

CHAPTER 459. OCCUPANCY OF HIGHWAYS BY UTILITIES

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Authority

The provisions of this Chapter 459 issued under section 411 of the State Highway Law (36 P. S. § 670-411), unless otherwise noted.

Source

The provisions of this Chapter 459 adopted July 13, 1979, effective August 13, 1979, 9 Pa.B. 2338, unless otherwise noted.

Cross References

This chapter cited in 67 Pa. Code § 212.414 (relating to emergency work).

§ 459.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Acknowledgment of completion—The date on which the Department records that permitted work appears to be completed under the permit and this chapter.

Adjacent area—The area surrounding the immediate area of the permitted work which can reasonably be assumed to have been affected by the permitted work.

Backfill—aterial used to replace or the act of replacing material removed during construction.

Base course—The layer or layers of specified or selected material or designed thickness placed on a subbase or a subgrade to support a surface course.

Bridge—A structure including supports, erected over a depression or an obstruction, as water, highway or railway, which has a track or passageway for carrying traffic or other moving loads and having an opening measured along the center of the pavement of more than 20 feet between supports.

Central permit office—The office which administers this chapter, located at: Department of Transportation, Transportation and Safety Building, Harrisburg, Pennsylvania 17120.

Clear zone—The portion of right-of-way beyond the pavement edge within which, under Design Manual, Part 5, no new obstructions may be located.

County office—One of the maintenance district offices of the Department.

Culvert—A structure under the pavement with an opening of 20 feet or less measured along the center of the pavement.

Department—The Department of Transportation of the Commonwealth. The term includes municipalities authorized to issue permits for the Department under the authority of a municipal permit issuance agreement. If this chapter confers powers or imposes duties upon the Department which under a statute may be exercised by or imposed only on the Secretary, the reference to the Department shall be construed to mean the Department acting by and through the Secretary or the person for the time being acting as the Secretary personally.

Design Manual, Part 2—A Department publication containing the Department's highway design criteria.

Design Manual, Part 5—A Department publication containing the Department's utility relocation and accommodation policies relating to permits issued in conjunction with highway construction projects.

Detour—To send traffic by a circuitous route around a portion of a highway that has been closed in accordance with § § 459.3(f) and 459.7(7) (relating to permit application procedure; and general conditions).

Director—The bureau director of the Department having administrative authority over the central permit office.

District engineer—The engineer in charge of one of the 11 district offices.

District office—One of the 11 engineering district offices of the Department. The term includes a municipality authorized to issue permits for the Department under the authority of a municipal permit issuance agreement.

Emergency—An unforeseen occurrence or combination of circumstances which calls for immediate action or remedy.

Emergency Permit Card—Department Form M-940 used under § 459.6 (relating to emergency work).

Emergency repair—Repair to a utility facility undertaken under § 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.

Equipment—Machinery and equipment, together with the necessary supplies for upkeep and maintenance, and tools and apparatus necessary for the proper construction and completion of the work.

Flexible base pavement—A pavement structure which maintains intimate contact with and distributes loads to the subgrade and depends on aggregate interlock, particle friction and cohesion for stability.

Grout—A mixture of cement, water and sand.

High early strength concrete—Cement concrete meeting specifications set forth in section 704 of Publication 408.

Highway—A highway or bridge on the system of State highways and bridges, including the entire width between right-of-way lines, over which the Department has assumed or has been legislatively given jurisdiction.

Improved area—The area within the right-of-way which has been constructed for highway purposes, including roadbed, pavement, shoulders, slope, sidewalks, drainage facilities and other appurtenances.

Inspector—The Department's authorized representative assigned to inspect permit operations.

License—A bridge occupancy license—Form M-906L—issued by the Department under this chapter.

Limited access highway—A highway in respect to which owners or occupants of abutting lands and other persons have no legal right of access except at points and in the manner determined by the Department.

Pavement—The combination of subbase, base course and surface course placed on a subgrade to support the traffic load or distribute it to the roadbed, or both. The term normally includes the traveled portion of the highway and extends to the face of the curb in a curbed section. The term does not include shoulders.

Permit—

(i) A highway occupancy permit—Form M-945P—issued by a district office under this chapter.

(ii) A highway occupancy permit issued to a utility by a municipality which has entered into a municipal permit issuance agreement with the Department.

(iii) 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.

Person—A natural person, firm, copartnership, association, corporation, authority or political subdivision.

Plans—Drawings which show the location, character and dimensions of the proposed occupancy and related highway features, including layouts, profiles, cross sections and other details.

Plowing—Direct burial of a utility line by means of a plow-type mechanism which breaks the ground, places the utility line and closes the break in the ground in a single operation.

Private status—The status of a utility's facilities, which are situated within public right-of-way by agreement with the Department, after the Department condemned the utility's easement and did not provide a substitute right-of-way.

Publication 408—A Department publication containing the Department's highway construction specifications, as supplemented.

Right-of-way—The area which has been acquired by the Department for highway purposes.

Rigid base pavement—A pavement structure which distributes loads to the subgrade having as one course a portland cement concrete slab of relatively high bending resistance.

Roadbed—The graded portion of a highway within top and side slopes, prepared as a foundation for the pavement and shoulder.

Roadway construction standards—Department publication No. 72 containing the Department’s design standards for highway construction.

Seal coat—A thin treatment consisting of bituminous or other approved material, usually with cover aggregate, applied to a surface course.

Secretary—The Secretary of Transportation of the Commonwealth.

Select granular material or 2 RC—A material meeting specifications in section 703.3 of Publication 408, when placed and compacted under § 459.8(g) (relating to special conditions—subsurface operations).

Shoulder—The existing improved or graded portion of the highway, contiguous to the traffic lanes, for accommodation of stopped vehicles, for emergency use, or for lateral support of base and surface courses of pavements.

Subbase—The layers of specified or selected material of designed thickness placed on a subgrade to support a base course.

Subgrade—The top surface of a roadbed upon which the pavement structure and shoulders including curbs are constructed.

Suitable material—Soil, granular material or shale meeting specifications in section 206.2 of Publication 408, when placed and compacted under § 459.8(g).

Supplement—An amendment to a highway occupancy permit issued on Department Form M-945S.

Surface course—One or more layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called “Wearing Course.”

Tack coat—An application of bituminous material to an existing surface to provide bond with a superimposed course.

Test hole—An exploratory opening of less than 100 square inches.

Utility—A person owning a utility facility including any wholly owned or controlled subsidiary.

Utility facility or facility—Privately, publicly or cooperatively owned lines, facilities and systems 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, which directly or indirectly serve

the public or any part thereof.

Vehicle—Every device which is or may be moved or drawn upon a highway.

Authority

The provisions of this § 459.1 amended under sections 411, 420 and 702 of the State Highway Law (36 P. S. § § 670-411, 670-420 and 670-702).

Source

The provisions of this § 459.1 adopted July 13, 1979, effective August 13, 1979, 9 Pa.B. 2338; amended August 7, 1981, effective August 8, 1981, 11 Pa.B. 2779; amended January 20, 1989, effective March 22, 1989, 19 Pa.B. 241. Immediately preceding text appears at serial pages (82525) to (82526) and (63759) to (63761).

Cross References

This section cited in 67 Pa. Code § 459.8 (relating to special conditions—subsurface operations).

§ 459.2. Purpose and application.

It is in the public interest to regulate the location and construction of utility facilities and other structures within State highway right-of-way for the purpose of insuring the structural integrity of the highway, economy of maintenance, preservation of proper drainage and safe and convenient passage of traffic. This chapter is made under the State Highway Law (36 P. S. § § 670-101—670-1102), including § § 411, 420 and 702 (36 P. S. § § 670-411, 670-420 and 670-702). Nothing contained herein is intended to relax existing safety requirements in Chapter 203 (relating to work zone traffic control) and similar State and Federal safety requirements referred to in § 459.7(2) (relating to general conditions).

Authority

The provisions of this § 459.2 amended under 411, 420 and 702 of the State Highway Law (36 P. S. § § 670-411, 670-420 and 670-702).

Source

The provisions of this § 459.2 adopted July 13, 1979, effective August 13, 1979, 9 Pa.B. 2338; amended August 7, 1981, effective August 8, 1981, 11 Pa.B. 2779; amended January 20, 1989, effective March 22, 1989, 19 Pa.B. 241. Immediately preceding text appears at serial page (63761).

§ 459.3. Permit application procedure.

(a) *General rule.* Except as provided in paragraphs (1)—(4) no work may be performed within the right-of-way involving the placing of utility facilities or other structures or opening of the surface without first obtaining a permit from the Department. Work performed within the right-of-way shall conform to Chapter 203 (relating to work zone traffic control).

(1) Emergency repairs of utility facilities may be performed by using an emergency permit card under § 459.6 (relating to emergency work).

(2) A permit application is not required for modifying parts of existing permitted facilities, such as cable within conduit on nonlimited access highways, cross arms or transformers on poles, or manhole riser rings prior to roadway resurfacing, if no surface opening is required.

(3) Permit applications are not required for stringing overhead utility lines on nonlimited access highways.

(4) Permit applications are not required for accessing an existing utility facility through a manhole except in limited access highway medians or interchange areas.

(5) Work performed on or across a limited access highway requires a permit.

(b) *Who may execute applications.*

(1) 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 shall be submitted in the name of, and executed by the party. An application may not be submitted in the name of contractors of the owner or operator, nor in the name of persons only being serviced by the facility.

(2) In the case of a facility owner who is not in the business of providing utility service, such as a developer whose land is located outside a utility's service jurisdiction, the application shall be submitted in the name of, and executed by, the owner of the facility at the time of construction. The applicant shall indemnify and hold harmless the Department from claims by anyone claiming residual property interests in the permitted area.

(i) An applicant under this paragraph shall provide satisfactory evidence to the Department of ability to completely discharge construction, maintenance and financial duties imposed by this chapter. An applicant shall provide 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. The Department may require security, including, but not limited to:

(A) Executing indemnity agreements satisfactory to the Department.

(B) Obtaining insurance in a form and amount acceptable to the Department.

(C) Obtaining 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 a period of at least 2 years after the acknowledged completion of the permitted work.

(D) Obtaining surety bonds 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 2 years after the acknowledged completion of the permitted work.

(E) Depositing sufficient currency in an escrow account acceptable to the Department to fully secure the obligations in clauses (C) and (D) as an alternative to the obtaining of the surety bonds.

