., approved) plans must be available at the work site for review.

Section 459.7(3) -- Department Standards

Several Department requirements and standards are referenced in the Utility Regulations. These include Publications 408 and (if highway materials) Publications 34, 35, 41 and 42. See Department Publication No. 12, *Price List -- Maps & Publications*. Department publications may be obtained from PENNDOT's Publications Sales Store and some publications are posted on the PENNDOT Web Site (see footer).

Select granular material. "2 RC" is not obtained from an approved source as listed in Department Publications 34, 35, 41 and 42. Therefore, the Permittee is to arrange with the District Permit Manager to have the 2 RC material stockpile tested consistent with Section 703.3 of Publication 408 prior to the start of work. This testing includes (1) gradation testing consistent with current P.T.M. 619, and (2) proctor testing for maximum density and optimum moisture consistent with current P.T.M. 106. The 2 RC material stockpile shall be identified

by the Permittee and checked to verify that the stockpile is free of vegetable or organic matter, lumps, or an excessive quantity of clay or other foreign or objectionable material, with no more than 10% of deleterious shale by weight. In-place compaction tests shall be performed consistent with current P.T.M. 112 (Sand Cone Method) or P.T.M. 402 (Nuclear Testing). All P.T.M. references pertain to Publication 19, Field Test Manual.

Plastic pipe. Plastic pipe is approved for installation within the highway right-of-way under the following conditions:

- a. Installations must comply with Design Manual, Part 5.
- b. Uncased plastic pipe crossings of free access highways may be approved provided all DM 5 uncased crossing provisions are followed and the uncased crossing meets or exceeds current DM 5 criteria, as certified by the applicant.
- c. Plastic pipe crossings of limited access highways must be cased in steel pipe.

Disputes. If a dispute arises between the Permittee and PENNDOT's inspector, PENNDOT's inspector has the authority to suspend work until the question at issue may be referred to and decided by the District Office. In such cases, a Citation (Form M-945 C) will be issued by the inspector documenting any violations in detail. Informal work site dispute review procedures may be initiated via Form M-945 Y.

Section 459.7(3)(i) -- Department Requirements

Appropriately colored vests and hard hats: Section 107.08 of Publication 408 requires all persons to wear an appropriately colored vest, shirt or jacket while in work zones adjacent to traffic and to wear headgear within the project limits. This DOT requirement does not apply outside the right-of-way. In order to eliminate potential conflicts with O.S.H.A. regulations, it is recommended that persons working under Permit authority wear hard hats (29 CFR Section 1926.100) and reflectorized appropriately colored vests (29 CFR Section 1926.650) since such vests meet all requirements under all lighting conditions. Reflectorized rain gear is also recommended for inclement weather.

Highway appurtenances: Highway appurtenances which serve motorists, bicyclists and pedestrians are placed consistent with PENNDOT requirements and standards. For example, highway lighting is placed consistent with the RC-80 series standards contained in Department Publication No. 72M.

Section 459.7(4)(v) -- Permittee's Inspector in Charge

When backfill or restoration work is to be performed, the Permittee will assign an inspector-in-charge who will be responsible for ensuring work is performed consistent with the Permit, Regulations, Publication 408 and applicable Design Manuals.

Section 459.7(4)(iii) -- Incomplete Work

The Permittee is required to promptly backfill openings and restore the surface if work is stopped on a project other than at the end of a normal workday. However, gas Utilities may need to keep excavations open overnight to “vent” leaking gas and, therefore, should not be ordered to promptly close such openings or continue work. Utilities that violate this section of the Regulations need to either promptly resume work or restore the right-of-way.

Section 459.7(6)(iv) -- Overlay Waiver

If damage to the pavement or shoulder surface is determined to be superficial, the Regulations allow for either a bituminous seal coat or a bituminous surface treatment to be authorized by the District Office in lieu of a full depth overlay. However, the District Permit Manager will not authorize a bituminous seal coat or bituminous surface treatment over an existing higher type-wearing course (e.g., ID-2, FJ-1) without the concurrence of the District Executive.

Section 459.7(9) -- Sharing Facilities

Sharing facilities under one permit is encouraged. However, the permit must be issued to the facility owner/operator (consistent with Section 459.3(b)(1)), not the “owner” of a conductor (on limited access right-of-way), guy or other appurtenance.

“Guys”. A permitted pole’s owner is responsible for obtaining a permit for any guy, even if the guy is being placed to support a conductor placed by another service provider who is sharing the Utility’s pole. The utility pole owner/operator must be the permittee for the structure and all appurtenances (including future changes). Normally, guys are an appurtenance to a new aboveground facility and not a facility themselves, unless a guy is installed later to support additional wire by another Utility who is sharing the pole under an agreement with the pole owner. Without the pole there would be no guy. Guys are placed when utility design standards indicate a guy is necessary; PENNDOT would not require a guy because utility facility *design* is beyond staff expertise and Regulation 459.2 authority. PENNDOT guy requirements are identified in Regulation 459.9(d) and compliance with these requirements can be easily verified at the ‘close out’ inspection. Utility owners/operators may need to change their standard third-party agreements to reflect changes brought about by the Telecommunications Act to address their tort concerns with other Utilities who choose to enter into agreements with the facility owner/operator.

Section 459.7(15) -- Facility Damage

This paragraph places responsibility on the Permittee for repair or restoration of the portion of the highway damaged by a damaged structure or facility. For example, if a leaking water line is repaired, the Permittee is also responsible for correcting subsidence in the area of the permitted work. The Permittee may furnish clear and convincing evidence such subsidence is not attributable to water which leaked from the damaged facility (e.g., no higher concentrations of fluoride in adjacent ground water when water in pipe is fluoridated). A sinkhole throat is a hole at the bottom of the sinkhole allowing water to pass out of the

sinkhole washing away fine material of sand or clay. The mere existence of a sinkhole throat is not necessarily clear and convincing evidence that the throat existed before the water facility leak. Also, the absence of chlorine in adjacent ground water is not necessarily clear and convincing evidence because chlorine rapidly dissipates.

Section 459.7(16) -- Restoration Responsibility

The Permittee has absolute responsibility to make temporary and permanent restoration if there is a failure in the area of the permitted work within two years after the acknowledged completion by PENNDOT and provided there is no similar failure beyond the area of the permitted work.

The Regulations allow for the Permittee to deliver clear and convincing evidence demonstrating that a highway failure was caused by another person. If the Permittee claims in writing that a highway failure was caused by another person, clear and convincing evidence and documentation thereof must be submitted together with the Permittee's request for waiver of responsibility. After the Permittee provides evidence that it has provided written notice to any other person claimed by the Permittee to be responsible for the highway failure, PENNDOT will investigate and make a written determination. If any affected person does not agree with PENNDOT's determination, an administrative hearing may be requested within 30 days of PENNDOT's written determination.

The Regulation also provides under subparagraph (iii) that principles of tort law will apply in the case of a failure of a highway in the permitted area occurring after the expiration of security (e.g., after the two year "warranty" has expired). Thus, while the Permittee has absolute responsibility to restore highway failures within two years after the acknowledged completion of the permitted work, PENNDOT may pursue the Permittee to correct highway failures after two years where PENNDOT believes the highway failure was caused by the permitted work, as provided by general principles of law.

Section 459.8(a)(1)(ii) -- Directional Drilling Authorization

"Directional Drilling" is a method of boring where a transmitter and a detector are used to control the depth and direction of the cutting head. Directional drilling is permitted at any location where the regulations currently allow drilling, boring, driving, or tunneling by conventional equipment and methods. Authorized equipment may use water and/or air under low pressure to cool the drill bit and/or the detection device (enclosed inside the drill head) to prevent burnout. Water is currently allowed up to 15 gallons per minute. The use of bentonite in combination with water is permitted. Bentonite is a clay material that is used to stabilize the circumference of the drill hole and also provides lubrication when pulling the facility through the void. Bentonite is an environmentally safe, nontoxic, naturally occurring material.

The use of this equipment reduces the amount of damage to Department facilities and other buried utility facilities done by “blind” types of boring. If damage occurs, the permittee is still responsible for repairs. Roadway excavation is not allowed to retrieve drilling tools that become stuck beneath the roadway.

Section 459.8(a)(3) -- Casing

This section refers to Design Manual, Part 5 for specific guidance. Except for service lines, facilities crossing an improved area must be cased from right-of-way line to right-of-way line unless exempted under Design Manual, Part 5, Chapter 7, which allows a Utility to provide a statement of certification that proposed uncased crossings in free access roadways meet or exceed current DM5 criteria.

Plastic pipe may be used for crossings of free access highways consistent with DM5 criteria. Plastic pipe may be used for crossings of limited access highways provided the plastic pipe is cased in steel pipe.

Section 459.8(b) -- Trenching Authorization

Trenching across the improved area is allowed only when specifically authorized by the Permit.

Section 459.8(b)(5) -- Three-Foot Depth

The Regulation provides for facilities to be placed at depths less than three feet provided such facilities are not capable of operating more than three feet below the surface. Department requirements and standards may authorize specific utility facilities or highway appurtenances to be placed at depths less than three feet.

Section 459.8(c)(1) -- Longitudinal Subsurface Facility Location

A utility facility shall be placed outside the pavement and shoulder unless there is no feasible space outside the pavement and shoulder for placing the facility, in which case occupancy within the pavement or shoulder may be authorized by Permit. Where it is necessary for a utility to occupy the pavement or shoulder longitudinally, the District still has the authority to determine the facility location which will have the least impact on both the traveling public and the structural integrity of the highway.

Section 459.8(d)(1) -- Restricting Work Hours

The District Permit Manager may identify restricted work hours under the Permit in the following situations:

- a. Highways with high A.D.T.
- b. Holiday periods.
- c. Special events.
- d. School areas.
- e. Areas of noted congestion.

Permittees should anticipate restricted work hours on highways in urbanized areas which are operating at or near full capacity during normal "rush hour" periods.

Section 459.8(d)(2)(i) -- Steel Plates

Steel plates are one of three options that may be used at the end of each workday, to protect openings which are less than six feet in either length or width, provided the plates extend a minimum of 18 inches from each edge of the opening and are secured in a safe manner. The utility owner can decide how the plates are anchored, as long as the plates are secured in a safe manner. Thus, an opening which is four feet wide and ten feet long may be covered with steel plates at the end of a workday and the steel plates may be secured by one of several methods that preclude the plates from moving and exposing the opening.

Section 459.8(d)(2)(ii) -- Protected Openings

This subparagraph provides a second option, other than steel plates, for treating an opening at the end of a workday. This option has the Permittee restore the opening up to original grade prior to the end of the workday. If any paved surface is not restored to the original surface elevation prior to the end of the workday, the work area needs to be protected consistent with Chapter 203/212.

While "flowable fill" was not an approved backfill material when Regulation 459 was amended in 1989, "flowable fill" is now acceptable backfill material which can preclude subsidence and minimize lane closure durations (see Publication 408, Section 220).

Section 459.8(d)(2)(iii) -- Protected Openings

This subparagraph provides a third option if the Permittee has an opening which has not been backfilled at the end of a workday. Under this option the Permittee is required to:

- (1) protect its opening consistent with Chapter 203/212, and
- (2) deliver a Certificate of Insurance (i.e., Form M-945 X).

Section 459.8(f)(4) -- Material Storage

This paragraph requires material to be stored (i.e., placed) consistent with Chapter 203/212. Material should be stored (i.e., placed) a minimum of 30 feet from the edge of the nearest open travel lane; the minimum unobstructed distance behind guiderail or median barrier; or more than two feet behind curb in curbed sections. If material cannot be stored as discussed above, then barricades, drums or other protective devices shall be placed around the material storage site to warn and protect the traveling public, consistent with an approved Traffic Control Plan.

For purposes of Regulation 459, "storing" material is synonymous with "placing" material on the surface and is not a function of time. Regardless of how long material occupies the surface at a particular site, the material creates an unyielding object for errant vehicles and presents a high probability that the surface itself will be damaged when the material is placed or removed.

Section 459.8(f)(5) -- Material Storage

This paragraph authorizes material to be stored on a pavement or shoulder which has already been authorized to be closed (under an approved Traffic Control Plan) for reasons other than material storage. The Permittee is not authorized to store material on the pavement or shoulder unless such storage is requested with the Permittee's Traffic Control Plan and approved by PENNDOT. In any event, if the Permittee does store material on the pavement or shoulder, the Permittee thereby acknowledges its obligation and commitment to repair or reconstruct the pavement and shoulder, if damaged, to its former condition and in a manner authorized by the District Office.

If Form M-945 U has not been executed and the Permittee wishes to store material on the pavement or shoulder, the Permittee must submit a revised Traffic Control Plan along with a completed Form M-945 U. Security -- for additional damage that may occur from material being placed and removed from the surface -- may be required or increased.

In no case shall delivered material be stored overnight on the pavement. The Permittee shall plan its work activities to minimize all roadside hazards, including openings, material and equipment, particularly at the end of the workday.

Section 459.8(f)(6) -- Overlay Waiver

If damage to the pavement or shoulder surface is determined to be superficial, the Regulations allow for either a bituminous seal coat or a bituminous surface treatment to be authorized by the District Office in lieu of a full depth overlay. However, the District Permit Manager will not authorize a bituminous seal coat or bituminous surface treatment over an existing higher type-wearing course (e.g., ID-2, FJ-1) without the concurrence of the District Executive.

Section 459.8(g) -- Flowable Fill Backfill

Flowable fill backfill for utility trenches has been approved (see Publication 408, Section 220) consistent with the following Permit requirements:

- a. Flowable fill may be authorized for all Utility trench backfill in lieu of or in conjunction with Regulation 459.8(g).
- b. Flowable fill may be used in trenches up to subgrade elevation, and in small utility openings (less than 36 square feet) to the top of the sub-base.
- c. The one-foot cutback that is required for *pavement* openings and all other requirements of Regulation 459.8 (h) & (i) still apply, unless a modification is granted.
- d. Outlet base drains may be required by the District to provide drainage of the embankment or sub-base as necessary.
- e. Utility owners whose facilities have been identified prior to excavation and exposed during the excavation of the trench should be notified by the Permittee and given the opportunity to polywrap or otherwise insulate their facilities.

Section 459.8(g)(1) -- Backfill -- First Foot

The Regulations allow for fine aggregate material or granular material to be placed to a height not to exceed one foot over the top of the facility, rather than placing course aggregate material around the facility. The backfill material shall be placed in layers not exceeding four inches in depth prior to compaction and each layer shall be thoroughly compacted to preclude subsidence. See Restoration Figure 7-N series (posted on PENNDOT Web Site -- see footer).

PENNDOT staff may promptly stop backfill operations having improper backfill material or backfill layers thicker than authorized.

Section 459.8(g)(3) -- Backfill Compaction

Subparagraph (i) requires backfill material to be placed in loose layers not to exceed eight inches prior to compaction, provided vibratory compaction equipment is used. Otherwise, material must be compacted consistent with Publication 408.

If the side(s) of an opening fall in, with the undermining resulting in a loss of support of the pavement or shoulder, require the Permittee (after backfilling the opening up to the level where the sides are no longer vertical) to remove sufficient material for the remaining depth of opening until both sides are again vertical, then resume backfilling.

While "flowable fill" was not an approved backfill material when Regulation 459 was amended in 1989, "flowable fill" is now acceptable backfill material which can preclude subsidence and minimize lane closure durations (see Publication 408, Section 220).

Section 459.8(g)(3) -- Backfill Compaction Plan

Subparagraph (ii) allows for backfill material to be placed in layers thicker than eight inches prior to compaction provided the opening is outside the pavement and shoulders and provided the Applicant/Permittee has submitted a compaction plan for approval at least 15 days prior to the start of work. Upon receipt of a compaction plan, it will be reviewed for compliance with information required under this subparagraph. If approved, it will be documented on the Permit or a Supplement. Security may be required consistent with Section 459.5(b). Work done under an approved compaction plan may be inspected periodically to verify the work is being performed consistent with the approved plan.

While “flowable fill” was not an approved backfill material when Regulation 459 was amended in 1989, “flowable fill” is now acceptable backfill material which can preclude subsidence and minimize lane closure durations (see Publication 408, Section 220). A compaction plan is not required for “flowable fill” to be authorized.

Section 459.8(g)(4) -- Backfill Testing

PENNDOT may require the Permittee to have both proposed backfill material and compacted backfill material tested for conformance to the applicable gradation and compaction requirements of Publication 408.

Material slips may be inspected to verify material to be used within the right-of-way is acquired from an approved source.

Gradation tests of backfill material need to be performed in the presence of, and approved by, PENNDOT's inspector.

Backfill compaction tests may be required on longitudinal or transverse openings which exceed 500 total feet in length or which exceed four feet in depth and at other times when the inspector believes the compaction method is not resulting in a compaction percentage consistent with Section 601.3(e) of Publication 408 (i.e., 100% of the determined dry weight density).

When PENNDOT tests backfill material, PENNDOT will decide the testing method. If the Permittee performs the tests, the Permittee may choose the test method provided the test method is consistent with Department Publication No. 19 (Field Test Manual) and provided prior arrangements are made with the District Permit Manager to have PENNDOT's inspector witness the testing.

Section 459.8(h) -- Restoration of Flexible Base Pavements

If binder course is required, it will be in addition to the wearing and base courses. If an existing wearing course is over 2" in depth, additional B.C.B.C. or ID-2 binder course will be required to fill the additional void. See Restoration Figure 7-N series (posted on PENNDOT Web Site -- see footer).

Section 459.8(i) -- Cement Concrete Pavement Restoration

Paragraph (3) specifies that on existing reinforced cement concrete pavements that are opened for more than six feet in either length or width, reinforcing steel, expansion tie bolts and load transfer devices shall be placed consistent with Roadway Construction Standard RC-26M.

Paragraph (4) specifies full lane width restoration may be required to restore the structural integrity of the damaged cement concrete pavement. The District Permit Manager may require, as a Permit condition, a full lane width restoration on cement concrete pavements less than ten years old or on other pavements which are in good condition. See Restoration Figure 7-N series (posted on PENNDOT Web Site -- see footer).

Section 459.8(k) -- Temporary Restoration

While temporary restoration methods should be avoided where feasible -- to preclude additional disruptions to traffic generally -- the District Permit Manager may require, as a Permit condition, temporary restoration of pavements or paved shoulders in the following instances:

- a. Openings expected to be restored between October 31 and April 1 (consistent with Publication 408, Section 401.3(a)).
- b. An opening in the pavement which was already *backfilled* without the Department having an opportunity to have an inspector present (e.g., emergency repairs during evenings, weekends, or holidays; or where the Department was not provided required prior notice; particularly if the Utility or its contractor has a documented history of highway restoration failures).
- c. An opening in the pavement or shoulder over 100 feet in length or over six feet in depth, where "flowable fill" is not used as trench backfill material.
- d. Where unfavorable subsurface or surface conditions preclude final restoration being performed promptly.

See Restoration Figure 7-N series (posted on PENNDOT Web Site -- see footer).

Section 459.8(l) -- Paint Date

The Permittee is not required to paint a date on temporary pavement restorations.

Section 459.8(m)(1) -- Appurtenances to Underground Installations

This paragraph requires that the top of every manhole, valve box or other access (e.g., pedestals, gas meters) to a subsurface facility be placed flush with the surrounding surface. Fire hydrants and other appurtenances (e.g., subsurface attachments to poles) which are incapable of operating below the surface and which cannot feasibly be placed outside the right-of-way may be placed consistent with Regulation 459.9.

Section 459.8 (m)(3) -- Appurtenances to Underground Installations.

This paragraph requires that a manhole, including that cast-in-place, be constructed in compliance with current Industry standards and Section 713.2(c) of Publication 408. Therefore, an application from a Utility to place manholes, vaults or similar underground appurtenances must confirm that the facility meets Industry standards.

Section 459.8(n) -- Additional Restoration

Paragraph (1) requires highway restoration to be consistent with the Roadway Construction Standards (Department Publication No. 72M).

Paragraph (1) also requires PENNDOT to notify the Permittee, in writing, should additional restoration be required which is not already specified in the Regulations, the issued Permit or a Supplement. Notes taken during the semi-final inspection will satisfy this regulatory requirement once these notes are provided to the Permittee.

Paragraph (3) specifies that if more than 100 linear feet of longitudinal or transverse openings are made in the pavement, an overlay may be required regardless of the age of the wearing course. Every effort will be made to specify in the issued Permit when an overlay is required under authority of this paragraph.

Section 459.8(n)(4) -- SRL

Skid Resistance Level (SRL) criteria are based on the highway Average Daily Traffic (A.D.T.) and dictate the aggregate used in bituminous wearing courses. See DM 2, Chapter 11 for current criteria.

Section 459.8(n)(8) -- Pavement Markings

All pavement markings which were covered, destroyed or disturbed shall be replaced in their former location. PENNDOT cannot acknowledge completion of the work until all pavement markings are replaced or otherwise restored.

This paragraph also requires temporary pavement markings to be placed whenever more than 100 linear feet of highway are covered or destroyed by the permitted work, before opening the disturbed pavement to traffic. See Chapter 203/212, section 203.72.

Section 459.9(b)(1)(i) -- New Poles

This subparagraph requires new poles to be installed as near the right-of-way line as practicable. This subparagraph also requires new poles to be installed outside the highway Clear Zone. *Note: the term "Clear Zone" is defined in Regulation 459.1 as a Clear Zone established under Design Manual, Part 5 (not Design Manual, Part 2).* Because there are few Clear Zones established under Design Manual, Part 5, the primary criterion for new poles and other aboveground facilities is that the aboveground facility needs to be installed "as near the right-of-way line as practicable".

Thus, whenever an application for a new pole identifies the pole to be more than two feet from the right-of-way line, the applicant needs to justify why the new pole cannot be located within two feet of the right-of-way line.

Section 459.9(b)(1)(iii) -- Poles Behind Guide Rail or Curb

This subparagraph allows poles and other aboveground facilities to be located behind specified guiderail deflection distances as well as behind curb, consistent with Design Manual, Part 5, (see Figure A-730). The distances allowed under this subparagraph are additional requirements which must be met along with subparagraphs (i) and (ii).

Thus, new poles must comply with subparagraphs (i) and (iii) while replacement poles must comply with subparagraphs (ii) and (iii).

Section 459.9(c) -- Vertical Clearance

Refer to Design Manual, Part 5, Figure A-725, for additional information on minimum vertical clearances required for wires, cables, conductors, or overhead structures or facilities.

Section 459.9(g)(2) -- Reinforced Existing Poles

This paragraph prohibits other than existing, permitted reinforced poles (such as new facilities, or repaired, modified, further reinforced or replaced facilities) from being located within areas not authorized under paragraph (1) of this subsection. If existing, permitted reinforced poles are repaired, modified or further reinforced, the reinforced pole must be located in compliance with paragraph (g)(1). However, any utility facility which PENNDOT determines to have a high accident potential or to be a hazard shall be promptly relocated at the Permittee's expense.

PENNDOT has approved requests involving new technology for:

- a. Reinforcing deteriorated wood utility poles with fiberglass restoration systems.
- b. Placing lightweight steel poles in highway right-of-way.

Before such an application is submitted, ensure that the following conditions are met:

- a. An approved system will be used.
- b. The application identifies the fiberglass restoration system or steel pole.
- c. The application states that the restored pole will not exceed 100% of the new pole strength as determined by the American Standards Institute (Specification 05.1-1992).
- d. The pole wrap system is not being used for other than a deteriorated pole. A fiberglass pole wrap system may not be approved for an accident-damaged pole.
- e. The pole to be wrapped is placed consistent with the Americans with Disabilities Act (ADA).

7.7 -- ACCESS DETERMINATIONS

The following determinations have been made in response to questions asked by persons who have contacted the Central Office for clarification of PENNDOT's Driveway Regulations. These determinations are keyed to the applicable section of the Regulations to assist Permit staff in making determinations in similar situations. These determinations are not intended to amend or modify any conflicting statute or Regulation.

Section 441.3(a) -- Permit Requirements -- Maintenance

A Permit is not required for maintenance of a permitted access, such as surfacing a Minimum Use driveway or resurfacing an access, nor for maintenance of a structure, such as cleaning a pipe, provided the maintenance does not alter the design of the permitted access or structure, or otherwise violate a requirement of the Permit or the Regulations.

Section 441.3(a) -- Access Permits required for certain Utility Crossings

If a utility owner is installing a facility crossing which will extend beyond the limits of the right-of-way and vehicular access is necessary for continued facility installation or future facility maintenance, Highway Occupancy Permits will be required, for both the facility and the access. An example would be a utility owner that is placing a facility "cross country" and highway access is needed by the Utility for personnel, equipment and materials to access the utility corridor. In this example, Minimum Use access permits are required at each crossing location, in accordance with State Highway Law and Regulation 441.

Section 441.3(d) -- When to Submit Permit Applications

Pre-application Reviews

District staffs will honor requests made by developers for pre-application reviews. The concept of conducting pre-application reviews, upon request, will have an overall positive impact by increasing the likelihood that the formal HOP application package will be acceptable, and will reduce the number of issues that would otherwise need to be addressed by the Department during the 60-day statutory time limit (where applicable) for formal access application reviews.

Some of the items that may be appropriate to address in the pre-application review stage include methods to determine trip generation, pass-by trip percentages, background traffic growth rate, Traffic Impact Study area boundaries, and conceptual design issues (e.g., number and location of driveways).

District staff will also honor requests made by developers for project "Scoping" meetings associated with pre-application reviews.

Q: Can PENNDOT issue a pre-application approval or conceptual approval for planned future access?

A: Pre-application Reviews: Yes. Pre-application Approvals: No.

PENNDOT can review and comment on a person's pre-application plans for future access. Participation in project "Scoping" meetings and other "pre-application reviews" is expected to identify issues and concerns early in the development process and to provide interested persons an opportunity to offer recommendations.