(F) The use of bonded contractors as well as consultants and engineers having professional liability insurance.

(ii) An applicant under this paragraph shall submit a detailed traffic control plan for permitted work.

(iii) An applicant under this paragraph shall cause the permit to be recorded in the appropriate recorder of deeds office.

(iv) An applicant under this paragraph is not authorized to place a facility longitudinally within the pavement, nor in the shoulder unless the applicant provides detailed plans which verify there is no feasible space outside the shoulder for placing the facility.

(v) If, subsequent to completion of the permitted work authorized under this paragraph, a corporation, authority, political subdivision or other person in the business of providing utility service assumes operation and maintenance of the facility, the Department, under proper application by the applicant and the provider of the utility service, under § 459.7(1)(iv) (relating to general conditions), may approve the assignment or transfer of the permit to the provider of the utility service. The applicant will not be released from the construction, maintenance and financial duties imposed under this section until the Department has approved the transfer or assignment of the permit.

(c) *Where to submit application.* A permit application shall be submitted to one of the following:

(1) The district or county office having jurisdiction over the county in which the proposed work will be performed.

(2) The municipality if it has entered into a municipal permit issuance agreement with the Department.

(d) *Required application information.* A permit application:

(1) Shall be submitted in person or by mail on a properly completed Department Form M-945A.

(2) Shall be signed by the applicant.

(3) Shall include at least four sets of plans, of a quality sufficient for microfilming, detailing the location and pertinent horizontal and vertical dimensions of the opening, the proposed utility installation and related highway features, including specific highway location, center line, edges of pavement, outside edges of shoulders, curbing, guide rail, highway drainage structures and right-of-way lines. Color coded plans are not acceptable because the notations are not distinguishable on photocopies or microfilm. Freehand drawings of highway features or utility facilities are unacceptable.

(4) Shall be accompanied by a check or money order, payable to the Department, in the appropriate amount, as set forth in § 459.4 (relating to permit fees), unless the applicant participates in the permit monthly billing system.

(5) Shall be submitted to the Department at least 30 days prior to the anticipated start of work. If the permitted work will be performed for the permittee by a contractor, the application shall, if possible, be submitted to the Department at least 60 days prior to soliciting bids for the permitted work so that the permittee may notify bidders of permit requirements. If the application specifies that the permitted work involves providing priority utility service, the district office will process the priority application before other nonpriority applications submitted by the applicant.

(6) Shall identify consulting engineers performing work related to the application. The consulting engineer shall also sign the application.

(e) *Plans for occupancy of the pavement or shoulder.* A permit application for occupancy of the pavement or shoulder shall include detailed plans which, in addition to subsection (d), comply with the following:

(1) Plans depicting new occupancy of more than 500 linear feet of pavement or shoulder, or both, shall have a horizontal scale of 1 inch equal to no more than 50 feet. Plans depicting other occupancy of the pavement or shoulder shall specify dimensions from the near edge of pavement.

(2) Plans depicting installation or replacement of a facility involving more than 100 linear feet of pavement or shoulder opening shall identify utility facilities and other structures within the right-of-way that will be affected by the proposed occupancy, and

shall include typical cross sections at each significant change in highway cross section features.

(3) Plans depicting installation of a facility longitudinally within more than 100 linear feet of pavement or shoulder, or both, shall verify there is no feasible space outside the pavement or shoulder available for placing the facility.

(f) *Traffic control plan.* A traffic control plan shall be submitted with the application in the following manner:

(1) With the exception of emergency work performed under the authority of § 459.6, the applicant shall submit a traffic control plan for Department approval for work on limited access highways; or whenever it will be necessary to close a portion of a travel lane during hours of darkness without work in active progress; or whenever it will be necessary to completely close a highway to perform the permitted work.

(2) The Department may require an applicant to submit a traffic control plan under other special circumstances.

(3) A traffic control plan shall comply with Chapter 203 and shall clearly indicate how the work area, vehicular and pedestrian traffic will be protected, maintained and controlled.

(4) A traffic control plan shall consist of one of the following:

(i) A reference to specific figures in Chapter 203 if the referenced figures properly depict actual site conditions and address the necessary traffic control.

(ii) Four copies of specific figures from Chapter 203 which have been modified to depict actual site conditions and the necessary traffic control requirements for the specific project.

(iii) Four copies of a detailed drawing, showing actual site conditions and the necessary traffic control requirements for the specific project.

(g) *Blasting requirements.* When blasting methods other than controlled blasting—as specified in section 203.3(b)1 of Publication 408—will be used or when blasting is anticipated within 100 feet of a bridge, box or culvert, a detailed plan of excavating, shoring, blasting and backfilling procedures shall be submitted at least 15 days prior to blasting. Prior to blasting within the right-of-way, insurance shall be furnished under § 459.7(12).

(h) *Accuracy of application.* The applicant is responsible for the accuracy of information submitted to the Department, including the application, plans, drawings, reports and correspondence.

(i) *Penalty for falsifying application.* Information provided in applications shall be accurate. Section 4904 of the Crimes Code (relating to unsworn falsification to authorities), makes it a misdemeanor of the second degree for a person to mislead a public servant in performing an official function by making a written false statement which the person does not believe to be true.

(j) *Authority to reject application.* The Department will examine and determine the genuineness, regularity and legality of every application, and may reject an application if not satisfied as to its genuineness, regularity or legality, or the truth of a statement contained in the application. The Department may also make investigations and require additional information as it deems necessary.

(k) *Right of appeal.* The applicant may appeal an adjudication of the Department under 2 Pa.C.S. § § 501—508 and 701—704 (relating to the Administrative Agency Law), by submitting a written request for a hearing within 30 days after service of the document containing the adjudication, to the Administrative Docket Clerk, Office of Chief Counsel, Room 521, Transportation and Safety Building, Harrisburg, Pennsylvania 17120. A filing fee of \$50, made payable to the “Commonwealth of Pennsylvania,” shall accompany each request.

(l) *Debarred persons.*

(1) The Department may debar a person, including permittees, consultants, contractors, and their employees, agents, successors and assigns, from placing a facility, working within or otherwise occupying State highway right-of-way under permit, directing work, or having involvement in a permit issued or an application submitted under this chapter, for one or more of the following:

(i) Unsatisfactory past performance, as documented by records, reports or performance ratings.

(ii) Failure to complete permitted work under the permit and this chapter, as documented by records, reports or performance ratings.

(iii) Bribing, attempting to bribe or giving gratuities to a Department employe or a permit inspector.

(iv) A reason outlined in § 457.13 (relating to suspension or disqualification).

(2) The first debarment of a person shall be for 6 months to 18 months. A subsequent debarment of the same person ordered within 5 years after the first debarment is served, shall be for 18 months to 3 years.

(3) A person may request a list from a district office of persons currently debarred under this subsection.

(4) A person has a right to appeal a debarment under subsection (k) within 30 days after service of the debarment notice.

Authority

The provisions of this § 459.3 amended under section 411, 420 and 702 of the State Highway Law (36 P. S. § § 670-411, 670-420 and 670-702).

Source

The provisions of this § 459.3 adopted July 13, 1979, effective August 13, 1979, 9 Pa.B. 2338; amended August 7, 1981, effective August 8, 1981, 11 Pa.B. 2779; amended January 20, 1989, effective March 22, 1989, 19 Pa.B. 241. Immediately preceding text appears at serial pages (63761) to (63762) and (111375).

Notes of Decisions

While 67 Pa. Code § 459.3(b) clearly excludes private developers from applying for state highway right-of-way occupancy permits, nothing in the language of the regulation compels a township to apply for the permits in their stead; thus, the township did not possess standing to challenge the exclusion of private developers. *South Whitehall Township v. Department of Transportation*, 475 A.2d 166 (Pa. Cmwlth. 1984).

Third party, a competitor of the permit applicant, had no standing to challenge the Department's decision to issue permits since the third party would suffer only economic harm, long after completion of construction, and would suffer no direct and immediate physical damage to a property interest (the type of damage this section is designated to prevent). *Equitable Gas Co. v. Department of Transportation*, 504 A.2d 402 (Pa. Cmwlth. 1986).

Cross References

This section cited in 67 Pa. Code § 459.1 (relating to definitions); 67 Pa. Code § 459.5 (relating to issuance of permits); 67 Pa. Code § 459.6 (relating to emergency work); 67 Pa. Code § 459.7 (relating to general conditions); and 67 Pa. Code § 459.10a (relating to bridge occupancy).

§ 459.4. Permit fees.

(a) *Permit application fees.* Application fees charged to defray costs incurred by the Department in reviewing and processing the application and plans, including the preliminary review of the site location identified in the application, whether or not a permit is issued and processed shall be as follows:

- (1) Application fee—\$50.

(2) Supplement fee (each 6-month time extension) (each submitted change)—\$10.

(3) Emergency permit card (each card)—\$5.

(b) *General permit inspection fees.* General inspection fees charged to defray costs incurred by the Department in spot inspections of permitted work or subsequent inspections after the permitted work has been completed and to monitor compliance with the permit and this chapter shall be as follows:

(1) Surface openings. This fee is calculated on the total linear feet of the opening being permitted with different areas of the right-of-way.

(i) Total linear feet of opening (each 100 feet increment or fraction thereof):

(A) Opening in pavement—\$40.

(B) Opening in shoulder—\$20.

(C) Opening outside pavement and shoulder—\$10.

(ii) If a longitudinal opening simultaneously occupies two or more highway areas identified in subparagraph (i), only the higher fee will be charged. Linear distances shall be measured to the nearest foot.

(2) Surface opening of less than 36 square feet—for example, service connections performed independently of underground facility installation, pipe line repairs—(each opening):

(i) Opening in pavement—\$30.

(ii) Opening in shoulder—\$15.

(iii) Opening outside pavement and shoulder—\$10.

(iv) If an opening simultaneously occupies two or more highway areas identified in subparagraphs (i)—(iii), only the higher fee will be charged.

(3) Aboveground facilities (for example, poles, or guys or anchors if installed independently of poles).

(i) Up to ten physically connected aboveground facilities (each continuous group)—\$20.

(ii) Additional aboveground physically connected facilities (each pole with appurtenances)—\$2.

(4) Crossings (for example, overhead tipples, conveyors or pedestrian walk-ways, and undergrade subways or mines)—\$80.

(5) Seismograph—Vibroseis method (for example, prospecting for oil or gas).

(i) First mile—\$50.

(ii) Each additional mile or fraction therefore—\$5.