However, actual approval for an access must be granted consistent with PENNDOT Regulation 441 only. Regulation 441.3 requires a permit application including plans and submittals sufficient to meet the requirements of the Regulation before PENNDOT can initiate the formal review process leading to approval of an access.

Conceptual or pre-application approval granted by PENNDOT in writing to a potential future permittee may impact on the future plans of PENNDOT for highway improvement, as well as the access plans of abutting and adjacent property owners. In addition, any future potential permittee who would receive such pre-application approval may take action in reliance upon it. If subsequent or supervening events change PENNDOT's pre-application position with respect to access, a significant problem could be presented. Therefore, no formal pre-application or conceptual approval can be provided to any person.

Any comments made in response to such a request are subject to the qualification that the comments are pre-application recommendations that are **not** binding on PENNDOT and, further, that if a formal HOP application is submitted, it will be reviewed consistent with current laws, regulations, PENNDOT statewide policies and procedures and based on Commonwealth (and Federal, where applicable) review of information submitted with the formal application.

Section 441.3(k) -- Authority to Reject Application

Q: If a requested access cannot be granted, will PENNDOT be liable for damages?

A: The Department's final decision on an application for a Highway Occupancy Permit constitutes an adjudication, and consequently the applicant has the right to request an administrative hearing before the Department (2 Pa. C.S. Section 504, 67 Pa. Code, Chapter 491). A property owner aggrieved by the Department's decision to deny access for a particular use must exhaust administrative remedies available before the Department prior to initiating any claim or cause of action under the Pennsylvania Eminent Domain Code for damages. *Riley v. Commonwealth, Department of Environmental Resources, 49 Commonwealth Ct. 379, A.2d (1980)*.

Generally, PENNDOT's action on a HOP application is considered an exercise of the police power and PENNDOT will not be held liable for its proper application of the regulations. A property owner with no existing permitted access takes his/her property as he/she finds it. For example, the ability of a particular property to pass a "perc" test will affect that property's value in the same way as a property's ability to meet the requirements of PENNDOT's regulations relating to access. While a property owner

has a constitutional right of reasonable access to the highway system, the type of access allowed must be consonant with Regulations as well as the property's existing physical configuration and limitations. *Hardee's Food Systems v. Department of Transportation*, 434 A.2d 1209, 495 A.2d 514 (1981).

Section 441.6(10) -- Restoration -- Guiderail

At the end of the workday, disturbed traffic control devices and guiderail systems must be replaced. Also, appropriate end treatments must be installed on guiderail systems where existing guiderail was removed to gain access.

Section 441.8(g)(2) -- Parking areas

While this paragraph provides for the prohibition of abutting parking areas within the property frontage boundaries as a Permit condition, other parking restrictions along State highways are normally imposed by local ordinance. Normally, PENNDOT defers to municipalities the decision on whether to adopt an ordinance to enforce parking restrictions. The Vehicle Code (Section 6109(a)) grants PENNDOT, and local authorities within their boundaries, the authority to impose parking restrictions on State highways. Section 6109(e) requires local authorities to conduct a traffic study in accordance with PENNDOT regulations prior to adopting parking restrictions by ordinance. Section 6109(d) grants PENNDOT the right to require its approval of the study before the parking restrictions can be imposed. Each Engineering District may decide if parking restrictions are appropriate after a municipality rejects or tables a property owner's request to accommodate a HOP application. Likewise, nothing in the Vehicle code requires PENNDOT to place or allow such restrictions to facilitate a HOP application. The District Executive may choose to defer to the municipality's decision to reject or table an applicant's request. PENNDOT's decision could find further support in correspondence from the municipality stating the reasons for its decision.

Section 441.8(h) -- Formula Sight Distance (FSD)

If *measured* sight distances do not exceed *FSDs*, the Permit cannot be issued. In this event, either (1) the access site must be modified to exceed *FSDs*, or (2) noncomplying access turning movements must be restricted consistent with Regulation 441.8(h)(3).

Mirror is **not** a remedy for insufficient sight distance. Although Department Publication 46, Chapter 6, Section 7 authorizes mirrors under certain conditions (e.g., highway intersections), mirrors alone are not an acceptable remedy for insufficient sight distance (e.g., mirrors do not improve the sight distance for approaching motorists to see a vehicle waiting to enter or exit a driveway).

Flashing warning or advisory sign/signal is **not** a remedy for insufficient sight distance. Flashing warning or advisory signs/signals shift responsibility from the property owner to the traveling public without addressing a hazardous condition created by the proposed access. Advisory signs/signals are not mandatory. This "proposed remedy" is based on the assertion that highway users will process these signs/signals and know where the "hidden" driveway is

located and will also cause each highway user to react by reducing their speed -- below the prevailing speed -- to a velocity that will afford safe Formula Sight Distance (FSD).

Traffic signal is **not** a remedy for insufficient sight distance. Following is an excerpt from Design Manual, Part 2, Chapter 2:

Case D - Intersections with Traffic Signal Control. *At signalized intersections, the first vehicle stopped on one approach should be visible to the driver of the first vehicle stopped on each of the other approaches. Left-turning vehicles should have sufficient sight distance to select gaps in oncoming traffic and complete left turns. Apart from these sight conditions, there are generally no other approach or departure sight triangles needed for signalized intersections. Signalization may be an appropriate crash countermeasure for higher volume intersections with restricted sight distance that have experienced a pattern of sight-distance related crashes.*

However, if the traffic signal is to be placed on two-way flashing operation (i.e., flashing yellow on the major-road approaches and flashing red on the minor-road approaches) under off-peak or nighttime conditions, then the appropriate departure sight triangles for Case B, both to the left and to the right, should be provided for the minor-road approaches. In addition, if right turns on a red signal are to be permitted from any approach, then the appropriate departure sight triangle to the left for Case B2 should be provided to accommodate right turns from that approach.

Also, certain warrants must be met to justify installation of a traffic signal (e.g., failure to exceed minimum formula sight distances is not sufficient to warrant a signal for a proposed access). In addition, municipalities must be willing to own and maintain the signal and associated appurtenances and highway infrastructure (e.g., drainage between curbs).

Section 441.8(i)(5) -- Grade Requirements Where Curbs and Sidewalks Are Present

Curb reveal shall be installed 1-1/2 inches above the adjacent roadway or the gutter grade to maintain proper drainage. Depressed curb is preferable to extending the curb around the driveway radii in the case of Minimum Use driveways and Low Volume driveways having an A.D.T. below 500. Also see Design Manual, Part 2, Chapter 2, Section 19 Q and Chapter 6. See RC-67M for curb cut ramp construction, repair or replacement at pedestrian crosswalks and on sidewalks in business and residential areas, consistent with ADA requirements. Also see Section 416 of the State Highway Law.

Section 441.8 (j) -- Auxiliary Lanes

Pavement widening is often necessary to accommodate auxiliary lanes. When this occurs, through-travel lanes must transition from old to new pavement. The longitudinal joint created between the old and new pavement crosses the through-travel lane at an angle and can cause driver confusion. In order to eliminate this potential hazard, the Permit may require a full width overlay covering both old and new lanes consistent with Publication 408, Section 401.3(j). Pavement markings will also need to be reinstalled.

7.8 -- SPOT INSPECTIONS

When *continuous* inspection is not required for subsurface utility work, *spot* inspection will be performed.

When *continuous* inspection is not required for access work, *spot* inspection will be performed. Spot inspection may also be performed prior to the installation of curb, sidewalk or drainage facilities, to verify compliance with the Permit plans. Spot inspection may also be performed prior to paving, to verify compliance with the Permit plans.

If there will be plant material inspections or other off-site inspections of fabricated products, the Permit should indicate this as a Condition Code.

7.9 -- ACKNOWLEDGMENT OF COMPLETION ('CLOSE OUT' INSPECTION)

Once a Permit reaches its assigned expiration date or when an acknowledgment of completion is received from the Permittee, the County Permit Manager will perform a 'close out' inspection of the site to verify that the occupancy was placed, the work was completed and the highway was restored consistent with the Permit and Regulations.

When performing each 'close out' inspection, the inspector will verify that the occupancy was placed, the work was completed and the highway was restored consistent with the Permit and Regulations. When performing the 'close out' review, there are four situations the inspector may encounter:

1. All work was completed consistent with the Permit and Regulations.
2. Work was performed but not consistent with the Permit and Regulations.
3. Work was not completed.
4. No work was performed.

Under situation #1, if all work was completed consistent with the Permit, the Permit will be 'closed out'.

Under situation #2, if work was not done consistent with the Permit, the Permit will not be 'closed out'. A determination will be made on what action will be required to resolve the discrepancy.

Under situation #3, if work was not completed, the Permit will not be 'closed out'. A Supplement will be required within the 30-day grace period to complete the work.

Under situations #4, if no work was performed the Permit will not be 'closed out'. The Permittee must apply for a Supplement within the 30-day grace period to perform the work.

If a permittee fails to complete all work authorized by the permit, Regulations 441.5(g) and 459.5(d) state that "...an application shall be submitted requesting a time-extension..." Any permittee who fails to request such a time-extension and has not completed the work required by the permit stands in violation of the Regulations.

Regulations 441.10 and 459.11 provide that any violation of these Regulations or the permit requirements shall constitute grounds for imposition of any or all of the following penalties:

- (3) *Revocation of the applicant's permit (or EPC) by PENNDOT.*

Thus, once the permitted period for construction within the right-of-way has expired and work authorized or required by the Permit is incomplete, Regulations mandate further action. In this case, revocation is an appropriate course of action. The incomplete Highway Occupancy Permit will not be "closed out" without further action.

7.10 -- ONE CALL LAW; STATUTORY PENNDOT EXCEPTIONS

In PA, highway designers and contractors are required to call a one-call system before they design and dig within State highway right-of-way. **PENNDOT employees** are also required to call a one-call system before they dig, unless they are only **digging within the first two feet beneath the surface within State highway right-of-way**. This two-foot exception is included in the PA one-call law. In PA, utility owners are required to place their facilities a minimum of three feet beneath the surface (thus allowing a one foot buffer). This two-foot exception allows Department Maintenance forces to carry out numerous daily maintenance activities without unnecessary utility line marking and unproductive workforce delays. For example, this two-foot exception allows Maintenance Crews to perform miles of shoulder grading and ditch cleaning operations each work day without burdening utility owners to mark their lines near these work areas. If Utilities were called upon to mark their nearby lines, Maintenance Crews would then need to stop at each mark actually in the work area and unnecessarily perform shoulder grading and ditch cleaning operations manually.

PENNDOT's other exception under the PA *One-Call Law* is that **highway drainage systems are not utility facilities**. There are several reasons for this exception. First, there is virtually no danger of loss of life or even personal injury resulting from a drainpipe being broken during excavation activities. The drainpipe is typically empty during the excavation. Second, when utilities are placed in highway right-of-way – under Permit in PA – it is understood that cross drain pipes may be damaged during excavation and it is also understood that damaged pipes will be repaired before the trench is backfilled, normally the same day. Third, because utility work within highway right-of-way is done by Permit, PENNDOT already knows in advance who is excavating within highway right-of-way. Such work is subject to inspection and the permittee is required to restore the highway to its pre-construction condition. Therefore, requiring PENNDOT to mark its drain lines before permitted utility excavations does not add value to the process.

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CHAPTER 8 -- USE OF FORMS

8.1 -- GENERAL INFORMATION ON USE OF FORMS

This Chapter contains information about the use and completion of Department forms that are used in the Highway Occupancy Permit and Bridge Occupancy License Programs. Each form is listed by its title and form number and includes a purpose and information on how to complete and process that form.

Modifications to HOP forms are not authorized by applicants, consultants, District staff, County staff or other persons that are not responsible for the statewide administration of any Highway Occupancy Permit Program or Bridge Occupancy License Program. Forms are both a reflection and extension of laws, regulations and established statewide policy. Forms facilitate statewide uniformity and efficiency by ensuring basic information is consistently provided and processed.

If more than one copy of a form is required, the text or the Form itself will identify the number of copies.

As a general rule, submitted forms must be complete and accurate. All forms must be completed properly by the applicant and Department staff. All information, including signatures, titles and dates must be completed in the proper location for all blanks and on all copies of the form.

In some instances the form itself contains additional instructions which must be followed. Also, additional forms that are to be attached to make a complete package are identified.

When submitting legal forms (e.g., M-945 I & M-950 IC, M-945 K, M-945 L, M-950 I & M-950 IC, M-950 K/K1, M-950 L) for execution and approval, the signature page of every copy must be paper clipped or otherwise identified to ensure all copies are properly executed. Because faxed copies do not contain original signatures and are not as readable as their original, faxed copies are generally not acceptable.

There are a few representatives of Surety Companies, Insurance Companies and Banks that are unwilling to complete and submit the Department's standard Bonds, Certificates and Letters of Credit. Applicants are advised to do business with one of the many PA Surety Companies, PA Insurance Companies and PA Banks that are willing to submit PENNDOT's HOP/BOL Forms without modifying the text, terms or conditions on these standard forms. Even if the Office of Chief Counsel would agree to consider reviewing a modification to a standard form, the special review will increase the application processing time and costs.