(6) Nonemergency test holes in pavement or shoulder (each hole)—\$5.

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

(1) The Commonwealth.

(2) Political subdivisions of this Commonwealth, 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 this Commonwealth, 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).

(4) The Federal government.

(5) Utility facility owners for:

(i) The installation or maintenance of highway lighting at the request of the Department or political subdivisions.

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

(iii) The removal of poles and attached appurtenances.

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

(v) Reconstructing or maintaining their facilities which occupy the right-of-way under private status.

(d) *Additional fees.* If the Department anticipates that the cost of reviewing the required application information or inspecting the permitted work will exceed the application or

inspection fees listed in this section by a significant amount, the following additional fees will be assessed:

(1) *Additional application fee.* The Department will estimate the additional amount of salary, overhead and expenses and prepare a reimbursement agreement for execution by the applicant. Department review of the permit application will commence on the effective date of the agreement.

(2) *Additional inspection fees.* If the Department determines that the permitted work is of sufficient magnitude or importance to warrant assignment of one or more persons to inspect the permitted work on a more than spot inspection basis, the permit will so indicate and the permittee shall be charged for additional salary, overhead and expenses incurred by the Department for inspection.

(3) *Charge calculation.* The charges will be calculated either on an actual cost basis or a standard unit cost basis.

(4) *Invoices.* The Department will provide an itemized invoice for additional fees owed to the Department.

(e) *Refunds.* The Department will refund the general permit inspection fees on unused permits. To be eligible to receive a refund, the permittee shall deliver the request with the permittee's copy of the permit to the issuing district permit office on or before the permit expiration date.

(1) A refund processing fee of \$10 shall be deducted from the general permit inspection fees.

(2) The permit application fee is not refundable.

(f) *Miscellaneous fees.* The applicant shall pay for notary and recording costs if it is determined by the Department that the permit shall be recorded in the county office of the recorder of deeds.

Authority

The provisions of this § 459.4 amended under sections 411, 420 and 702 of the State Highway Law (36 P. S. §§ 670-411, 670-420 and 670-702).

Source

The provisions of this § 459.4 adopted July 13, 1979, effective August 13, 1979, 9 Pa.B. 2338; amended August 7, 1981, effective August 8, 1981, 11 Pa.B. 2779; amended July 16, 1982, effective July 10, 1982, 12 Pa.B. 2294; amended January 20, 1989, effective March 22, 1989, 19 Pa.B. 241. Immediately preceding text appears at serial pages (111376) to (111377) and (73625) to (73626).

Cross References

This section cited in 67 Pa. Code § 459.3 (relating to permit application procedure); and 67 Pa. Code § 459.6 (relating to emergency work).

§ 459.5. Issuance of permits.

(a) *General rule.* Upon approval of an application submitted under this chapter, a permit will be issued by the appropriate district office, subject to this chapter and the conditions contained in the permit and its attachments and supplements. The permit shall be the applicant's authority to proceed with the work specified in the permit. A copy of the permit and relevant plans shall be available at the work site for review.

(b) *Permit requiring agreement/security.* If the permittee will be authorized to perform a substantial amount of work within the right-of-way, the Department may, at its discretion, require the applicant to execute an agreement or provide security, or both, as a prerequisite to issuance of the permit. If security is required, it shall be delivered to the Department in a form and amount acceptable to the Department and shall guarantee restoration and maintenance of the highway for a period of at least 2 years after the acknowledged completion of the permitted work. If the security is executed by a company registered and authorized to do the business in this Commonwealth, the following documents are acceptable forms of security:

(1) An individual or blanket bond—Form M-945K—executed by the permittee and naming the Commonwealth as obligee.

(2) An irrevocable letter of credit—Form M-945L—signed by a bank officer and naming the Department as sole beneficiary, to be honored on presentment.

(3) An assignment of cause of action—Form M-945M—when authorized by the Department.

(4) An escrow account in a form acceptable to the Department.

(c) *Permit issued only to applicant.* A permit will only be issued to the applicant as described in § 459.3(b) (relating to permit application procedure).

(d) *Permit supplements.* The permittee may request a supplement to the permit, on Form M-945A, to amend a permit condition, such as revising the traffic control plan or extending the permit expiration date. A permit is valid for a 6-month period, or multiples thereof as specified on the permit, subject to the following conditions:

(1) If the permittee has not completed authorized work by the completion date specified on the permit, an application shall be submitted requesting a time extension on the permit.

(2) If approved, a supplement to the permit authorizing a new completion date will be issued by the District office.

(3) No extension of the permit will be authorized unless the permittee obtains an extension on the duration of a bond, insurance or other security required under this chapter, which extension of the bond, insurance or other security corresponds with the permit time extension. The permittee shall provide evidence of the extension to the Department.

(4) No work may be performed on an expired permit until a time extension supplement or new permit is obtained.

(5) No time extension supplement will be issued for a request received more than 30 days after the expiration of the permit. In that case, an application for a new permit may be submitted to the district office.

(e) *Work completion notification.* When permitted work has been completed, the permittee shall notify, in writing, the district office.

(f) *Permanent permit microfilm record.* The permit together with plans, relevant correspondence and supplements issued will be microfilmed, and the microfilm record will be retained in the district permit office.

(g) *Photodocumentation.* At least 15 days prior to opening more than 500 linear feet of pavement or shoulder, or both, the permittee shall deliver photodocumentation to the district office verifying the preconstruction condition of the pavement and shoulder surfaces in accordance with the following:

(1) The pavement and shoulder that will be disturbed shall be photodocumented in its entirety with color videotape or color film. Photodocumentation shall be compatible with district office viewing equipment.

(2) The permittee may submit color slides or color prints in lieu of videotape or film, if each slide or print is clearly labeled and arranged to verify the surface condition of each successive 25 linear feet of pavement and shoulder that will be disturbed.

(3) If photodocumented pavement and shoulder surface conditions or locations are not discernible, complete or otherwise acceptable, the district office will either return the photodocumentation to the permittee for resubmission or the district office will create its own photodocumentation record and shall be reimbursed for the costs by the permittee within 30 days after receipt of the Department's invoice.

(4) The date of photodocumentation shall be identified on each cartridge, reel, slide or print.

(5) Photodocumentation of longitudinal openings less than 500 linear feet in pavements or shoulders is recommended to avoid responsibility for preexisting highway conditions.

Authority

The provisions of this § 459.5 amended under sections 411, 420 and 702 of the State Highway Law (36 P. S. §§ 670-411, 670-420 and 670-702).

Source

The provisions of this § 459.5 adopted July 13, 1979, effective August 13, 1979, 9 Pa.B. 2338; amended August 7, 1981, effective August 8, 1981, 11 Pa.B. 2779; amended January 20, 1989, effective March 22, 1989, 19 Pa.B. 241. Immediately preceding text appears at serial page (73626).

Cross References

This section cited in 67 Pa. Code § 459.7 (relating to general conditions); and 67 Pa. Code § 459.8 (relating to special conditions—subsurface operations).

§ 459.6. Emergency work.

(a) *General rule.* Emergency repairs involving the placing of facilities or opening of the surface within the right-of-way may be performed prior to obtaining a permit if the following procedure is adhered to:

(1) Utility owners or operators may obtain emergency permit cards by submitting an application, on Department Form M-945A or on company stationary, to the district office having jurisdiction over the State highways in which the utility facilities are located. The application shall be accompanied by a check or money order, in the amount specified in § 459.4 (relating to permit fees). The utility facility owner or operator shall promptly notify the district office by telephone, when the necessity for an emergency repair occurs during the hours of 8 a.m. to 4 p.m., Monday through Friday. Emergency work occurring at other times shall be reported to the district office on the following work day.

(2) Prior to opening the surface or placing utility facilities within the right-of-way, the utility work crew shall enter the following information on the emergency permit card in legible handwriting, using indelible ink:

- (i) Date emergency work is started.
- (ii) Time emergency work is started.
- (iii) Location of emergency work site.

(iv) Description of emergency work.

(3) The completed, original emergency permit card shall be located at the work site and shall be available for inspection by any police officer or representative of the Department. Reproduced copies of the original card shall not be valid.

(4) A permit shall be applied for within 15 days to confirm and set forth, in detail, any work performed. The application number shall then be entered on the emergency permit card by the applicant.

(5) Work performed under authority of an emergency permit card shall conform to this chapter; see in particular § § 459.7—459.9 (relating to general conditions; special conditions—subsurface operations; and special conditions, above-ground facilities).

(b) *Use of card.* An emergency permit card shall be valid for 1 year or 25 emergency repairs, whichever occurs first.

(1) Emergency permit cards may be obtained by submitting an application to each district office in which the utility's facilities are located, listing thereon the number of emergency permit cards desired.

(2) The utility shall be responsible for assigning the proper emergency permit cards to its work crews.

(3) An emergency permit card shall be returned to the issuing district office within 15 days after either the 25th emergency repair authorized by the card or 1 year from the card issuance date, whichever occurs first.

(c) *Exceptions.* Emergency repairs to utility facilities within the right-of-way do not require an emergency permit card in those instances when a permit application is not required, as identified in § 459.3(a) (relating to permit application procedure).

Authority

The provisions of this § 459.6 amended under sections 411, 420 and 702 of the State Highway Law (36 P. S. § § 670-411, 670-420 and 670-702).

Source

The provisions of this § 459.6 adopted July 13, 1979, effective August 13, 1979, 9 Pa.B. 2338; amended August 7, 1981, effective August 8, 1981, 11 Pa.B. 2779; amended January 20, 1989, effective March 22, 1989, 19 Pa.B. 241. Immediately preceding text appears at serial pages (73626) and (63767) to (63768).

Cross References

This section cited in 67 Pa. Code § 203.24 (relating to highway occupancy permit work on State-designated highways); 67 Pa. Code § 212.4 (relating to application); 67 Pa. Code § 459.1 (relating to definitions); 67 Pa. Code § 459.3 (relating to permit application procedure); 67 Pa. Code § 459.7 (relating to general conditions); and 67 Pa. Code § 459.8 (relating to special conditions—subsurface operations).

§ 459.7. General conditions.

The following conditions apply to permits issued under this chapter:

(1) *Scope of permit.* The permit is binding upon the permittee, its agents, contractors, successors and assigns.

(i) The permittee is responsible for causing compliance with the terms and conditions of the permit by its employees, agents and contractors.

(ii) The permit shall be located at the work site and be available for inspection by a police officer or representative of the Department.