Application Review / Permit Inspection Costs; Form M-371 A

Purpose

This form is used to document costs and to invoice Applicants/Permittees to **reimburse** PENNDOT for significant *additional* application review and significant *additional* (resident) inspection costs incurred by the Commonwealth, consistent with section 420 of the State Highway Law and Regulations 441.4(d) and 459.4(d). The form is used both by Department staff and Consultant Agreement personnel assigned to significant *additional* application review or significant *additional* (resident) Permit inspection.

Preparation

Department employees will complete the expense section daily, consistent with Commonwealth travel expense policies, and show all expenditures as listed on the employee's reimbursable travel expenses. The salary section will show the number of hours worked each day multiplied by the hourly rate; overtime hours are typically multiplied by 1½ the hourly rate. Completion of Form M-371 A by a consultant employee shall be consistent with the District's current Consultant Agreement.

On days when an inspector reports for work and there is inclement weather or the Permittee's contractor does not report without prior notification, the Permittee will be charged two hours reporting time in addition to expenses.

Acknowledgment. Every assigned inspector will complete that day's row on Form M-371 A every workday; this includes obtaining initials daily from the Permittee or its duly authorized representative. These daily initials are helpful in settling future billing disputes.

Payroll Additive. The Bureau of Fiscal Management will periodically update the payroll additive. The payroll additive will be added to all Department labor costs, but not to consultant costs.

The Billing Unit will forward two copies of the invoice and a copy of Form M-371 A to the Permittee. Prompt, full payment of all invoices -- to the Office of the Comptroller -- is necessary to avoid work stoppages and revocation of the Permit.

When the Office of Chief Counsel notifies the District Permit Office that an invoice is uncollectible, the Permit Office will notify the Permittee that its Permit is being revoked for nonpayment, as specified under Regulations 441.10 and 459.11. If there is an executed Permit agreement with security covering the Permittee's obligation to pay all fees, the Surety/Bank will be provided with a copy of the revocation letter.

Additionally, once the Permit is revoked, PENNDOT may choose to take appropriate action, consistent with current statewide policy, to block driveways, or sever, remove or block drainage facilities which remain in State highway right-of-way without a Permit.

Application for Bridge Occupancy License (BOL); Form M-906 A

Purpose

This form provides applicants a standard form which is used statewide to apply for utility occupancy of a State bridge. It also provides the District Bridge Unit with clear and concise information required to begin a Permit application review.

Preparation

Regulation 459.10a contains the required information necessary to properly complete the application form. District Bridge Unit staffs will assist applicants in the preparation of this form upon request.

If -- after review of the application and the on-site review -- it is found that errors or omissions exist, or if the application is not complete and accurate, District Bridge Unit staff will assist the applicant by giving detailed instructions on problems which need to be addressed.

There are general instructions on the applicant's copy of the application detailing additional information pertaining to submission of an application.

BOL License; Form M-906 L

Purpose

This form provides PENNDOT a standard form which is used statewide to issue a formal Bridge Occupancy License for utility occupancy of a State bridge.

Preparation

This form is currently prepared by Central Permit Office staff after receipt of an approved application (Form M-906 A) from the affected District Bridge Engineer.

Data is also entered in the BOL database to document the issuance of the BOL and to enable the preparation of annual invoices for bridge occupancy rental fees.

The Licensee is responsible for retaining the BOL as a permanent record.

Emergency Permit Card (EPC); Form M-940

Purpose

This form provides a method for public and municipal Utilities to perform emergency repairs to their facilities statewide prior to issuance of a formal Highway Occupancy Permit.

Preparation

Upon receipt of a properly completed HOP Application (Form M-945 A) from a public Utility or municipal Utility, District staff will complete the EPC by entering all required information. The expiration date will be one year from the date the card was issued.

When the new Emergency Permit Card is received by the applicant, the back of the card shall be signed by an authorized representative of the company or municipality.

See Regulation 459.6 for actual EPC use requirements.

After a period of one year or whenever all lines on the card are completed, the cardholder shall return the card to the issuing District Permit Office. Upon receipt, the District will compare the applicant's copy against the District copy to verify that no discrepancies appear.

Application for HOP; Form M-945 A

Purpose

This form provides applicants (except for Minimum Use driveways) a standard form which can be used statewide to apply for occupancy of State highway right-of-way, including utility, access, drainage, and structures. It also provides the Permit staff with clear and concise information required to begin a Permit application review.

Preparation

Chapter 2 contains the required information necessary to properly complete the application form. County and District Permit Office staff will assist applicants in the preparation of this form upon request.

If -- after review of the application and the on-site review -- it is found that errors or omissions exist, the District or County Permit staff will assist the applicant by giving detailed instructions on problems which need to be addressed.

There are general instructions on the applicant's copy of the application detailing additional information pertaining to submission of an application.

Application Return Notification; Form M-945 AR

This form provides County HOP staff a consistent, simplified, efficient method of notifying applicants statewide about submitted applications and accompanying plans that are being returned because the initial review identifies the application package is incomplete, inaccurate or inconsistent with Regulation 459. This form is designed to allow it to be completed by handwriting so it may be completed during the initial on-site review and promptly provided to the applicant.

The applicant is responsible for addressing **all** issues identified on this form.

Departmental Citation; Form M-945 C

This form provides a standard notice that can be utilized statewide to document violations of laws, regulations and Permit conditions; and to identify necessary corrective action by the Permittee or enforcement action by PENNDOT. The Citation Form meets the requirements of Regulation 441.10(a)(1) and Regulation 459.11(a)(1) pertaining to written notices for work stoppages.

Receipt of Citation is acknowledged -- signature -- The work crew leader will be asked to sign the completed Citation in this field, to acknowledge receipt of the Citation. The signature acknowledges receipt only.

Copies will be distributed according to the Units noted at the bottom of each sheet. The Permittee's copy will be forwarded to the address printed on the Permit; not the work crew leader. Additional photocopies may be made of the completed form and sent to other interested parties (e.g., Surety, Bank or insurance company, Chief Counsel, O.S.H.A., FmHA, or police).

Photographs may be taken of violations.

Acknowledgment of Completion (Post Card); Form M-945 G

Regulations 441.5(h) and 459.5(e) require the permittee to notify the District Office in writing when permitted work has been completed.

This form provides one statewide option (under current software) for establishing that the completion of permitted work is acknowledged by PENNDOT and that the official two-year maintenance responsibility has begun. Regulations 441.6(11) and 459.7(18) clarify that this or similar acknowledgments do not constitute approval or acceptance of the work ...

A form letter, email or other written acknowledgment may also be used instead of this form to notify the permittee.

This card (or similar notification) will be forwarded to the Permittee whenever the:

1. Permit required security;
2. Permit involved resident (full time) inspection;
3. Permittee specifically requests confirmation of its regulatory warranty period.

Acknowledgment -- Reimbursement Obligation for Utility Application Review; Form M-945 H

Purpose

This form provides an efficient mechanism for an applicant to acknowledge, in writing, that it intends to reimburse the Department for *additional* application review costs that are expected to exceed the standard fees specified in Regulation 459.4 by a significant amount. The assessing of additional fees is discussed in Chapter 3.

Preparation

When it is anticipated that the cost of reviewing the application will exceed the standard fees by a significant amount, the District Permit Manager will prepare a cost estimate. The *additional* costs will be based on the criteria in the “reimbursable costs” section of this form. If the estimated cost is too low, it may eventually be necessary to process a second form with a higher estimate.

The Applicant will complete the FEIN, location information, Application Number (if available), Project Name, Applicant Name and Address and signature section.

Note: If applicant signature is other than a president, vice president, sole proprietor and owner, or managing partner, a Resolution authorizing the signature must be attached.

When the completed form (and Resolution, if required) is received in the District Permit Office, the District Permit Manager will review the form and, if acceptable, complete the:

1. cost estimate in the “applicant obligations” section on the form (if not already accurately completed), and
2. effective date (i.e., date the form is determined to be completed accurately, which must be on or after the date received by PENNDOT).

A completed copy will be returned to the applicant. All costs will be itemized by PENNDOT staff and invoices will be prepared periodically.

Indemnification Agreement; Form M-945 I & and Covenant; Form M-950 ICPurpose

These two forms, when executed together, provide standard, concise, and easy to use documentation when additional indemnification is required under the following Regulation sections:

1. 67 PA Code, Section 459.3(b)(2)(i)(A), relating to facility owner not in the business of providing utility service.
2. 67 PA Code, Section 459.12(b)(1), relating to modification of regulations.

These forms are designed to be used for additional indemnification under these Regulation 459 sections only. (Use Form M-950 I & M-950 IC for additional indemnification under Regulation 441.)

Preparation

These two forms are to be prepared in duplicate and submitted to PENNDOT for approval before the Permit may be issued.

The pending Permittee's Name and Application Number need to be specified in the blank spaces on Page 1.

Section 4. Section 4 requires the Permittee to add the Commonwealth as an *additional insured* to its or its contractor's insurance in the amounts specified, unless excused by the District Executive.

Exhibit A. Executed Certificate(s) of Insurance must be submitted to PENNDOT with this form, including an acceptable "policy rider" or policy endorsement incorporating the language contained in Exhibit A and properly executed by a representative of the insurance company, with authority to do so. If the rider or endorsement is not executed by an officer of the corporation, evidence of authority to execute should be provided. This endorsement or rider should indicate who is the insured, who is the additional insured and who the insurance company is and should reference a policy number. Insurance is the backbone of the indemnification agreement and must be provided before the Permit is issued, unless excused by the District Executive.

Section 10. Section 10 requires the applicant to prepare a Covenant (see **Form M-950 IC**) containing the statement that this Indemnification Agreement has been executed and that all subsequent purchasers, heirs, assigns or transferees of any legal or beneficial interest in the property take it subject to the obligations imposed herein as *covenants running with the land*. This section also requires the covenant to be recorded in the Recorder of Deeds Office, and that proof of recording shall be presented to PENNDOT. This section may be excused by the Office of Chief Counsel if the applicant can justify why this requirement should not apply.

Signature

The signature page is to be prepared and executed by the applicant. The Permittee's name must be entered on the Permittee line exactly as it appears on the HOP application.

The Indemnity Agreement must be signed by a person or persons with authority with respect to the site for which the Permit is issued.

If applicant is a corporation, the president or vice president's signature is required. If the applicant is a municipality or municipal authority, the chairman or president's signature is required. If there is more than one owner and the applicant is not incorporated, all owners' signatures are required. This form is to be attested and sealed by a notary public.

Computation Sheet for Highway Restoration Security; Form M-945 J

This form provides simplified and standard statewide restoration security amounts, which can be used as a guide for establishing a minimum security amount on individual permits, adjusted for inflation, consistent with Section 420 of the State Highway Law.

If security is in the form of an escrow account which has an early withdrawal penalty (e.g., certificate of deposit), then the security will be increased by the amount equal to the early withdrawal penalty.

Highway Restoration and Maintenance Bond; Form M-945 K

Purpose

This form provides one type of security that can be used statewide and be promptly reviewed by District staff, Central Office and Chief Counsel. The use of this form is required under Regulation 459.5(b)(1) when the bond option for providing security is selected by the applicant. Substitutes or changes to this form are not permitted.

This security option allows coverage for more than one Permit only when processed by the Central Permit Office as a “blanket” bond.

Preparation

This form is to be prepared by the applicant in quadruplicate, with at least one of the four sets in the security package containing original signatures.

1. Agreement Number is assigned by the District Permit Office on an individual bond, using the standard 6-digit number D.D.C.Y.N.N. where DD = District, C = County, Y = last number of current year, N.N. = sequential number of security documents in that County for current year (01-99).
2. Enter Application Number on an individual bond.
3. Permittee's Federal Identification Number.
4. Bond Number will be assigned by Surety.
5. Effective Date will be assigned by Surety. Power of Attorney must have the same date as the bond (effective or executed date). See footnote*** on form.
6. Permittee's full name as it appears on the application.
7. Contractor's name may also be listed as principal on an individual bond. Contractor's name cannot appear on “blanket” bond. See footnote* on form. Thus, Permittee's name is *required* while contractor's name is *optional*.
8. Permittee's full address.
9. Complete name of Surety.
10. Complete mailing address of Surety.
11. Enter the written and numerical bond amount as determined by the District.
12. Date assigned by Surety. Power of Attorney must have the same date as the bond's effective or executed date. See footnote*** on form.
13. Attesting signature is required.
14. Check the title to match signature, or
15. If person attesting is other than secretary, assistant secretary, treasurer or assistant treasurer, their title must be placed on this line. See footnote** on form, regarding Resolution requirement.
16. Permittee must sign on specified line.
17. Check corresponding block to match Permittee signature line, or
18. If individual signing for Permittee is other than the president or a vice president, their title must be placed on specified line. See footnote** on form, regarding Resolution requirement.

19. If individual bond is in both the Permittee's and its contractor's name, contractor's corporate secretary or assistant secretary, or corporate treasurer or assistant treasurer must sign on specified line to attest signature, unless a Resolution authorizing another signature is attached.
20. Check the title to match signature under specified line, or
21. If person attesting under specified line is other than a listed corporate officer, their title must be placed on specified line. See footnote** on form, regarding Resolution requirement.
22. If individual bond is in both the Permittee's and its contractor's name, contractor's corporate president or vice president must sign on specified line, unless a Resolution authorizing another signature is attached.
23. Check the title to match signature under specified line, or
24. If person signing specified line is other than the corporate president or vice president, their title must be placed on specified line. See footnote** on form, regarding Resolution requirement.
25. Person witnessing for Surety must sign on specified line.
26. Title of person signing specified line must be listed.
27. Signature of person binding Surety must sign on specified line.
28. Title of person binding Surety must be listed.
29. Name and signature of Pennsylvania Resident Agent required if Attorney-in-Fact address (appearing on Power of Attorney) is other than PA.
30. Bond will be completed by Commonwealth Chief Counsel, upon approval.

District Permit staff will review submitted security for completeness and accuracy before forwarding one original (signatures) and three copies to Central Office. Allow the Central Office at least ten days for processing security.

Irrevocable Letter of Credit (LC); Form M-945 L

Purpose

This LC form provides preferable security that can be used statewide and be promptly reviewed by District staff and Chief Counsel. This form is required under Regulation 459.5(b)(2) when the Letter of Credit security option is selected by the applicant. This form may be retyped on lending institution letterhead if text is not modified.

Preparation

This form is to be prepared by the applicant in quadruplicate, with at least one of the four sets in the security package containing original signatures.

1. Agreement Number is assigned by the District Office using the standard 6-digit number D.D.C.Y.N.N. where DD = District, C = County, Y = last number of current year, NN = sequential number of security documents in that County for current year (01-99).
2. Applicant's Federal Identification Number.
3. LOC Number (assigned by PA Commercial Bank).
4. Name of lending institution (i.e., issuer) and complete mailing address.
5. Applicant/Permittee name and complete mailing address as entered on application.
6. Date LOC issued by lending institution, LOC amount, and Initial LOC expiration date.
7. Beneficiary: Engineering District organization number (e.g., 7-0) and mailing address.
8. Permit number, if issued; otherwise enter HOP application number.
9. LOC Number (assigned by PA Commercial Bank).
10. Complete address where the demand note (Exhibit A) may be presented for collection.
11. Numerical amount of restoration security as determined by the District.
12. Written amount of required restoration security.
13. Issuer's Name (i.e., PA Commercial Bank).
14. Issuing Officer's signature and title.
15. Signed by corporation president or vice president (unless delegation attached).
16. Attesting signature must be corporation secretary/assistant secretary or treasurer/assistant treasurer. No substitutes permitted. Appropriate block checked?
17. Approval completed by Commonwealth Chief Counsel.

Exhibit A is a part of the Irrevocable Letter of Credit and must be included with the security document (Exhibit A is used only to demand payment from the lending institution).

District Permit staff will review submitted security for completeness and accuracy before forwarding one original (signatures) and three copies to Central Office. Allow the Central Office at least ten days for processing security.

Assignment of Cause of Action; Form M-945 M

Purpose

This form provides one type of security that can – in limited situations -- be used and reviewed by District staff and Chief Counsel. The use of this form is required under Regulation 459.5(b)(3) when the Assignment of Cause of Action option for providing security is selected by the applicant. Substitutes or changes to this form are not permitted.

A municipality may propose to utilize this form of security if it has difficulty obtaining a bond or irrevocable letter of credit. An assignment of cause of action may not be used as security unless the contractor's surety bond and the contract between the permittee/municipality and its contractor have been reviewed by the Office of Chief Counsel, Permits Section staff; thus, these documents must be attached to the assignment form. The assignment will not be approved if the surety bond imposes conditions unacceptable to the Department, such as excluding coverage to the Commonwealth or political subdivisions, or limits on the amount of recovery, or the requirement that actions on the bond be litigated in a particular place or jurisdiction. In most cases, the Surety's obligation is only to insure completion of work authorized under the contract; it generally will not cover all of the obligations of the permittee contained in Department regulations. Likewise, the contract between the municipality/permittee and its contractor must be reviewed to determine if the contractor's obligations to the municipality are co-extensive with the requirements of the Department regulations (often they are not sufficient).

Preparation

This form is to be prepared by the applicant in quadruplicate, with at least one of the four sets in the security package containing original signatures.

1. Agreement Number is assigned by the District Office using the standard 6-digit number D.D.C.Y.N.N. where DD = District, C = County, Y = last number of current year, NN = sequential number of security documents in that County for current year (01-99).
2. Permittee's Federal Identification Number.
3. Enter Permit number, if issued; otherwise enter application number.
4. Permittee's complete name as it appears on the application.
5. Complete name of Permittee's contractor whose security is being assigned to PENNDOT.
6. Restoration security amount as determined by the District.
7. Name of Surety that issued the security being assigned to PENNDOT.
8. Date assigned by Surety. Power of Attorney must have the same date as the security effective or executed date. See footnote*** on form.
9. Attesting signature is required. Check the title to match signature, or
10. If person attesting is other than secretary, assistant secretary, treasurer or assistant treasurer, their title must be placed on this line. See footnote** on form, regarding Resolution requirement.
11. Permittee must sign on specified line.

12. Check corresponding block to match signature on specified line, or
13. If individual signing for Permittee is other than president or vice president, their title must be placed on specified line. See footnote** on form, regarding Resolution requirement.
14. Contractor's corporate secretary or assistant secretary, or corporate treasurer or assistant treasurer must sign on specified line to attest signature, unless a Resolution authorizing another signature is attached.
15. Check the title to match signature under specified line, or
16. If person attesting under specified line is other than a listed corporate officer, their title must be placed on specified line. See footnote** on form, regarding Resolution requirement.
17. Contractor's corporate president or vice president must sign on specified line, unless a Resolution authorizing another signature is attached.
18. Check the title to match signature under specified line, or
19. If person signing specified line is other than the corporate president or vice president, their title must be placed on specified line. See footnote** on form, regarding Resolution requirement.
20. Person witnessing for Surety must sign on specified line.
21. Title of person signing specified line must be listed.
22. Signature of person binding Surety must sign on specified line.
23. Title of person binding Surety must be listed.
24. Name and signature of Pennsylvania Resident Agent required if Attorney-in-Fact address (appearing on Power of Attorney) is other than PA.
25. Completed by Commonwealth Chief Counsel, upon approval.

District Permit staff will review submitted security for completeness and accuracy before forwarding one original (signatures) and three copies to Central Office.

Allow the Central Office at least 30 days for processing this type of security.

HOP Permit; Form M-945 P

This form provides PENNDOT a standard form which is used statewide to issue a formal Highway Occupancy Permit, consistent with Regulations.

This form is prepared by District Permit Office staff upon approval of an application (Form M-945 A or M-950 A) that is complete and accurate, consistent with law, Regulations 441 or 459, and statewide policy.

Data is entered in the HOP database to document the issuance of the HOP, to print pertinent data on this form (under current software), to enable the preparation of monthly invoices for applicants with Account numbers, and to allow for other reports to be generated.

The Permittee is responsible for retaining the HOP as a permanent record.

Highway Occupancy Permit Placard; Form M-945 PL

Purpose

This form provides a mechanism by which both the public and Department staff can verify whether a Driveway Permit has been issued, when current or recent driveway construction activity is observed. This form will eventually reduce the number of inquiries concerning permitted driveway activity and increase the number of inquiries concerning unpermitted driveway activity. The use of this form by each Engineering District is optional.

Preparation

Each District Permit Manager will decide if this Placard will be used within the District. If the form is used, it will be used District-wide on all access permits in order to be effective; inconsistent use of this form would be counterproductive.

If this form is used, it will be completed after a Driveway Permit is issued and forwarded to the Permittee with the Permittee copy of the Driveway Permit and plans. The Placard must then be posted as described on the form.

Resolution; Form M-945 R

Purpose

This form provides an acceptable format that can be used by *municipalities or municipal authorities statewide* in conjunction with other Permit documents that require a Resolution to be executed as part of the submission. A Resolution verifies that the person signing a document on behalf of the governmental unit does, in fact, have the authority to bind the governmental unit to the terms and conditions of the document being executed. A similar Resolution may also be required for non-governmental entities, as noted on the accompanying document to which the Resolution will be attached.

Preparation

This form is prepared by the applicant and submitted with each Permit document that requires a Resolution. One copy of the Resolution must be attached to each copy of the required document. One copy must contain original signatures and be attached to the required document that contains original signatures.

1. Name of municipal authority, if established, otherwise, municipality name.
2. Municipality name and County in which municipality is located.
3. Title of person designated to sign the document. This is the only title that will be permitted to sign the accompanying document.
4. Title of person designated to attest the signing of the accompanying document. This is the only title that will be permitted to attest the accompanying document.
5. Name of municipal authority, if established, otherwise, municipality name.
6. Signature and title of municipality or municipal authority member authorized to approve the Resolution. This person may be the person designated to sign the document.
7. Signature and title of person attesting the signing. This person may be the person designated to attest the signing of the accompanying document.
8. Name and title of person certifying that this Resolution is a true and correct copy. This again may be a person that holds one of the titles listed above.
9. Name of governing body adopting the Resolution and municipality. This may be a municipality or municipal authority.
10. Name of governing body.
11. Date of meeting when Resolution was adopted.
12. Signature and title of person certifying as to the correctness of the Resolution and Date signed.

Ensure the titles are affixed, complete name of municipality or municipal authority is given and a copy of the Resolution is attached to each copy of the required document; one copy must contain original signatures.

Follow the instructions pertaining to the accompanying document to which the Resolution will be attached.

Recording Copy; Form M-945 RC

Purpose

This form provides an acceptable format that can be used statewide by applicants in conjunction with other Permit-related documents that need to be executed and recorded in the County Courthouse, but which do not have a recording section. Substitutes or changes to this form are not permitted. Forms which have their own recording section should be recorded using that recording section.

Preparation

To record a Permit, the Engineering District Permit staff will:

1. Complete -- but not sign -- the Permit.
2. Determine the fees for recording the Permit or other document in the County Recorder of Deeds Office. *Specific fees and recording procedures vary from County to County.*
3. Forward page one of the *unsigned* Permit and Form M-945 RC (Document Recording Copy) to the applicant.
4. When Form M-945 RC (Document Recording Copy) is signed, notarized and returned by the applicant (with the Recorder of Deeds check) Engineering District staff will complete Form M-945 RC as follows:
 - a. complete the certification block "D";
 - b. complete block "C" in instances where PENNDOT is conveying an interest in land or is binding itself to conditions relative to the Permit. In certain Counties, the Recorder of Deeds may require an authorized representative of PENNDOT to complete block "C";
 - c. sign the Permit (or other document, if required); and
 - d. forward page one of the Permit or other document, Form M-945 RC, and the Recorder of Deeds check to the Recorder of Deeds in the County in which the work is being performed, and distribute the other copies of the issued Permit or other document, application and plans in the usual manner.
5. The Recorder of Deeds will forward the recorded copy of the Permit or other document and Form M-945 RC to the address entered in block "D".

When recording the Permit or other document, it is only necessary to record one page of the Permit or other document and Form M-945 RC (Document Recording Copy) as well as legal documents (e.g., access covenant, drainage release, indemnification agreement). The plans need not be recorded unless a particular County Courthouse insists that the complete Permit document be recorded.

Note: Generally, HOPs should be recorded in the Grantor-Grantee index. PENNDOT is the Grantor, and the Permittee is the Grantee. In this index, any person searching the Permittee's property title will see that PENNDOT has issued the HOP, and is thus on notice of it, and of its requirements. This includes subsequent purchasers. However, HOPs convey no interest in property, and are indeed a form of agreement between PENNDOT and the property owner. As such, some recorders of deeds offices are unwilling to record the HOP in the Grantor-Grantee index, and instead record it in the Miscellaneous Docket.

Supplemental Highway Permit; Form M-945 S

Purpose

This *electronic* form provides a means to amend, extend time or add additional information to a Permit, consistent with Regulations, or to correct a Department error. A Supplement may also be used to change a Permittee's name if the change is made before the expiration date of the Permit. (Note: after the Permit is closed out, an Assignment, Form M-948, must be executed to change the Permittee's name).

Fees

1. Supplement fees will be charged consistent with Regulation 441.4 or 459.4.
2. If Permittee is not exempted under Regulation 441.4(c) or Regulation 459.4(c), a \$10.00 fee shall be charged for issuing the Supplement; this fee may also include one six-month extension of time. An additional \$10.00 fee will be charged for each additional six-month period (e.g., one year time-extension = \$20.00). If additional work is requested, an additional fee shall also be charged consistent with Regulation 441.4 or Regulation 459.4.
3. Fees shall be paid (under current software) in the form of a check or money order (cash is not acceptable).

The Permittee is responsible for retaining the HOP Supplement as a permanent record.

Acknowledgment – Additional Highway Restoration Obligation; Form M-945 U

Purpose

This form documents a Permittee's acknowledgment of its additional highway restoration obligation, consistent with Regulations 459.7(6)(ii) and 459.8(f)(5).