(iii) The permit shall be maintained by the permittee as a permanent record and remain in effect, subject to the permit conditions and this chapter, as long as the permittee's facilities authorized by the permit occupy the right-of-way.

(iv) Responsibility for compliance with the terms of the permit may not be assigned or transferred by the permittee without first obtaining approval from the Department after submitting Form M-948, Assignment of Permit or License. If a permit is assigned or transferred without first obtaining approval from the Department, the assignment or transfer is void. The permit assigned or transferred also becomes void. A facility installed under the authority of the permit shall be subject to removal at the expense of the applicant to which the permit was issued or its assignees, or both.

(v) The permittee is liable to the Department for failure to comply with the permit and this chapter. The liability of the permittee to the Department does not preclude the permittee or the Department from bringing an action against the permittee's contractor, subcontractor, engineer, architect, assignee, agent, workers, employees or other persons.

(2) *Additional restrictions.* Work authorized by the permit is subject to:

(i) Applicable laws, rules and regulations, including but not limited to:

(A) The act of October 26, 1972 (P. L. 1017, No. 247) (53 P. S. § 1611), concerning environmental control measures related to pollution and the preservation of public natural resources.

(B) The act of December 10, 1974 (P. L. 852, No. 287) (73 P. S. § § 176—182), concerning protection of the public health and safety by preventing excavation or demolition work from damaging underground utility facilities.

(C) The Clean Streams Law (35 P. S. § § 691.1—691.1001).

(D) O.S.H.A. construction safety and health regulations at 29 CFR 1926.1—1926.1051.

(E) Title VI, Civil Rights Act of 1964 (23 U.S.C. § § 140 and 315) and implementing regulations.

(F) The Federal Highway Program Manual—Volume 6, Chapter 6, section 3.

(G) Title 66 of the *Pennsylvania Consolidated Statutes* § § 2701—2706 (relating to railroads), in instances where the Pennsylvania Public Utility Commission has taken jurisdiction of a public rail-highway crossing.

(ii) The rights of any person.

(iii) The conditions, restrictions and provisions of the permit.

(3) *Work to conform to Department standards.* Work shall conform to Department standards, including the following:

(i) The work shall be done at a time and in a manner consistent with the safety of the public and conform to requirements and standards of the Department, including, but not limited to, Publication 408.

(ii) Highway materials shall be obtained from Department approved sources which are identified in current Department Publication Numbers 34, 35, 41 and 42. Upon request, the permittee shall make available for review certifications for backfill and restoration materials placed within the improved area.

(iii) If it is found by the Department that the work is not being done or has not been properly performed, the permittee shall promptly take the necessary steps, at its own expense, to place the work in condition to conform to the requirements or standards.

(iv) If a dispute arises between the permittee and the Department's inspector, the Department's inspector has the authority to suspend work until the question at issue may be referred to and decided by the district office.

(v) Work not specifically regulated by this chapter shall be performed as authorized by the district office.

(4) *Permittee responsibilities.* Permittee responsibilities include the following:

(i) The permittee shall pay the costs and expenses incident to or arising from the project, including the prescribed fees for the project, the cost of making and maintaining temporary restoration of the disturbed areas and making permanent restoration. The permittee shall reimburse the Department for inspection costs which the Department deems necessary to incur within 30 days after receipt of the Department's invoice.

(ii) In the event of failure or neglect by the permittee to perform and comply with the permit or this chapter, the Department may immediately revoke and annul the permit and order and direct the permittee to remove structures, equipment or property belonging to the permittee or its contractors, or both, from the legal limits of the right-of-way and to restore the right-of-way to its former condition. If the Department determines that the structures, equipment or property poses a threat to the public safety and the permittee fails to remove it after notice from the Department to do so, the Secretary or his attorneys, or an attorney of a court of record is authorized to appear for the permittee, and to enter an amicable action of ejectment and confess judgment against the permittee. The attorney is authorized to issue forthwith a writ of possession with a clause of *fieri facias* for costs, without leave of court.

(iii) At the end of a workday, an opening in the right-of-way shall be covered, backfilled or protected under § 459.8(d)(2) (relating to special conditions—subsurface operations). If work is stopped on a project, other than at the end of a normal workday, the permittee shall promptly backfill the opening and restore the surface, and work may not be resumed until the permittee is prepared to proceed with the work to its completion. If the permittee fails to backfill the opening or proceed until completion of the work, the Department reserves the right to do the work upon notice to the permittee, where practicable, and shall be reimbursed for the costs by the permittee within 30 days after receipt of the Department's invoice.

(iv) If the permittee, after making an opening in the surface to place or repair a facility or for another purpose, fails to restore a portion of the right-of-way to conform with this section and § 459.8 and § 459.9 (relating to special conditions, aboveground facilities), the Department reserves the right to do the work upon notice to the permittee, if practicable, and the permittee shall reimburse the Department for the costs within 30 days after receipt of the Department's invoice.

(v) If backfill or restoration work will be performed for the permittee by a contractor, the permittee shall identify to the Department both its contractor and its inspector-in-charge who shall be assigned to monitor backfill and restoration work performed within the improved area. The permittee's inspector-in-charge, as well as the permittee, is responsible for ensuring work is performed in compliance with the permit, this chapter and Publication 408 and Design Manual, Parts 2 and 5.

(vi) The permittee shall verify that no person debarred under § 459.3(1) (relating to permit application procedure) is allowed to perform permitted work or direct permitted work within State highway right-of-way.

(vii) The permittee shall notify the district office at least 3 full workdays prior to the start of work when the permit identifies that the permitted work will be inspected on a more than spot inspection basis.

(5) *Altering drainage prohibited.* Altering drainage shall be prohibited by the following conditions:

(i) Unless specifically authorized by the permit, the permittee may not:

(A) Alter the existing drainage pattern or the existing flow of drainage water.

(B) Direct additional drainage of surface water toward, onto, or into or in any way affect the highway right-of-way or highway facilities.

(ii) The permit does not authorize the permittee to direct, divert or otherwise drain surface waters over the property of another property owner.

(A) The permit does not relieve the permittee from acquiring the consent, permission or other authorization from a property owner who may be adversely affected by drainage alterations.

(B) The permittee is responsible for damage caused to property owners as a result of work done under the permit.

(iii) A permit will not be issued to authorize the discharge of water into the right-of-way unless the water is surface drainage.

(6) *Equipment damaging highway.* A highway shall be protected in accordance with the following:

(i) To protect the pavement and shoulders, equipment shall have rubber wheels or runners and have rubber, wood or similar protective pads between the outriggers and the surface unless otherwise authorized by the permit.

(ii) If other than rubber equipped machinery or equipment is used, the pavement and shoulders shall be protected from equipment damage by the use of matting or other suitable protective material, unless the permittee requests, in writing, a waiver from the use of protective material, thereby acknowledging its obligation and commitment to repair or reconstruct the pavement and shoulder, if damaged, to its former condition.

(iii) If the equipment damages the pavement or shoulders, the permittee shall restore the damaged pavement or shoulder, or both, to its former condition, in a manner authorized by the district office.

(iv) The district office may authorize the permittee to restore the pavement or shoulder from superficial surface damage with a seal coat or surface treatment.

(7) *Work zone traffic control.* Maintenance and protection of traffic shall be carried out by the permittee under 75 Pa.C.S. § 6123 (relating to erection of traffic-control devices while working), the approved traffic control plan and the applicable provisions of Chapter 203 (relating to work zone traffic control).

(8) *Highways under construction.* No permit application will be approved for occupancy of a section of right-of-way within which a highway construction or reconstruction project is underway, or if a contract for such a project has been let, until the project is completed and accepted by the Department, unless the application is accompanied by an attested certificate signed by the contractor or other authority constructing the project, consenting to the proposed work of the applicant within the right-of-way, together with a waiver, release and quitclaim to the Department of damages and defenses for delays by reason of that work and occupation of the right-of-way by the permittee, or from a cause resulting by reason of that work and occupation. This paragraph does not apply:

(i) To an emergency. In an emergency, the permittee shall procure the consent of the Department to do the work as deemed necessary to correct the existing emergency condition under § 459.6 (relating to emergency work).

(ii) If the permittee has been authorized by the Department to relocate or adjust its facilities simultaneously with highway construction, under applicable provisions of Design Manual, Part 5.

(9) *Sharing facilities.* Sharing facilities is encouraged and may be authorized under one permit in accordance with the following:

(i) *Aboveground.* Notwithstanding paragraph (1)(iv), the permittee may authorize others to share and use facilities already authorized by a permit, on other than limited access highways, if attachments by others to its facilities are in compliance with this chapter and the permit.

(ii) *Subsurface.* The application shall identify a facility that will be sharing a trench or structure with the facilities of the applicant.

(10) *Limited access right-of-way.* No utility may conduct operations, including maintenance or inspection of existing facilities, within limited access right-of-way without first obtaining a permit, except for an emergency which is regulated by § 459.6.

(i) *Occupancy.* Facility occupancy of limited access right-of-way shall comply with Design Manual, Part 5.

(ii) *Access.* Access for servicing, maintenance or inspection of facilities shall be made from outside the extent of limited access unless specified on the permit, and shall comply with Design Manual, Part 5; the A.A.S.H.T.O. "Policy on the Accommodation

of Utilities on Freeways''; and, if applicable, the Federal Highway Program Manual—Volume 6, Chapter 6, section 3.

(11) *Indemnification.* Indemnification of the Department for property and personal injury will be governed as follows:

(i) The permittee shall fully indemnify and save harmless and, if requested, defend the Commonwealth, its officers, agents and employes, of and from liability for damages or injury to persons or property in a claim or suit seeking to impose liability on the Commonwealth, its officers, agents or employes, arising out of an act or omission of a contractor, agent, servant, employe or person engaged or employed in, about or upon the work, by, at the instance of or with the approval or consent of the permittee, including a failure of the permittee or a person to comply with the permit or this chapter.

(ii) The permittee shall have the Commonwealth added as an additional insured to its or its contractor's insurance policy to secure the permittee's indemnification of the Department for property damage and personal injury under this paragraph. The coverage of the Commonwealth as an additional insured shall be limited to the acts or omissions of the permittee or its contractor, as described in subparagraph (i). The amount of insurance shall be at least \$250,000 per person and at least \$1,000,000 per occurrence, or other statutory limitations on damages as the General Assembly may establish. The policy shall be of a duration satisfactory to the Department.