Preparation

When District Office staffs determine this form is necessary, the Applicant/Permittee will be required to complete this form in quadruplicate (4 copies, one with original signatures) and submit it to the District Office before either of the potentially damaging operations are performed by the Permittee or its contractor.

Following are instructions for completing this form:

1. Check the preferred block for "blanket" or individual coverage. If individual, give Permit number, if issued. If Permit has not been issued, enter application number.
2. Enter the Permittee's name as it appears on the application; not its consultant, its contractor nor a person only receiving service.
3. Check one or both of the sections that apply. The first block pertains to equipment damage; the second block pertains to material storage damage.
4. Enter the date that the form is signed by the Applicant/Permittee.
5. Form must be signed by Applicant/Permittee and the title block must be checked. If other is checked, a Resolution authorizing signature must be attached (see footnote* on form). A Permittee's consultant, its contractor or person only receiving service may not sign this form for the Permittee.
6. Attesting signature is also to be by the Applicant/Permittee. Check the title block (see footnote* on form).

Restoration security amounts may be reviewed (if existing) or required (if not already on file) to ensure security is sufficient for potential damage.

After review and acceptance by the District, a copy will be returned to the Permittee.

Certificate of Insurance; Form M-945 X

Purpose

This form provides an acceptable statewide document to execute when a Certificate of Insurance is required under Regulations 459.3(b)(2)(i)(B), 459.5(d)(3), 459.7(11), 459.7(12)(i), 459.7(12)(ii), 459.7(13)(i), 459.8(d)(2)(iii), or 459.12(b)(3).

Preparation

When PENNDOT determines that this form is required, the Applicant/Permittee or its contractor will be required to complete this form in quadruplicate (4 copies) and submit to the District Permit Office before work may be performed by the Permittee or its contractor. *Note: Upon request, submit a copy of the policy endorsement adding the Department as an "additional insured" with Form M-945 X.*

Following are instructions for completing this form:

1. Check block for individual Permit or "blanket" coverage. Certificates for an individual Permit will be submitted to the District Permit Office.
Note: Forward "blanket" requests directly to the Central Permit Office.
2. Enter either the Permittee's name exactly as entered on the application or the name of the Permittee's contractor. Also check the corresponding block below this line.
3. Address is the complete mailing address of the Permittee or the Permittee's contractor, whichever is named as insured.
4. Carrier affording coverage is the company that is underwriting the insurance coverage.
5. Insurance agency is the broker that is representing the Permittee or its contractor.
6. Address is the complete mailing address of the insurance agency.
7. Under (c), requests for individual Permit coverage must have the complete mailing address of the applicable District Office.
8. Under (d), enter the policy number(s) and expiration date(s) above the letter and number (b1, b2, b3) that affords coverage relating to the corresponding numbers.
9. Address for certificate holder on individual Permits is the Engineering District Office.
10. Either Permittee's representative or the contractor's representative must sign the form, whoever was listed as the insured on the front of the form.
11. Check the title block for official signing for the Permittee or its contractor. If other is checked, see footnote* on form.
12. Enter date certificate issued by insurer.
13. Pa. Resident Agent must sign above the line if Attorney-in-Fact address is other than Pa. Also list Pa. Resident Agent's telephone number, including area code.

After review and acceptance by the District, one copy will be returned to the Permittee.

Notice of Dispute; Form M-945 Y

Purpose

This form initiates an informal process (outside of the administrative hearing process) for resolving disputes that arise between the District and a Permittee over permitted work.

Procedure

Following are instructions for completing this form:

The front side of the form is to be completed by the Permittee or its consultant or contractor. All questions must be answered completely. Enter N/A for any question that does not apply. Use additional sheets of paper if more room is required. Signature by the Permittee is required; the Permittee's contractor's signature is optional.

Upon receipt of a completed Notice, the District Permit Office will complete the Organization -- Year -- Number line (e.g., 053-04-240). This will be the dispute file number.

The District Permit Manager will promptly review the specifics with all Department staff that were involved and complete the back of the form in detail. The District Permit Manager then signs and dates the form.

The form will then be forwarded to the District Executive or Assistant District Executive for concurrence or rejection. After the District Executive or his/her Assistant completes and signs the form, it is returned to the District Permit Manager who will promptly notify the Permittee of the District's decision.

A Dispute Review Panel may be convened to gather additional information regarding the dispute. For detailed instructions on the informal HOP dispute review process, see Chapter 5.

Access Covenant; Form M-946

Purpose

This form provides a notice and documentation of an applicant's commitment to use only currently proposed access to its property, when PENNDOT anticipates that a property may be subdivided and that such subdivision will result in an unacceptable number or arrangement of driveways, consistent with Regulation 441.6(16).

It would be appropriate to require an Access Covenant on a critical corridor (e.g., a corridor being considered for access management control), a high ADT highway, where there is significant property frontage with satisfactory sight distance, where there is potential for "strip development" or future "out parcels" or similar future access or congestion concerns.

Preparation

Following are instructions for completing this form:

If the District Permit Manager determines (after application review) that an Access Covenant is necessary, District staff will forward the Access Covenant form to the applicant for completion.

On page 1, the applicant must complete the required information in the box in the upper left corner, as well as the date, the owner's name(s) and required deed and deed book information.

On page 2, the applicant must complete the upper Sections. If the owner is a partnership, all partners are required to sign the form. If the owner is a corporation, association, club, etc., and if other than the president or vice president signs, or if other than the secretary, assistant secretary, treasurer or assistant treasurer attests, then a Resolution authorizing the signatures must be executed and attached.

After the owner has completed its portions of the form, the executed Access Covenant must then be forwarded to the District Permit Office.

District Permit Office staff will review the form to verify that the form is complete and correct. If approved, staff will complete the PENNDOT block on page 2, then have both the Access Covenant and the Permit recorded. The Recorder will complete the appropriate block.

Access Covenants and recording of Permits are discussed in Chapter 3.

Drainage Release: Form M-947

Purpose

This form provides notice and documentation of each affected property owner's concurrence with an applicant's proposed drainage from its property as a result of action authorized by the permit, when the applicant or PENNDOT determines that a Drainage Release will be required, consistent with Regulation 441.3(h). Note: Drainage Releases are not required under Regulation 441 for Minimum Use driveways.

Preparation

Following are instructions for completing this form:

If the District Permit Manager determines (after application review) that a Drainage Release is necessary but is not included in the application package, District staff will forward the Drainage Release form to the applicant for completion.

The applicant must complete the required information in the box in the upper left corner, as well as the other blanks.

The applicant is responsible for negotiating with each releasor in determining the consideration. The applicant must enter that amount on the form. Enter the releasor's name and mailing address in the spaces provided.

The releasor will then date and sign the form on the lines provided at the bottom. If there is more than one owner, all owners must sign the form. Each signature is required to be witnessed, but one person may witness all signatures.

The applicant is then responsible for having the form(s) notarized by having the notary complete block "A".

Then, forward the notarized form(s) to the District Permit Manager, who will complete block "B" and sign the form(s) as the agent for the Commonwealth.

After the Permit is printed and before it is issued, the Permit and the Drainage Release(s) are to be recorded. The County Recorder will complete block "C".

Assignment of Permit or License; Form M-948

Purpose

This form provides the present and new Permittees/Licensees, District staffs and the Central Permit Office with a simple method to transfer ownership of a *completed* Permit or License statewide -- in order for a HOP or BOL to remain valid. *Note: A Supplement may be used to transfer ownership of an active permit.* This dual program form is used to assign either a Highway Occupancy Permit under Regulation 441.6(1)(iv) or 459.7(1)(iv), or a Bridge Occupancy License under Regulation 459.10a(d). This form is also posted on the PENNDOT Web Site (see footer).

Preparation

Following are instructions for completing this form:

Section 1 is completed by the present Permittee/Licensee (Assigner). Enter the name of the new owner, new owner's address, the Permit or License number, the issuance date of the Permit/License and a short description of work (e.g., install Minimum Use driveway with drainage). The present owner will also enter the municipality where he/she resides and the current date, then print the name as it appears on the Permit, sign and identify the signer's title. The signature shall be attested and the attessor's signature shall be titled.

Section 2 is completed by the new Permittee/Licensee (assignee). Enter the Permit/License number, the municipality where the new owner resides, the current date, the printed name or company of the new owner, the new owner's signature and signer's title. The signature shall be attested and the attessor's signature shall be titled. *Note: It is recommended that proof of ownership be provided (e.g., a recorded deed to the property).*

Section 3 is completed and signed by the District Permit Manager (if a HOP) or the District Bridge Engineer (if a Bridge Occupancy License). District Office staff will review the package to verify that it contains the correct number of copies (two for Highway Occupancy and three for Bridge Occupancy – at least one copy with original signatures), that the Permittee's copy of the Permit is attached, that the information is correct and that all blanks have been completed. If approved, the District Permit Manager/Bridge Engineer will enter any special conditions and the Organization number and sign the form, and then forward the Assignment to the Central Permit Office.

Upon receipt, the Central Permit Office will review the package. If approved, the Central Permit Office will complete Section 4 and return the Assignment package to the District for distribution.

Utility Sketch (Single Pole Placement); Form M-949 A

Purpose

This form provides corporate and municipal Utilities with a concise, easy to use statewide form that contains basic utility plan information required by Regulation 459.3(c)(3).

Preparation

If the applicant uses this form as its plan, all information must be completed before it is submitted -- in quadruplicate -- with the Application (Form M-945 A).

The completed form may be used to request placement of a single aboveground facility (e.g., pole, anchor guy, etc.). Up to three sketches may be submitted with each application provided all locations are within the same municipality. If an applicant proposes to place more than three poles on the same State Route and they are physically connected, Form M-949 B may be used.

Following are instructions for completing this form:

1. The applicant may use the "Permittee Use Only" section for their information.
2. PENNDOT staff may use the "Dept. Use Only" section for on-site review comments.
3. The information section must be complete and accurate.
4. In the plan section, the dimensions from centerline to right-of-way, centerline to front face of pole, and front face of pole to right-of-way line must be entered. Also, show North arrow and pole number.
5. In the cross-section section, darken in the pole and existing type slope that best shows actual field conditions.
6. Check the applicable block for curb and/or guiderail. If guiderail exists, check type (see back of form for spacing and required lateral offset).
7. If either curb or guiderail exists, give dimensions, in feet. Enter N/A on either line that is not applicable.

Under Regulation 459.9(b)(1)(i), new facilities shall be installed as near the right-of-way line as practicable. If a pole is not adjacent to the right-of-way line, justification must be included with the plan.

Under Regulation 459.9(b)(1)(ii), replacement facilities must be placed consistent with Design Manual, Part 5.

A maximum of three single pole sketches may accompany a single Application (Form M-945 A) provided they are located in the same municipality.

Utility Sketch (Multi-Pole Placement); Form M-949 B

Purpose

This form provides corporate and municipal Utilities a concise, easy to use statewide form that contains basic utility plan information required by Regulation 459.3(d)(3).

Preparation

If the applicant uses this form as its plan, all information must be completed before it is submitted -- in quadruplicate -- with the Application (Form M-945 A).

The completed form may be used if requesting placement of more than three physically connected aboveground facilities (e.g., 10 poles; 4 anchor guys), within the same municipality. If an applicant proposes to place less than four poles, use Form M-949 A.

Following are instructions for completing this form:

1. The applicant may use the "Permittee Use Only" section for their information.
2. PENNDOT staff may use the "Dept. Use Only" section for on-site review comments.
3. The information section must be complete and accurate.
4. Review Table 1 and also review notes.
5. In the plan section, sketch in the location of the facility, then show the dimensions from centerline to right-of-way line, centerline to front face of pole, and front face of pole to right-of-way line.
6. Enter the Segment and Offset in the space provided.
7. Show breaks in continuous pole placements and/or replacements.
8. Sketch in features (e.g., bridges, intersections) where applicable.
9. In the cross-section section, darken in the pole and existing type slope that best shows actual field conditions.
10. Check the applicable block for curb and/or guiderail. If guiderail exists, check Table 1 for type and required lateral offset.
11. If either curb or guiderail exists, give dimensions, in feet. Enter N/A on either line that is not applicable.
12. A separate cross section must be used for each facility to be placed or replaced.

Under Regulation 459.9(b)(1)(i), new facilities shall be installed as near the right-of-way line as practicable. If pole is not adjacent to the right-of-way line, justification must be included with the plan.

Under Regulation 459.9(b)(1)(ii), replacement facilities must be placed consistent with Design Manual, Part 5.

More than one form may be used provided all facilities are physically connected (e.g., share a common conductor), and all facilities are in the same municipality.

Utility Sketch (Surface Openings Less Than 500 L.F.); Form M-949 C

Purpose

This form provides corporate and municipal Utilities with a concise, easy to use statewide form that contains basic utility plan information required by Regulation 459.3(c)(3).

Preparation

If the applicant uses this form as its plan, all information must be completed before it is submitted -- in quadruplicate -- with the Application (Form M-945 A).

The completed form may be used to request numerous surface openings within a 500 ft. length that are each less than 36 sq. ft., if the openings are in the same municipality and on the same S.R. and are physically connected. The form may also be used to request transverse or longitudinal openings within 500 linear feet. The form may also be used to request open cutting in lieu of boring (see Chapter 3).

Following are instructions for completing this form:

1. The applicant may use the "Permittee Use Only" section for their information.
2. PENNDOT staff may use the "Dept. Use Only" section for on-site review comments.
3. All information in the four information sections must be accurate and complete.
4. On the plan view, show all surface openings, dimensions of opening(s), and location (relative to centerline, edges of pavement, shoulder, curb, and right-of-way).
5. The plan view must also show affected highway features (e.g., signs, guiderail, inlets, pipes, laterals).
6. Show other affected utilities (e.g., poles, manholes).
7. Show intersections or bridges where applicable.
8. If plan views depict boring pits, show the dimensions of the pits, their exact location, and sizes of casing and carrier pipe.
9. If applicant is requesting open cutting, show depths and locations of other facilities that would preclude boring.
10. On the cross section view, show the location and depth from the lowest point of the surface to the top of the facility, with dimensions.

In certain cases, where a facility is placed in over 100 feet of pavement or shoulder and the topography changes significantly, additional cross sections may be required consistent with Regulation 459.3(e)(2).

Application for Minimum Use Driveway; Form M-950 A

Purpose

This form provides any property owner that needs to obtain a Minimum Use driveway permit a combined application and plan that is easy to complete.

Preparation

PENNDOT Publication 312 and Chapter 2 contain instructions to properly complete this application form. District and County Permit Office staffs will assist such applicants in completing this form, if necessary or upon request.

If -- after review of the application and the on-site review -- it is found that errors or omissions exist, the District or County Permit staffs will assist the applicant by giving detailed instructions on problems which need to be addressed.

Application Return Notification; M-950 AR

This form provides County HOP staff a consistent, simplified, efficient method of notifying applicants statewide about submitted applications and accompanying plans that are being returned because the initial review identifies the application package is incomplete, inaccurate or inconsistent with Regulation 441. This form is designed to allow it to be completed by handwriting so it may be completed during the initial on-site review and promptly provided to the applicant.

The applicant is responsible for addressing **all** issues identified on this form.

Deed, Fee Simple; Form M-950 D1

Purpose

This form provides standard, concise, and easy to use documentation when additional right-of-way will be required for the construction of a proposed access (e.g., to accommodate auxiliary lane(s) consistent with Regulation 441, including section 441.8(j)). This “Fee Simple” deed may be used in conjunction with and as a condition to issuance of a permit.

Preparation

If the applicant has negotiated to purchase the necessary right-of-way from another person, the property should first be conveyed to the applicant and then to PENNDOT using this deed form.

Complete the Location and Identification information:

1. County, Municipality, and SR, Segment, Offset
2. Application/Permit Number
3. Applicant/Permittee Name and Address

Complete the blanks in the body text, including:

1. Date (indenture is made)
2. Grantor’s complete Name and Address
3. Deed Book Reference

The deed utilizes a “plot plan” referenced as an exhibit. The applicant is required to provide a “title report” or “bring down”, updated to within 15 days of the date the permit is to be issued.

The executed deed and the title information must be reviewed and accepted by the District Right-Of-Way Administrator prior to: (1) recording, and (2) issuance of the permit.

Recording

Once the complete application package is approved, it must be recorded. The applicant and PENNDOT staff will need to complete their portions of the recording page(s) by following the recording instructions on each Form to be recorded. Then, the document(s) to be recorded will be delivered to the County Court House (following recording procedures for that County).

Deed of Easement; Form M-950 D2

Purpose

This form provides standard, concise, and easy to use documentation when additional right-of-way will be required for the construction of a proposed access (e.g., to accommodate auxiliary lane(s) consistent with Regulation 441, including section 441.8(j)). This “Deed of Easement” may be used in conjunction with and as a condition to issuance of a permit if the attorney for the applicant is unwilling to give PENNDOT fee simple title (see Form M-950 D1).

Preparation

If the applicant has negotiated to purchase the necessary right-of-way from another person, the property should first be conveyed to the applicant and then to PENNDOT using this deed form.

Complete the Location and Identification information:

1. County, Municipality, and SR, Segment, Offset
2. Application/Permit Number
3. Applicant/Permittee Name and Address

Complete the blanks in the body text, including:

1. Date (indenture is made)
2. Grantor’s complete Name and Address
3. Deed Book Reference

The deed utilizes a “plot plan” referenced as an exhibit. The applicant is required to provide a “title report” or “bring down”, updated to within 15 days of the date the permit is to be issued.

The executed deed and the title information must be reviewed and accepted by the District Right-Of-Way Administrator prior to: (1) recording, and (2) issuance of the permit.

Recording

Once the complete application package is approved, it must be recorded. The applicant and PENNDOT staff will need to complete their portions of the recording page(s) by following the recording instructions on each Form to be recorded. Then, deliver the document(s) to be recorded to the County Court House.

Deed of Easement (Drainage); Form M-950 D3

Purpose

This form provides standard, concise, and easy to use documentation when an easement for drainage purposes is required from a property owner for the construction of a proposed access (e.g., storm drainage). This “Deed of Easement” may be used in conjunction with and as a condition to issuance of a permit.

Preparation

Complete the Location and Identification information:

1. County, Municipality, and SR, Segment, Offset
2. Application/Permit Number
3. Applicant/Permittee Name and Address

Complete the blanks in the body text, including:

1. Date (indenture is made)
2. Grantor’s complete Name and Address
3. Dollar Amount paid by Applicant/Permittee
4. Deed Book Reference
5. SR, Segment, Offset

The deed utilizes a “plot plan” referenced as an exhibit. The applicant is required to provide a “title report” or “bring down”, updated to within 15 days of the date the permit is to be issued.

The executed deed and the title information must be reviewed and accepted by the District Right-Of-Way Administrator prior to: (1) recording, and (2) issuance of the permit.

Recording

Once the complete application package is approved, it must be recorded. The applicant and PENNDOT staff will need to complete their portions of the recording page(s) by following the recording instructions on each Form to be recorded. Then, deliver the document(s) to be recorded to the County Court House.

Acknowledgment -- Reimbursement Obligation for Access Application Review; Form M-950 HPurpose

This form provides an efficient mechanism for an applicant to acknowledge, in writing, that it intends to reimburse the Department for *additional* application review costs that are expected to exceed the standard fees specified in Regulation 441.4 by a significant amount.

Preparation

When it is anticipated that the cost of reviewing the application will exceed the standard fees by a significant amount, the District Permit Manager will prepare a cost estimate. The *additional* costs will be based on the criteria in the “reimbursable costs” section of this form. If the estimated cost is too low, it may eventually be necessary to process a second form with a higher estimate.

The Applicant will complete the FEIN, location information, Application Number (if available), Project Name, Applicant Name and Address and signature section.

Note: If applicant signature is other than a president, vice president, sole proprietor and owner, or managing partner, a Resolution authorizing the signature must be attached.

When the completed form (and Resolution, if required) is received in the District Permit Office, the District Permit Manager will review the form and, if acceptable, complete the:

1. cost estimate in the “applicant obligations” section on the form (if not already accurately completed), and
2. effective date (i.e., date the form is determined to be completed accurately, which must be on or after the date received by PENNDOT).

A completed copy will be returned to the applicant. All costs will be itemized by PENNDOT staff and invoices will be prepared periodically.

Indemnification Agreement; Form M-950 I and Covenant; Form M-950 IC Purpose

These two forms, when executed together, provide standard, concise, and easy to use documentation when additional indemnification is required under the following Regulation sections:

1. 67 PA Code, Section 441.3(h), relating to drainage
2. 67 PA Code, Section 441.5(e)(1)(v), relating to waiver
3. 67 PA Code, Section 441.8(j)(5), relating to lane in front of another property

These forms are designed to be used for additional indemnification under these Regulation 441 sections only. (Use Form M-945 I & M-950 IC for additional indemnification under Regulation 459.)

Preparation

These two forms are to be prepared in duplicate and submitted to PENNDOT for approval before the Permit may be issued.

The pending Permittee's Name and Application Number need to be specified in the blank spaces on Page 1.

Section 4. Section 4 requires the Permittee to add the Commonwealth as an *additional insured* to its or its contractor's insurance in the amounts specified, unless excused by the District Executive only.

Exhibit A. Executed Certificate(s) of insurance must be submitted to PENNDOT with this form, including an acceptable "policy rider" or policy endorsement incorporating the language contained in Exhibit A and properly executed by a representative of the insurance company, with authority to do so. If the rider or endorsement is not executed by an officer of the corporation, evidence of authority to execute should be provided. This endorsement or rider should indicate who is the insured, who is the additional insured and who the insurance company is and should reference a policy number. Insurance is the backbone of the indemnification agreement and must be provided before the Permit is issued, unless excused by the District Executive.

Section 10. Section 10 requires the applicant to prepare a Covenant (see **Form M-950 IC**) containing the statement that this Indemnification Agreement has been executed and that all subsequent purchasers, heirs, assigns or transferees of any legal or beneficial interest in the property take it subject to the obligations imposed herein as *covenants running with the land*. This section also requires the covenant to be recorded in the Recorder of Deeds Office, and that proof of recording shall be presented to PENNDOT. This section may be excused by the Office of Chief Counsel if the applicant can justify why this requirement should not apply.

Signature

The signature page is to be prepared and executed by the applicant. The Permittee's name must be entered on the Permittee line exactly as it appears on the HOP application.

The Indemnity Agreement must be signed by a person or persons with authority with respect to the site for which the Permit is issued, for instance:

1. Regulation 441.1 defines persons that may qualify as owners. In the case where the tenant of a lease applies (a supermarket or convenience store, etc.), both the tenant and the "real owner" of the land must sign the indemnification.
2. If the land is owned by joint tenants, for instance husband and wife, all persons owning an interest must sign the Indemnity Agreement.
3. If the applicant is a business entity or trust, a letter from the applicant's lawyer must accompany the application stating that the individual or individuals signing the Indemnity Agreement have authority to do so on behalf of the applicant.

If applicant is a corporation, the president or vice president's signature is required. If the applicant is a municipality or municipal authority, the chairman or president's signature is required. If there is more than one owner and the applicant is not incorporated, all owners' signatures are required. This form is to be attested and sealed by a notary public.

HOP Obligation Bond; Form M-950 K and HOP "Blanket" Bond; Form M-950 K1

Purpose

These forms provide one type of security that can be used statewide and be promptly reviewed by District staff, Central Office and Chief Counsel. The use of these forms may be required under Section 420 of the State Highway Law when the bond option for providing security is selected by the applicant. Substitutes or changes to these forms are not permitted.

- Form M-950 K may provide security on an individual permit; and is processed and maintained by the affected Engineering District.
- Form M-950 K1 may provide security on multiple permits statewide, and is processed and retained by the Central Permit Office.

Preparation

Either of these forms is to be prepared by the applicant in quadruplicate, with at least one of the four sets in the security package containing original signatures.

1. Agreement Number is assigned by the affected Permit Office on an individual bond.
2. HOP application number (on M-950 K).
3. County where access is located (on M-950 K).
4. Permittee's Federal Identification Number.
5. Bond Number will be assigned by Surety.
6. Effective Date will be assigned by Surety. Power of Attorney must have the same date as the bond (effective or executed date). See footnotes on form.
7. Permittee's full name (as it appears on the application).
8. Contractor's name may also be listed as principal (on Form M-950 K). Thus, Permittee's name is required while contractor's name is optional (on M-950 K).
9. Permittee's complete mailing address.
10. Surety's complete name and Surety's complete mailing address.
11. Enter the written and numerical *bond amount* as determined by the District.
12. Enter the written and numerical *bond reduction amount*, after acknowledgment of completion of work, as determined by the District (on M-950 K).
13. Date assigned by Surety. Power of Attorney must have the same date as the bond's effective or executed date. See footnotes on form.
14. Attesting signature is required.
15. Check the title to match signature, or
16. If person attesting is other than secretary, assistant secretary, treasurer or assistant treasurer, their title must be placed on specified line. Notations identify Resolution requirement.

17. Permittee must sign on specified line.
18. Check corresponding block to match Permittee signature line, or
19. If individual signing for Permittee is other than president or vice president, their title must be placed on specified line. Notations identify Resolution requirement.
20. If bond is in both Permittee's and its contractor's name (on M-950 K), contractor's corporate secretary or assistant secretary, or corporate treasurer or assistant treasurer must sign on specified line to attest signature, unless a Resolution authorizing another signature is attached.
21. Check the title to match signature under specified line, or
22. If person attesting under specified line is other than a listed corporate officer, their title must be placed on specified line. Notations identify Resolution requirement.
23. If bond is in both the Permittee's and its contractor's name (on M-950 K), contractor's corporate president or vice president must sign on specified line, unless a Resolution authorizing another signature is attached.
24. Check the title to match signature under specified line, or
25. If person signing specified line is other than the corporate president or vice president, their title must be placed on specified line. Notations identify Resolution requirement.
26. Person witnessing for Surety must sign on specified line.
27. Title of person signing specified line must be listed.
28. Signature of person binding Surety must sign on specified line.
29. Title of person binding Surety must be listed.
30. Name and signature of Pennsylvania Resident Agent required if Attorney-in-Fact address (appearing on Power of Attorney) is other than PA.
31. Bond will be completed by Commonwealth Chief Counsel, upon approval.