(iii) Upon request, the permittee shall deliver to the district office certificates of insurance evidencing that the coverage required under subparagraph (ii) has been obtained. The Department may accept a formalized plan of self-insurance as a substitute for the insurance described in this subparagraph.

(12) *Insurance.* The permittee shall obtain, prior to the start of work, a policy of insurance, issued by an insurer having a certificate of authority and a licensed agent authorized to transact the business of insurance in this Commonwealth, in accordance with the following conditions:

(i) The permittee or its contractor shall obtain insurance for public liability and property damage, in form, amount and duration satisfactory to the Department to cover a loss that may be incurred for construction, reconstruction, repair, relocation or installation of the permitted structure or facilities.

(ii) If blasting is authorized by the permit under paragraph (13), the insurance coverage shall include property damage and personal injury occasioned by blasting. In addition, the insurance policy shall provide coverage for damage to the highways, highway structures and appurtenances or other Department property and shall be in an amount satisfactory to the Department.

(iii) Upon request, the permittee shall deliver to the district office certificates of insurance evidencing that the insurance coverage required under subparagraphs (i) and

(ii) has been obtained. The Department may accept a formalized plan of self-insurance as a substitute for the insurance described in this subparagraph.

(iv) The permittee's obligations to indemnify the Department and obtain insurance to secure indemnification under paragraph (11) and its obligations to restore the highway and obtain a bond relating to restoration under paragraph (16) are separate obligations from obtaining insurance for the purposes required under this paragraph. Obtaining insurance under this paragraph does not relieve the permittee of its obligations under paragraphs (11) and (16).

(13) *Blasting*. Blasting requirements include the following:

(i) No predrilling or blasting may be performed within the right-of-way unless authorized by the permit and until the permittee provides insurance for property damage and public liability under paragraph (12).

(ii) The blaster's license number shall be furnished upon request.

(iii) No blasting will be permitted within 50 feet of the nearest part of a bridge, box or culvert.

(iv) The permittee's obligation for restoration of the highway under paragraph (16) shall include failure of the highway occasioned by blasting.

(14) *Maintaining structure or facility*. As long as the permittee operates and leaves in place structures or facilities, in, upon or along the right-of-way, the permittee shall maintain and keep them in good order and repair.

(15) *Damaged structure or facility to be repaired*. If a structure or facility becomes damaged, the permittee shall promptly have it removed, repaired or otherwise made safe. The permittee is responsible for repair or restoration of the portion of the highway damaged by a structure or facility. The permittee's obligation to repair or restore the highway necessitated by a damaged structure or facility under this paragraph is separate from the obligations to restore the highway and obtain a bond relating to restoration and maintenance of the highway under § 459.5(b) (relating to issuance of permits). Compliance with paragraph (16) does not relieve the permittee of its obligations under this paragraph.

(16) *Damage to highway*. Responsibility of the permittee for restoration of the highway includes the following:

(i) If there is a failure of the highway, including a slope or other appurtenance thereto, in the area of the permitted work within 2 years after the acknowledged completion of the permitted work and there is no similar failure of the highway beyond the area of the permitted work, the permittee has absolute responsibility to make temporary and permanent restoration of this area unless the permittee delivers clear and

convincing evidence to the district office demonstrating that the highway failure was caused by another person.

(ii) In situations where the permittee has the responsibility to restore the highway, including slope or another appurtenance thereto, under subparagraph (i), the permittee has the duty to restore the improved area in accordance with the permit. If the permittee fails to restore the improved area properly, the Department will have the authority to do the work at the expense of the permittee. The permittee shall reimburse the Department for the costs within 30 days after receipt of the Department's invoice.

(iii) The obtaining of a bond, other security or an agreement described in § 459.5(b) to secure restoration costs does not relieve the permittee of the restoration obligations imposed by subparagraph (i) and (ii), nor does it relieve the permittee of its obligations under paragraphs (11) and (12). The obtaining of a bond, other security or an agreement will not act as a release of the permittee from liability under principles of tort law with respect to a failure of the highway in the permitted area occurring after the expiration of the bond, other security or agreement.

(17) *Future highway changes.* If in the future the highway is altered for public convenience or necessity, the permittee shall at its own cost and expense, change or relocate all or a part of the structures or facilities authorized by the permit which interfere with the highway alterations or which is inconsistent with the purpose of the highway alterations.

(18) *Acknowledgment by inspector.* Acknowledgment, by the inspector of the Department that all or part of the permitted work has been completed, does not constitute approval or acceptance of the work or agreement that the work was performed in accordance with the permit. Acknowledgment of completion by the inspector will not act as a release of the permittee or waiver by the Department of its right to seek performance or restitution from the permittee.

(19) *Record examination.* Upon request, permit records, restoration records and emergency work records shall be made available for examination by the Commonwealth and appropriate Federal agencies.

Authority

The provisions of this § 459.7 amended under sections 411, 420 and 702 of the State Highway Law (36 P. S. § § 670-411, 670-420 and 670-702).

Source

The provisions of this § 459.7 adopted July 13, 1979, effective August 13, 1979, 9 Pa.B. 2338; amended August 7, 1981, effective August 8, 1981, 11 Pa.B. 2779; amended January 20, 1989, effective March 22, 1989, 19 Pa.B. 241. Immediately preceding text appears at serial pages (63768) to (63774) and (91847).

Notes of Decisions

Where a township did not aver that it was presently indemnifying the Department for the work of a private developer, or that it had sought a permit on behalf of a private developer, the events which might bring the parties into actual conflict were too tenuous to justify granting a declaratory judgment invalidating 67 Pa. Code § 459.7 since standing to protest is not shown. *South Whitehall Township v. Department of Transportation*, 475 A.2d 166 (Pa. Cmwlth. 1984).

Cross References

This section cited in 67 Pa. Code § 459.1 (relating to definitions); 67 Pa. Code § 459.3 (relating to permit application procedure); 67 Pa. Code § 459.6 (relating to emergency work); 67 Pa. Code § 459.8 (relating to special conditions—subsurface operations); and 67 Pa. Code § 459.12 (relating to modification of conditions).

§ 459.8. Special conditions—subsurface operations.

(a) *Drilling, boring, driving or tunneling across improved area.* Drilling, boring, driving or tunneling across improved areas shall comply with the following conditions:

(1) When crossing under an improved area, the opening for a utility facility shall be drilled, bored, driven or tunneled a minimum depth of 3 feet from the surface to the top of the opening.

(i) If the facility or its casing is 30 inches or greater in diameter, the bored cylindrical space surrounding either an uncased facility or a facility casing shall be filled with grout, in a manner authorized by the district office.

(ii) Jet or other nonmechanical boring methods are prohibited. Water may be used under low pressure only to cool the drill bit and to facilitate removal of cuttings from the bore opening, if retrievable liquid is immediately removed from the boring pit.

(2) No openings for the purpose of placing utility facilities or other structures under the improved area by drilling, boring, driving or tunneling may be made closer than 3 feet to the edge of the shoulder, unless the permit authorizes a lesser clearance.

(3) A facility or other structure crossing under the improved area shall be constructed to assure the safety of the traveling public and to preclude the necessity of entering upon the improved area to effect future maintenance or replacement. The facilities shall comply with Design Manual, Part 5.

(b) *Trenching across the improved area.* Trenching across an improved area may be performed only when specifically authorized by the permit, in accordance with the following:

(1) The top of every utility facility shall be installed at least 3 feet beneath the surface.

(2) Trenching across the improved area may be authorized by the permit where drilling, boring, driving or tunneling are:

(i) Not feasible because:

(A) The subsurface is solid rock, as documented with satisfactory evidence such as drill records, or where boring was attempted without success.

(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.

(C) Adjacent development in a very congested urban area makes the construction of a tunneling or boring shaft impossible.

(ii) Not required because of one of the following:

(A) The highway is unpaved.

(B) The Department's wearing course is older than 10 years, and the highway average daily traffic—ADT—does not exceed 500.

(3) When trenching is authorized by the permit, the trenching operation shall be performed by one of the following methods:

(i) Utility facility placed in one piece across highway.

(A) Traffic shall be routed over 1/2 of the pavement width.

(B) The closed half of the pavement shall be opened to the required depth and bridged with steel plates.

(C) Traffic shall be shifted to the bridged half of the pavement.

(D) The remaining half of the pavement shall be opened to the required depth.

(E) The facility shall be placed full width.

(F) The open trench shall be backfilled and restored half-width in accordance with this section.

(G) Traffic shall be shifted to the restored half of the pavement.

(H) The bridging shall be removed and the remaining half of the trench shall be backfilled and restored in accordance with this section.

(ii) Utility facility placed in more than one piece across highway.

(A) Traffic shall be routed over 1/2 of the pavement width.

(B) The closed half of the pavement shall be opened to the required depth, the facility placed and the trench backfilled and restored in accordance with this section.

(C) Traffic shall be shifted to the restored half of the pavement.

(D) The remaining half of the pavement shall be opened to the required depth, the facility placed and the trench backfilled and restored in accordance with the provisions of this section.

(4) The permittee shall protect its openings to provide for the safety of the traveling public, including motorists, bicyclists and pedestrians.

(5) The permit may authorize the placement at depths less than 3 feet of traffic signal detectors or other highway facilities which are not capable of operating more than 3 feet below the surface.

(c) *Openings parallel to the highway.* Requirements for openings parallel to the highway are as follows:

(1) 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.

(2) The top of a utility facility shall be installed at least 3 feet beneath the surface.

(3) On an unpaved highway, the near edge of the opening shall be at least 12 feet from the general center line of the traveled highway, or as authorized in paragraph (1).

(4) No opening may be made for more than 200 linear feet at one time, unless authorized by the permit.

(5) The permittee shall protect its openings to provide for the safety of the traveling public, including motorists, bicyclists and pedestrians.

(d) *Daily stoppage of work requirements.* Daily stoppage of work requirements include the following:

(1) Except for emergency repairs of utility facilities, work within the pavement or shoulder shall be stopped prior to peak traffic hours that may exist on a particular highway on a particular day and as specified in the permit.

(2) At the end of each workday, an opening in the right-of-way shall be one of the following:

(i) Covered with steel plates or bridging over openings which are less than 6 feet in either length or width. The plates or bridging shall be extended a minimum of 18 inches from each edge of the opening and shall be secured in a safe manner.

(ii) Backfilled under subsection (g) to the bottom elevation of the pavement or base course, or to the original surface elevation if outside the pavement and shoulder, and protected under Chapter 203 (relating to work zone traffic control) and an approved traffic control plan until the surface is restored to its former condition.

(iii) Protected under Chapter 203 and an approved traffic control plan, if the permittee has delivered certificates of insurance under § 459.7(12) (relating to general conditions).

(3) The permittee shall protect its openings to provide for the safety of the traveling public, including motorists, bicyclists and pedestrians.

(e) *Plowing operations.* Plowing operations shall comply with the following:

(1) No plowing will be permitted within the right-of-way, unless authorized by the permit.

(2) Plowing operations will not be authorized in the pavement or paved shoulders.

(3) Plowing operations in unpaved shoulders are not allowed from December through March inclusive or at other times when there is frost in the top 3 feet beneath the surface.

(4) No plowing is authorized within 3 feet from the edge of the pavement. A greater distance shall be attained wherever possible.

(5) The opening shall be a minimum depth of 3 feet. If this depth cannot be consistently maintained, the proper depth shall be achieved by trenching.

(6) The utility facility shall be installed under any structures that are less than 3 feet deep. Disturbed structures shall be repaired or replaced by the permittee.

(7) The disturbed area shall be restored in conjunction with the plowing operation. Heaved surfaces shall be scarified to a depth of at least 4 inches, extending at least 1 foot on either side of the heaved area for the entire length of the heaved area. The disturbed area shall then be graded, backfilled where necessary, and compacted until the disturbed

area is restored to a condition at least equal to that which existed before plowing. Disturbed shoulders shall also be restored under subsection (j).

(f) *Disposition of materials.* The responsibility of the permittee for disposition of materials is as follows:

(1) The permittee shall keep the improved area free of material which may be deposited by vehicles traveling upon or entering onto the highway during the performance of work authorized by the permit.

(2) The permittee is responsible for controlling dust conditions created by its own operations.

(3) Excess material and material that is not suitable for backfill shall be promptly removed and properly disposed of outside the right-of-way as the work progresses.

(4) Other material shall be stored under § 203.9(b) (relating to general requirements), and so that there will be no interference with the flow of highway drainage.

(5) The permittee is not authorized to close a portion of the pavement or shoulder to traffic for the primary purpose of storing material. If the permittee stores 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, in a manner authorized by the district office. Delivered material may not be stored overnight on the pavement.

(6) The district office may authorize the permittee to restore the pavement or shoulder from superficial surface damage with a seal coat or surface treatment.

(g) *Backfilling.* An opening shall be backfilled by the permittee in accordance with the following:

(1) The opening may first be backfilled with fine aggregate material, meeting the requirements of section 703.1 of Publication 408, or granular material to protect the facility, placed to a height not to exceed 1 foot over the top of the facility, if the material is compacted in not more than 4-inch loose layers or as authorized under Publication 408. To help protect its facility from future excavations, the permittee is encouraged to place a permanent ribbon colored under subsection (l) at least 1 foot above its facility. If the facility is nonmetallic, the permittee is also encouraged to place a metallic ribbon at a depth from which the ribbon can be sensed by typical metal locating instruments.

(2) The opening shall then be backfilled with select granular material, unless retained suitable material—as defined in § 459.1 (relating to definitions)—is authorized or other coarse aggregate material meeting the requirements of section 703.2 of Publication 408 is specified in the permit. Select granular material or other aggregate material will be required for use as backfill of openings in pavements, paved shoulders and improved (for

example, oil and chip) shoulders as well as unimproved (for example, stabilized or earth surface) shoulders within 3 feet of the edge of pavement. Retained suitable material will normally be authorized for use as backfill of openings outside shoulders and in unimproved shoulders more than 3 feet outside the edge of pavement and up to within 3 feet of the surface.

(3) Backfill shall be compacted as follows:

(i) *General rule.* Except as provided in subparagraph (ii) backfill material shall be placed in loose layers not to exceed 8 inches if vibratory compaction equipment is used or as authorized under Publication 408. Each layer shall be thoroughly compacted to preclude subsidence, under section 601.3(e) of Publication 408.

(ii) *Compaction outside pavement and shoulders.* At least 15 days prior to the start of work, the applicant may submit its written compaction plan to the district office requesting backfill in an opening outside the pavement and shoulder to be placed in layers thicker than 8 inches prior to compaction. The compaction plan shall include full details on equipment, materials and work methods as well as the permittee's acknowledgment of its obligation and commitment to regularly monitor the restored surface until 2 years after the acknowledged completion of the permitted work and to promptly correct failure or subsidence of the highway. The district may condition its approval of a compaction plan on the execution of a bond under § 459.5(b) (relating to issuance of permits), if a part of the opening is within the improved area.

(iii) *Existing pavement elevation.* Compaction shall be completed to the bottom elevation of the existing pavement.

(4) The Department may require the permittee to have material proposed for use as backfill and compacted material tested, at the expense of the permittee, for conformance to the applicable gradation and compaction requirements of Publication 408.

(5) Openings made in the pavement or shoulder under § 459.6 (relating to emergency work) may be immediately backfilled with excavated material that is treated with a recognized chemical soil stabilizer at a minimum rate of 100 pounds stabilizer per cubic yard of backfill, if the stabilized backfill is compacted under paragraph (3).

(6) Test holes shall be backfilled, as soon as safely possible, with existing type material or other material authorized by the Department, and sealed under subsection (o). The district office may authorize test holes in the pavement or shoulder to be restored without a 1 foot cutback of the surrounding surface.

(h) *Restoration of flexible base pavements.* Base and surface restoration of flexible base pavements shall be performed under this subsection and as specified in the permit. Prior to replacement of the base course, 1 foot outside of each edge of the opening shall be sawed, in a neat straight line, to the top elevation of the existing aggregate subbase or stone base course, and the detached material shall be removed. Other surface opening

methods such as cutting may be authorized if the methods result in the opened pavement having a neat straight vertical line. See subsection (k).

(1) Exposed vertical and horizontal surfaces shall be prepared under section 401.3(f) of Publication 408.

(2) The base course shall consist of bituminous concrete meeting the requirements of section 305 of Publication 408 or other base course material authorized by the district office. The base course material shall have a minimum depth of 5 inches or a depth equal to the existing base course, whichever is greater.

(3) If required, the binder course shall consist of ID-2 material meeting the requirements of section 421 of Publication 408. The binder course shall have a minimum depth of 2 inches or a depth equal to the existing binder course, whichever is greater.

(4) The wearing course shall consist of ID-2 material meeting the requirements of section 420 of Publication 408 or FJ-1 material meeting the requirements of section 422 of Publication 408. The wearing course shall have a minimum depth of 1-1/2 inch ID-2, or 1 inch FJ-1, or a depth equal to the existing wearing course, whichever is greater.

(i) *Restoration of plain or reinforced cement concrete pavements.* Base and surface restoration of plain or reinforced cement concrete pavements shall be performed under this subsection and as specified in the permit. Drilling is not permitted where sawing or cutting is required. See subsection (k).

(1) Prior to replacement of the pavement, 1 foot outside of each edge of the opening shall be sawed the full depth of pavement in a neat straight line. The detached material shall be removed without damaging the adjacent pavement. The use of a pavement breaker is prohibited. The permittee may partially saw cut the pavement to a depth of at least 3 inches and cut the remaining pavement with a jackhammer weighing no more than 90 pounds, if:

(i) The restored opening does not exceed 6 feet in either length or width.

(ii) The restored opening is at least 2 feet from a pavement edge or joint.

(iii) The highway average daily traffic—ADT—does not exceed 5,000.

(2) The replacement pavement shall consist of high early strength concrete equal in depth to the original concrete pavement or to a depth of 8 inches, whichever is greater.

(3) On existing reinforced cement concrete pavements that are opened for more than 6 feet in either length or width, reinforcing steel, expansion tie bolts and load transfer devices shall be placed in accordance with Roadway Construction Standard RC-26 (relating to concrete pavement maintenance).

(4) The permittee may be required to restore the structural integrity of a damaged cement concrete pavement by:

(i) Replacing the opened pavement transversely the full lane width.

(ii) Replacing the opened pavement longitudinally to a transverse joint or opening within 6 linear feet of the opening.

(5) The surface shall be restored as follows:

(i) After surface corrections have been completed and before the concrete becomes nonplastic, the surface shall be given a textured finish that matches the existing adjacent surface. The surface shall be cured under section 501.3(k) of Publication 408.

(ii) Restoration of the binder and wearing courses of a cement concrete pavement which has a bituminous surface shall be done under subsection (h).

(j) *Shoulder restoration.* Shoulder restoration shall be performed under this subsection and as specified in the permit. See subsection (k).

(1) *Paved shoulders.* Paved shoulders shall be reconstructed and restored to a serviceable condition, of the same type as existed before the start of work, under section 651, 653, 654, 656, 657 or 658 of Publication 408, and Roadway Construction Standard RC-25.

(2) *Other shoulders.* Other shoulders shall be restored as follows:

(i) The surface shall be restored with at least 2 inches of select granular material, or as authorized by the district office.

(ii) If the length of the open shoulder exceeds 100 linear feet, the shoulder shall be graded, rolled and—unless excused—penetrated with bituminous material specified in section 461 of Publication 408, at a minimum rate of .20 gallon per square yard and chipped or lightly sanded to prevent tracking of oil onto the pavement.

(3) *Outside existing shoulder.* If the disturbed area extends outside the existing shoulder, the disturbed area outside the restored shoulder shall be properly graded and a ditch line shall be constructed wherever necessary to maintain highway drainage.

(k) *Temporary pavement restoration.* Temporary restoration of a pavement or paved shoulder may be required by the district office prior to permanent restoration, under the following:

(1) The base shall consist of compacted select granular material with a surface of 2-inch bituminous material. If the existing pavement structure includes a course of subbase

material, it shall be replaced to a depth equal to the existing course depth with material meeting the requirements of section 350.2 of Publication 408.

(2) Temporary pavement restoration shall be completed before traffic is allowed to travel on the disturbed area. The temporary pavement may be kept in place for up to 6 months or as specified in the permit, if it is properly maintained.

(3) The temporary pavement shall be removed and permanent restoration performed under subsection (h), (i) or (j).

(l) *Paint identification.* Upon completion of pavement or paved shoulder restoration, the restoration date shall be painted immediately adjacent to the restored cut but not in an area where tires normally contact the pavement. The painted date shall indicate the month and year numerically. The numerals shall be 6 to 9 inches in height. The paint shall be color coded as follows: blue (water), yellow (gas-petroleum), red (electric), orange (communications) and green (sewer). The paint shall be maintained for 2 years after the acknowledged completion of the permitted work. If the pavement or shoulder is being overlaid for more than 100 linear feet, the district office may, upon request, exempt the permittee from complying with this subsection.