District Permit staff will review submitted security for completeness and accuracy before forwarding one original (signatures) and three copies to Central Office. Allow the Central Office at least ten days for processing security.

Irrevocable Letter of Credit (Access); Form M-950 L

Purpose

This form provides preferable security that can be used statewide and be promptly reviewed by District staff and Chief Counsel. The use of this form may be required under Section 420 of the State Highway Law when the Letter of Credit option for providing security is selected by the applicant. This form may be retyped on lending institution letterhead if text is not modified.

Preparation

This form is to be prepared by the applicant in quadruplicate, with at least one of the four sets in the security package containing original signatures.

1. Agreement Number is assigned by the District Office.
2. Applicant's Federal Identification Number.
3. LOC Number (assigned by PA Commercial Bank).
4. Name of lending institution (i.e., issuer) and complete mailing address.
5. Applicant/Permittee name and complete mailing address as entered on application.
6. Date LOC issued by lending institution, initial LOC amount and expiration date.
7. Beneficiary: Engineering District organization number (e.g., 7-0) and mailing address.
8. Permit number, if issued; otherwise enter HOP application number.
9. LOC Number (assigned by PA Commercial Bank).
10. Complete address where the demand note (Exhibit A) may be presented for collection.
11. Numerical amount of restoration security as determined by the District.
12. Written amount of required restoration security.
13. LOC reduction percentage (e.g., 90%) after acknowledgment of completion of work.
14. LOC reduced amount after acknowledgment of completion of work.
15. Issuer's Name (i.e., PA Commercial Bank) and Issuing Officer's signature and title.
16. Signed by corporation president or vice president (unless delegation attached).
17. Attesting signature must be corporation secretary/assistant secretary or treasurer/assistant treasurer. No substitutes permitted. Appropriate block checked?
18. Approval completed by Commonwealth Chief Counsel.

Exhibit A is a part of the Irrevocable Letter of Credit and must be included with the security document (Exhibit A is used only to demand payment from the lending institution).

District Permit staff will review submitted security for completeness and accuracy before forwarding one original (signatures) and three copies to Central Office. Allow the Central Office at least ten days for processing security.

Land Use Questionnaire; Form M-950 MPC

Purpose

This form allows the Department to meet the statutory requirement “*to consider*” land use issues as part of the driveway application review process, where applicable. This form is posted on the PENNDOT Web Site (see footer).

Preparation

This form must be completed and submitted with each application for a Low, Medium or High Volume driveway permit.

District Permit Managers are encouraged to use the MPC authority to approve or deny applications based on zoning considerations. District Permit Managers need to notify the municipality as required when Form M-950 MPC identifies a zoning conflict. To date, relatively few applications have met all requirements under the MPC to enable the Department to “*rely upon*” zoning conflicts as part of the Department’s driveway application review.

Agreement of Release; Form M-950 R

Purpose

This form provides a release that can be used statewide and be promptly reviewed by District staff and Chief Counsel. This form is required if the applicant's proposed occupancy may permanently interfere with the operation of another access, as outlined in Regulations 441.8(d)(j)(m) and (n) – see below. Modifications to this form are not permitted. This executed form needs to be recorded and maintained as a permanent record with the Permit.

1. Under 441.8(d) & (j), this release is required if a portion of a planned access, including an auxiliary lane, turning lane, curb radius or other structure must be *located outside the permittee's property frontage boundary line*.
2. Under 441.8(m), this release is required if the *placement or removal of a median* along a State highway will adversely affect or modify the operational characteristics and access patterns of another access serving an abutting or adjacent property.
3. Under 441.8(n), this release is required if an *existing shoulder will be upgraded* along a State highway and the required construction will adversely affect or modify the operational characteristics of another access serving an abutting or adjacent property.

Preparation

Complete the Location and Identification information:

1. County, Municipality, and SR, Segment, Offset
2. Application/Permit Number and Applicant/Permittee Name

Complete the blanks in the body text, including:

1. Date (indenture is made)
2. Owner's complete name and complete address
3. Deed Book Reference

Once the complete application package is approved, it must be recorded. The applicant and PENNDOT staff will complete their portions of the recording page(s) by following the recording instructions on each Form to be recorded. Then, these document(s) will be delivered to the County Court House (following recording procedures for that County).

Driveway Formula Sight Distance (FSD) Measurements; Form M-950 S

Purpose

This form provides PENNDOT with a uniform method for measuring and documenting actual *driveway* Formula Sight Distance (FSD) measurements statewide. For *local roads*, Publication 70M sight distance criteria are used.

Preparation

This form is prepared by the County Permit Manager or other person performing the on-site HOP application review, for a proposed *driveway*. The form includes three schematic drawings that illustrate typical vehicles on typical highways preparing to make critical turning movements out of and into a typical driveway. No standard drawing will cover every situation that may occur (e.g., longer combination vehicles, queues), but minimum sight distance measurements will be based on these typical situations.

If the highway section has no posted (maximum legal) speed limit, the reviewer will determine the safe-running speed and record the safe-running speed in the space provided on Form M-950 SRS.

If all *measured* sight distances exceed their corresponding FSD, then at least minimum sight distance requirements are being met. However, optimal sight distance is preferable to minimum sight distance along a property frontage and should be provided where possible.

If any FSD meets or exceeds its corresponding *measured* sight distance, then minimum sight distance requirements have not been met. In this case, the applicant will need to explore other options that will provide sufficient sight distance.

Additional information on sight distance measurements is in Regulation 441.

Safe-Running Speed Determination; Form M-950 SRS

Purpose

This form is used by permit staff to determine the velocity value for the Formula Sight Distance (FSD) calculation statewide if there is no posted (maximum legal) speed to control traffic approaching the proposed driveway site.

PENNDOT will not use a posted advisory speed or a posted minimum speed to determine the "V" value below.

Preparation

The safe-running speed is the maximum velocity, in miles per hour, at which drivers may safely operate their vehicles on a section of highway during favorable weather conditions and prevailing traffic conditions, as determined under 67 Pa. Code, Section 201.6(17)(iii).

District Permit staff may determine the Formula Sight Distance (FSD) consistent with Regulation 441.8(h) by using the safe-running speed in the "formula" for "V", where:

$$V = \text{Velocity of vehicle (miles per hour).}$$

The reviewer will make 5 test runs in each direction through the area, driving at a reasonable, safe, prudent speed considering all factors. Each test run will be made during favorable weather conditions and prevailing traffic conditions.

After completing the five runs in each direction, the reviewer will determine the *average speed* in each direction. The value will be the average safe-running speed in that direction.

The reviewer will round this average up to the next highest mph multiple of 5 (e.g., 47 mph would be rounded up to 50 mph).

The reviewer will document the recorded speeds and computations on Form M-950 SRS in the spaces provided.

Certificate of Insurance (Access); Form M-950 X

Purpose

This form will provide an acceptable document to execute statewide if a Certificate of Insurance is required for other than Minimum Use driveways, consistent with Regulation 441.

Preparation

When District staffs determine that this form is required, consistent with Regulation 441, the Applicant/Permittee or its contractor will be required to complete this form in quadruplicate (4 copies) and submit it to the District Permit Office before work may be performed by the Permittee or its contractor.

Note: Upon request, submit a copy of the policy endorsement adding the Department as an "additional insured".

After review and acceptance by the District, one copy will be returned to the Permittee.

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CHAPTER 9 -- FORMS AND PUBLICATIONS

9.1 -- GENERAL

The basic purpose of a form is to provide for the uniform recording, transmitting, and data processing of information. Forms allow information processing (and service to the public) to be more efficient than would otherwise be possible.

All forms must be used as designed and published, unless specifically exempted in this Manual (e.g., Letters of Credit are specifically authorized to be retyped on Bank stationary). *Revisions* to official statewide HOP forms are not permitted by District or County staffs, applicants, permittees, consultants or citizens.

9.2 -- FORMS

Following is a partial list of Highway Occupancy Permit Forms that may need to be completed by or on behalf of the applicant/permittee. Also see Chapter 8.

<u>FORM NO.</u>	<u>DESCRIPTION</u>
M-371 A	Application Review/Permit Inspection Costs
M-906 A	Application for Bridge Occupancy License (BOL)
M-940	Emergency Permit Card
M-945 A	HOP Application
M-945 C	Departmental Citation
M-945 H	Acknowledgment – Reimbursement Obligation For Application Review – Utility
M-945 I	Indemnification Agreement – Utility (Use with M-950 IC)
M-945 K	Highway Restoration and Maintenance Bond
M-945 L	Irrevocable Letter Of Credit – Utility
M-945 R	Resolution
M-945 RC	HOP Recording Copy
M-945 U	Acknowledgment – Permittee's Restoration Obligation
M-945 X	Certificate of Insurance -- Utility
M-945 Y	Notice of Dispute
M-946	Access Covenant
M-947	Drainage Release
M-948	Assignment of Permit/License
M-949 A	Utility Sketch (Single Pole)
M-949 B	Utility Sketch (Multi-pole)

M-949 C	Utility Sketch (Surface Opening)
M-950 A	Application for Minimum Use Driveway
M-950 D1	Deed, Fee Simple
M-950 D2	Deed of Easement
M-950 D3	Deed of Easement (Drainage)
M-950 H	Acknowledgment – Reimbursement Obligation For Application Review
M-950 I	Indemnification Agreement (Driveway)
M-950 IC	Declaration of Covenant (Use with M-945 I & M-950I)
M-950 K	HOP Obligation Bond
M-950 K1	HOP “Blanket” Bond
M-950 L	Letter of Credit
M-950 MPC	Land Use Questionnaire PENNDOT Web
M-950 R	Agreement of Release
M-950 X	Certificate of Insurance

9.3 -- PUBLICATIONS

<u>PUB NO.</u>	<u>DESCRIPTION</u>
Pub 10M	Design Manual, Part 1
Pub 10A	Design Manual, Part 1A
Pub 13M	Design Manual, Part 2
Pub 16M	Design Manual, Part 5
Pub 19	Field Test Manual
Pub 23	Maintenance Manual
Pub 34	Aggregate Producers
Pub 35	Approved Construction Materials
Pub 41	Producers of Bituminous Mixtures
Pub 42	Producers of Redi-Mixed Concretes
Pub 70M	Design of Local Roads and Streets
Pub 72M	Roadway Construction Standards
Pub 148	Traffic Standards Signals (TC-7800 Series)
Pub 149	Traffic Signal Design Handbook
Pub 203M	Work Zone Traffic Control
Pub 234	Flagging Handbook
Pub 312	Guide for Obtaining Minimum Use Driveways
Pub 408	Specifications

9.4 -- REGULATIONS

Note: Paper version may not be current, due to possibility of quarterly editorial updates by Legislative Reference Bureau (e.g., in response to Court decisions and Administrative Hearing Officer Orders).

Refer to www.pacode.com site for current electronic versions (includes quarterly updates).

RR 441 Chapter 441 – Driveway Regulations

RR 459 Chapter 459 – Utility Regulations

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APPENDIX “A” -- METRIC CONVERSIONS

The following table can be used as a guide when using this Manual. Congress and the General Assembly have not established hard conversion equivalents for laws governing the HOP programs. (In a soft conversion, an inch-pound measurement is mathematically converted to its exact or nearly exact metric equivalent. With a hard conversion, a new rounded or rationalized metric number is created that is convenient to work with and remember.)

SOFT METRIC CONVERSION	
ENGLISH LINEAR	METRIC LINEAR
1 in.	25.4 mm
1.5 in.	38.1 mm
3 in.	76.2 mm
4 in.	101.6 mm
8 in.	203.2 mm
18 in.	457.2 mm
1 ft.	305 mm
1.5 ft.	457.2 mm
2 ft.	610 mm
3 ft.	915 mm
3.5 ft.	1.067 m
4 ft.	1.220 m
6 ft.	1.829 m
8 ft.	2.439 m
10 ft.	3.048 m
12 ft.	3.658 m
14 ft.	4.268 m
16 ft.	4.877 m
18 ft.	5.487 m
20 ft.	6.090 m
25 ft.	7.620 m
30 ft.	9.144 m
40 ft.	12.192 m
50 ft.	15.240 m

SOFT METRIC CONVERSION	
ENGLISH LINEAR	METRIC LINEAR
55 ft.	16.764 m
60 ft.	18.288 m
65 ft.	19.812 m
70 ft.	21.336 m
75 ft.	22.860 m
100 ft.	30.48 m
300 ft.	91.44 m
500 ft.	152.40 m
600 ft.	182.88 m
1000 ft.	304.8 m
2000 ft.	609.6 m
2500 ft.	762.0 m
3000 ft.	914.4 m

APPENDIX “B” SERIES

APPENDIX B -- Recommended HOP Application Process

APPENDIX B1 -- HOP Project Scoping Meeting Checklist

APPENDIX B2 -- TIS Scoping Meeting Criteria

APPENDIX B3 -- TIS Scoping Meeting Checklist