(m) *Appurtenances to underground installations.* Requirements relating to appurtenances to underground installations shall include:

(1) The top of every manhole, valve box or other access to the facility shall be at the same elevation as the surface in which it is located.

(2) The surface surrounding manhole covers located in paved shoulders shall be paved with 4 inches bituminous concrete base course a distance of at least 1 foot around the structure to prevent washouts.

(3) A manhole, including those cast-in-place, shall be constructed in compliance with current industry standards and section 713.2(c) of Publication 408.

(n) *Additional restoration.* Additional restoration shall be required as follows:

(1) Disturbed portions of the highway, including, but not limited to, slopes and appurtenances and structures such as guide rails, curbs, signs, markings, drain pipes, driveways and vegetation, shall be restored by the permittee to a condition at least equal to that which existed before the start of work authorized by the permit, if the restoration is consistent with the "Roadway Construction Standards". Additional restoration may also be required, upon written notification, to restore the structural integrity of the pavement or shoulder.

(2) If the permittee opens pavement having a bituminous concrete surface and the Department's wearing course is less than 5 years old, the permittee shall, in addition to

the restoration conditions outlined in the permit and in this section, overlay the pavement in accordance with the following conditions:

(i) When a longitudinal opening longer than 100 linear feet has been made in the pavement, the permittee shall overlay the traffic lanes in which the opening was made, for the entire length of highway that was opened, in a manner authorized by the Department.

(ii) When two or more transverse openings have been made within 100 linear feet of pavement, the permittee shall overlay traffic lanes in which the openings were made, for the entire length of highway between the openings, in a manner authorized by the Department.

(iii) When 4 or more emergency openings have been made by the same permittee within 100 linear feet of pavement, the permittee shall overlay traffic lanes in which the openings were made, for the entire length of highway between the openings, in a manner authorized by the Department.

(iv) If disturbed lanes adjacent to undisturbed lanes are overlaid, the edge of the disturbed lane shall be saw cut or milled to a depth of 1-1/2 inch or the depth of the existing surface course, whichever is less, for the length of the opening to insure a smooth joint, with proper elevation and cross section. A full width overlay may be authorized on various highways instead of saw cutting or milling the disturbed lane.

(v) If disturbed lanes adjacent to shoulders are overlaid, the shoulder shall be raised, with material and in a manner authorized by the Department for the type of existing shoulder, so that the overlaid pavement and shoulder edges are at the same elevation.

(3) Regardless of the age of the wearing course:

(i) If more than 100 linear feet of longitudinal or transverse openings, or both, are made in the pavement, the Department may require the permittee to overlay traffic lanes in which the openings were made, for the entire length of highway that was opened, if the district office determines that the rideability or structural integrity of the pavement has been impaired by the openings.

(ii) If four or more openings are made by the same permittee within 100 linear feet of pavement, the district office may require the permittee to restore the entire disturbed pavement between the openings by milling, planing or other authorized method and overlaying the entire disturbed pavement.

(4) Aggregate used in a bituminous overlay wearing course shall comply with skid resistance level (SRL) criteria specified in Design Manual, Part 2, Chapter 11.

(5) If an opening is made in a bituminous concrete pavement within 3 feet from the edge of pavement or other longitudinal joint or opening, the surface restoration shall be extended to the edge of pavement or other longitudinal joint or opening.

(6) At each end of an overlay, the permittee shall install a paving notch, under Roadway Construction Standard RC-28, by milling, planing or other authorized method and provide a minimum 10-foot transition.

(7) The transition areas at each end of an overlay shall follow the contour of the surrounding surface.

(8) When pavement markings on more than 100 linear feet of highway are covered or destroyed by the permitted work, including overlays, they shall be replaced with temporary pavement markings, under § 203.72 (relating to temporary pavement markings) before opening the disturbed pavement to traffic. When the pavement surface is restored, pavement markings that were covered or destroyed shall be replaced in their former location.

(o) *Sealing.* Restored openings in the pavement or paved shoulder shall be sealed under section 401.3(j)(3) of Publication 408 in the case of bituminous concrete or section 501.3(n) of Publication 408 in the case of cement concrete.

Authority

The provisions of this § 459.8 amended under sections 411, 420 and 702 of the State Highway Law (36 P. S. § § 670-411, 670-420 and 670-702).

Source

The provisions of this § 459.8 adopted July 13, 1979, effective August 13, 1979, 9 Pa.B. 2338; amended August 7, 1981, effective August 8, 1981, 11 Pa.B. 2779; amended January 20, 1989, effective March 22, 1989, 19 Pa.B. 241. Immediately preceding text appears at serial pages (91848) and (63777) to (63782).

Cross References

This section cited in 67 Pa. Code § 459.1 (relating to definitions); 67 Pa. Code § 459.6 (relating to emergency work); and 67 Pa. Code § 459.7 (relating to general conditions).

§ 459.9. Special conditions, aboveground facilities.

(a) *General rule.* A permit will not be issued to install aboveground facilities at a location which the Department determines to have a high accident potential.

(b) *Location of aboveground facilities.* The location of an aboveground facility shall be:

(1) Within nonlimited access right-of-way.

(i) 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.

(ii) Replacement of poles and other aboveground facilities shall comply with the permit and applicable provisions of Design Manual, Part 5.

(iii) Installation of poles and other aboveground facilities in locations where highway guide rail or curb exists shall comply with the permit and applicable provisions of Design Manual, Parts 2 and 5.

(2) Installation of poles, guys and other aboveground facilities within limited access right-of-way shall comply with applicable provisions of the Federal Highway Program Manual—Volume 6, Chapter 6, section 3; the A.A.S.H.T.O. ‘‘Policy on the Accommodation of Utilities on Freeways’’; and Design Manual, Part 5.

(c) *Location of wires, cables or conductors.* A wire, cable or conductor which overhangs a portion of the right-of-way shall be placed to provide a minimum vertical clearance of 18 feet over the pavement and shoulder, except where the National Electrical Safety Code requires vertical clearances in excess of 18 feet due to voltage or span lengths.

(d) *Guys.* A guy shall be placed and insulated in the following manner:

(1) A guy shall be placed to avoid interference with vehicular or pedestrian traffic.

(2) A guy shall be insulated or grounded in compliance with the National Electrical Safety Code.

(e) *Identification of poles.* A pole shall bear the name or initials of the facility owner and the pole numbers assigned by the facility owner.

(f) *Seismograph—vibro seis method.* Seismograph—vibro seis method shall comply with the following:

(1) Seismograph operations by other than the vibro seis method will not be permitted.

(2) A permit will not be issued to authorize seismograph operations within limited access highway right-of-way.

(3) Wherever possible, seismograph operations shall be performed entirely off the pavement and shoulder to lessen interference to traffic.

(g) *Modular concrete replacement units, metal reinforcing collars and similar devices.*

(1) Modular concrete replacement units, metal reinforcing collars and similar devices may not be placed in State highway right-of-way unless located:

- (i) Thirty feet or more beyond the edge of pavement under Design Manual, Part 2, Chapter 12.
- (ii) At the top of a slope (2:1 or greater) or at least 8 feet beyond the toe of the slope.
- (iii) Beyond parallel drainage ditches.
- (iv) Beyond the specified deflection distance for the type guide rail in front of the location, under Design Manual, Part 2.

(2) No permit will be issued for the placement of a new facility, or for the repair, modification, reinforcement or replacement of an existing facility, by modular concrete replacement units, metal reinforcing collars or similar devices unless the facility is located in compliance with paragraph (1).

Authority

The provisions of this § 459.9 amended under sections 411, 420 and 702 of the State Highway Law (36 P. S. § § 670-411, 670-420 and 670-702).

Source

The provisions of this § 459.9 adopted July 13, 1979, effective August 13, 1979, 9 Pa.B. 2338; amended August 7, 1981, effective August 8, 1981, 11 Pa.B. 2779; amended January 20, 1989, effective March 22, 1989, 19 Pa.B. 241. Immediately preceding text appears at serial pages (63782) and (113653).

Cross References

This section cited in 67 Pa. Code § 459.6 (relating to emergency work); and 67 Pa. Code § 459.7 (relating to general conditions).

§ 459.10. [Reserved].

Source

The provisions of this § 459.10 adopted July 13, 1979, effective August 13, 1979, 9 Pa.B. 2338; reserved January 20, 1989, effective March 22, 1989, 19 Pa.B. 241. Immediately preceding text appears at serial page (113654).

§ 459.10a. Bridge occupancy.

(a) *License required.* No person may attach a utility facility to a State bridge or modify an existing facility until the owner of the utility facility has obtained a license (Form M-906L) from the Department under this chapter.

(b) *Application procedure.*

(1) *General.* A separate bridge license application (Form M-906A) shall be completed and signed by the facility owner and submitted to the district office bridge engineer for each utility facility and for each bridge. An application from a facility owner not in the business of providing utility service shall identify how the public will benefit from the occupancy and shall furnish other information as may be required by § 459.3(b)(2) (relating to permit application procedure). License applications shall be submitted at least 60 days prior to the anticipated start of work.

(2) *Plans.* Plan requirements are as follows:

(i) *Bridge license application.* Three sets of plans shall accompany the bridge license application. A fourth set of plans is required when a part of the work involves Interstate highway right-of-way. The plans shall have a horizontal scale of 1 inch equal to no more than 20 feet, and shall clearly illustrate the location and pertinent dimensions of both the proposed installation and related highway and bridge features. The plans shall also show the installation in plan and elevation, unless excused, with a cross section and enlarged details of the installation showing appurtenances, such as brackets, inserts, supports, couplings, encasements, hangers, sleeves, insulators, fabricated structural steel—if required, crossarms and poles. The details shall be complete throughout the entirety of the structure including treatment at the diaphragms and abutments.

(ii) *Traffic control plans.*

(A) Three sets of traffic control plans shall be submitted in the following situations:

(I) For work on limited access highways.

(II) Whenever it will be necessary to close a portion of a travel lane during hours of darkness without work in active progress.

(III) Whenever it will be necessary to completely close a highway to perform the permitted work.

(B) The district office may require an applicant to submit a traffic control plan under other special circumstances.

(C) Traffic control plans shall comply with 75 Pa.C.S. § 6123 (relating to erection of traffic-control devices while working) and the applicable provisions of Chapter 203 (relating to work zone traffic control).

(D) Traffic control plans shall clearly indicate how the work area and vehicular and pedestrian traffic will be protected, maintained and controlled.

(3) *License fees.* A check or money order, payable to the Department, shall accompany a bridge license application in the appropriate amount under this paragraph.

(i) Issuance fee—\$80.

(ii) Inspection fee—\$20.

(iii) Accommodation fee (each 1,000 pounds or fraction thereof)—\$50.

(iv) Annual rental fee (each 1,000 pounds or fraction thereof)—\$10.

(v) Accommodation and annual rental fee weights shall be calculated to include the ultimate weight of the utility facility and contents—running full—as well as appurtenances, including the weight of 1/2 inch of ice or sleet on listed items exposed to the elements on any part of the bridge or structure.

(vi) License fees will not be assessed against the following entities:

(A) The Federal government.

(B) The Commonwealth.

(C) Political subdivisions of this Commonwealth.

(D) Utilities ordered by the Pennsylvania Public Utility Commission to occupy a bridge over which the Pennsylvania Public Utility Commission has taken jurisdiction.

(E) Governmental authorities, except that annual rental fees specified in subparagraph (iv) shall be assessed.

(vii) The annual rental fee is payable upon receipt of an invoice from the Department.

(c) *Issuance of license.*

(1) Upon approval of an application made under this chapter, a license will be issued by the Department, subject to this chapter and the conditions contained on the license and its attachments. The license shall be the applicant's authority to proceed with the work specified in the license. A copy of the license, application and authorized plans shall be available for inspection at the work site.

(2) A license shall be issued only to the owner of the utility facility. A license will not be issued to a contractor nor to persons only being serviced by the facility.

(3) The license shall be maintained by the licensee as a permanent record. A license shall be valid until revoked by the Department or until the Department ceases to be responsible for the bridge for which the license is granted or until the bridge is reconstructed or relocated, at which time a new license application may be submitted to the district office.

(d) *License conditions.* The provisions of this chapter governing permits and permittees, except those that are not technically feasible, are incorporated herein by substituting license and licensee for permit and permittee, respectively. The following conditions apply in addition:

(1) The license authorizes only those facilities specifically designated on the license.

(2) Work authorized by the license is subject to laws or regulations which give jurisdiction to the Army Corps of Engineers, Pennsylvania Public Utility Commission, or other Federal, State or local authority having jurisdiction over any aspect of the location, construction or maintenance of the licensee's facility. The licensee is responsible for complying with Department of Environmental Resources license requirements under 25 Pa. Code Chapter 105 (relating to dam safety and waterway management).

(3) The licensed work shall be done at a time and in a manner consistent with the safety of the public and conform to requirements and standards of the Department, including, but not limited to, Publication 408 and acceptable practices of the industry not inconsistent therewith.

(4) The licensee shall pay fees, costs and expenses incident to or arising from the project, including the cost of related highway or bridge improvements which the license work may necessitate.

(5) No license application will be approved for occupancy of a section of right-of-way within which a highway or bridge construction project is underway, or if a contract for the project has been let, until the project is completed and accepted by the Department, unless the applications are accompanied by an attested certificate signed by the contractor or other authority constructing the project, consenting to the applicant's proposed work within the right-of-way, together with a waiver, release and quitclaim to the Department of damages and defenses for delays by reason of the work and occupation of the right-of-way by the licensee, or from a cause resulting by reason of the work and occupation. This paragraph does not apply:

(i) To an emergency. In an emergency, the licensee shall obtain the consent of the Department to do work necessary to correct the existing emergency condition.

(ii) If the licensee has been authorized by the Department to relocate or adjust its facilities simultaneously with the highway or bridge construction, under Design Manual, Part 5.

(6) If the bridge is reconstructed or relocated, the privilege granted in this subsection ceases and the licensee shall bear the expense of reconstruction as will be necessary if the privilege is to be continued for the benefit and at the request of the licensee.

(7) The licensee shall notify the district office at least 1 week prior to the start of work and notify the district maintenance office at least 1 week in advance of maintenance work.

(8) Upon notification that the Department has scheduled maintenance painting of a bridge, the licensee shall, unless excused, have its attached facilities promptly painted in accordance with specifications furnished by the district office or enter into an agreement with the Department's contractor for the painting of its facilities.

(9) If in the future the licensee desires to change, alter or remove a structure or property belonging to it from the bridge or highway, it may do so upon approval of an amended application, if disturbed parts of the bridge or highway are restored at the expense of the licensee, as directed by the district office.

(10) If the rent remains unpaid on a day when it is due, including default on a check submitted in payment of rent and after 15 days' notice of default:

(i) A prothonotary or an attorney of a court of record is empowered to appear for the licensee in actions which may be brought for rent or to sign for the licensee an agreement for entering in a competent court an amicable action for the recovery of rent or other charges or expenses; and in the suit or in the amicable action, to confess judgment against the licensee for all or a part of the rents specified in this license, and then unpaid, and for interests and costs, together with attorney's commission of 10%. The authority will not be exhausted by one exercise thereof, but judgment may be confessed from time to time as often as rent is in arrears.

(ii) The Department may revoke and annul the license and order and direct the licensee to remove structures, equipment or property belonging to the licensee or its contractors from the bridge or legal limits of the right-of-way and to restore the right-of-way to its former condition. If the licensee fails to remove the structure, equipment or property after notice from the Department to do so, the Department or an attorney of a court of record is authorized to appear for the licensee, and to enter an amicable action of ejectment and confess judgment against the licensee. The attorney is authorized to issue a writ of possession without leave of court, at the cost of the licensee.

(11) Facility occupancy of State bridges shall comply with applicable provisions of Design Manual, Part 5.

Authority

The provisions of this § 459.10a issued under sections 411, 420 and 702 of the State Highway Law (36 P. S. § § 670-411, 670-420 and 670-702).

Source

The provisions of this § 459.10a adopted January 20, 1989, effective March 22, 1989, 19 Pa.B. 241.

§ 459.11. Penalties and enforcement.

(a) *General rule.* Violation of this chapter or the permit requirements constitutes grounds for imposition of the following penalties:

(1) Upon receipt of oral or written notice of violations from the authorized representative of the Department or a police officer whose jurisdiction includes the permitted work area, the permittee shall cease to perform any further work in the permitted area except to restore the area to a safe condition. No further work may commence in the permitted area until the violations have been remedied. Where the permittee has received oral notice of the violations, written notice shall be sent to the permittee within 10 days of receipt of the oral notice.

(2) Confiscation of the applicant's permit or emergency permit card by any police officer or authorized representative of the Department.

(3) Revocation of the applicant's permit or emergency permit card by the Department.

(4) Removal of facilities installed without a permit or in violation of the provisions of this chapter.

(5) Fines, imprisonment or other penalties as are provided by statute.

(6) Other action as may be deemed necessary or proper after consultation with the Office of Chief Counsel.

(7) Other conditions which may be specified on a Departmental Citation.

(b) *Additional grounds for revocation.* Additional grounds for revocation shall be as follows:

(1) The Department may revoke a permit whenever it determines that the permitted facility is not being maintained, is in violation of a condition of the permit or this chapter, constitutes a hazard to traffic or interferes with the proper use of the highway by the Department or the public.

(2) The Department may revoke a permit for nonpayment of a fee authorized in § 459.4 (relating to permit fees) including default of a check submitted for payment.

(c) *Revocation procedure.* Prior to revocation of a permit, except for nonpayment as specified in subsection (b)(2), the permittee shall be given an opportunity for a hearing under 2 Pa.C.S. § § 501—508 and 701—704 (relating to the Administrative Agency Law).

Authority

The provisions of this § 459.12 amended under sections 411, 420 and 702 of the State Highway Law (36 P. S. § § 670-411, 670-420 and 670-702).

Source

The provisions of this § 459.11 adopted July 13, 1979, effective August 13, 1979, 9 Pa.B. 2338; amended August 7, 1981, effective August 8, 1981, 11 Pa.B. 2779; amended January 20, 1989, effective March 22, 1989, 19 Pa.B. 241. Immediately preceding text appears at serial page (113654).

§ 459.12. Modification of conditions.

(a) *General rule.* When a term or condition of this chapter cannot be met, an applicant may request, in writing, that the district office modify that term or condition if it is not required by law, under the following:

(1) The applicant has done all that can reasonably be done to comply with the term or condition.

(2) The proposed modification satisfies the intent of the term or condition to be modified.

(3) The proposed modification represents the minimum feasible deviation from the term or condition to be modified.

(4) The reason for the requested modification is infeasibility of meeting the exact terms or conditions of this chapter rather than mere economic benefit to the applicant.

(b) *Modification granted.* If a requested modification is granted, the permit will specify the allowable modification. A permit issued under authority of this section shall be signed only by the district engineer or higher Departmental authority. The granting of a modification will be predicated on the applicant's complying with the following:

(1) Unless the applicant is excused in writing, executing a hold harmless and indemnity agreement acceptable to the Department, under § 459.7(11) (relating to general conditions).

(2) Unless the applicant is excused in writing, obtaining bonds satisfactory to the Department to guarantee highway restoration and maintenance costs, under § 459.7(16).

(3) Unless the applicant is excused in writing, obtaining public liability insurance for personal injury and property damage on behalf of the Department, its officers, agents and employes, in a form and amount acceptable to the Department, for the life of the facility.

(4) Permit conditions, which may include use restrictions, special traffic control devices or safety features.

(c) *Restrictions.* A municipality authorized to issue permits for the Department may not modify a term or condition of this chapter without obtaining written authorization from the district engineer. If the modification is granted by the district engineer, the municipality shall require the applicant to provide security or satisfy other conditions required by the district engineer. The municipality shall indemnify and hold harmless the Department for negligence by the municipality in issuing the permit.

(d) *Third parties.* The modification of a term or condition by the district engineer does not create rights in a third party, nor does a waiver act as a modification of the common law duty of the applicant to relocate its facilities upon demand by the Department to another location within the right-of-way at the sole cost of the applicant.

Authority

The provisions of this § 459.12 issued under sections 411, 420 and 702 of the State Highway Law (36 P. S. § § 670-411, 670-420 and 670-702).

Source

The provisions of this § 459.12 adopted January 20, 1989, effective March 22, 1989, 19 Pa.B. 241.