

~~Frequently Asked Questions from the Highway Occupancy Permit (HOP) Storm Water Maintenance Responsibility Webinars (Oct. 5th, 8th and 15th)~~

~~Due to the number of questions received we attempted to categorize them, eliminating duplicate questions. Questions outside the scope of the Strike-Off Letter were not included.~~

General Statement:

The Drainage Policy (Strike-Off Letter 470-10-3) was implemented statewide on June 24, 2010 to assure conformance with the State Highway Law, especially 36 P.S., § 670-421, 67 Pa. Code, Chapters 441 and 459, and to bring about statewide consistency.

The State Highway Law states: “It is unlawful for any person to discharge sewage or drainage, except surface drainage, on, or within the legal limits of, any State highway.” The Department has traditionally held that an exception to this rule exists for local governments due to their public nature and their review and approval of land development plans within their geographical boundaries. Thus, at the discretion of the Department, a highway occupancy permit may be issued to a local government to allow the installation of subsurface storm water facilities that convey a private property’s storm water into the Department’s right-of-way.

To better facilitate the local government, a process was created whereby private property owners could become co-applicants along with local governments for drainage facilities that direct drainage into the Department’s right of way. As a condition of such a permit, the co-applicant (i.e. the private property owner) is responsible for providing funding to the local government to offset future maintenance costs.

PennDOT worked with representatives of the Transportation Advisory Committee (TAC), the Pennsylvania State Association of Township Supervisors (PSATS), the Pennsylvania State Association of Boroughs (PSAB), the Pennsylvania State Association of Township Commissioners (PSATC), and the Pennsylvania League of Cities and Municipalities (PLCM) in developing the policy. To fully communicate this policy, PennDOT hosted four informational outreach Webinars.

Category 1: Surface or Subsurface storm water facility draining or conveying drainage under a driveway or local road

1. Who issues the HOP for a basic homeowner culvert pipe?

Response: A permit to install a driveway with drainage facilities would be issued by the respective Engineering District office to the property owner.

Category 2: Surface storm water facilities draining more than a proposed driveway or local road

1. What constitutes local government approval for a Category 2 facility? Will the district permit manager require a letter from the municipality stating its approval? The land development approval often times is contingent upon HOP approval.

Response: There is no specific form of approval. However, as a policy and for local coordination, generally, an approved preliminary land development plan would be sufficient documentation.

Category 3: Subsurface storm water facilities draining more than a proposed driveway or local road

1. In a situation where a site contains a very complex drainage system to a basin, which in turn has an outlet pipe connecting to a Department pipe, is the municipality responsible for the entire system, basin, and outlet pipe, the basin and outlet pipe, or only the outlet pipe?

Response: The permittee is responsible to continuously maintain the facilities being installed within the Department's right-of-way so as to conform to the permit and so as not to interfere or be inconsistent with the design, maintenance, and drainage of the highway, or the safe and convenient passage of traffic upon the highway. If there is a failure outside the Department's right-of-way that causes a drainage issue within the Department's right-of-way, the permittee would be required to correct the issue.

2. If the applicant proposes to increase the size of a Department culvert, does that change the category?

Response: No. However, in accordance with regulation, the permittee is responsible to continuously maintain all facilities being installed as part of the permit.

3. If someone wants to pipe their ditch so they do not have to mow grass in the ditch, who is responsible?

Response: This type of installation would be subsurface and drain/convey more than a driveway, thus the local government would be the permittee. The Department is not required to allow such an installation for the convenience of the property owner but may do so in its discretion.

4. If the developer of a residential subdivision dedicates the roadways to the municipality, is it correct to assume the municipality is the responsible party for long-term maintenance?

Response: Responsibility for compliance with the terms of the completed permit, including maintenance, cannot be assigned or transferred by the permittee without first obtaining approval from the Department after submitting Form M-948, Assignment of Permit or License.

Note: A Supplement may be used to transfer ownership of an active permit.

5. In the southeast, municipalities typically do not want ownership of basins in residential subdivisions and in the absence of a highway occupancy permit, the basin becomes the responsibility of a homeowner. How can this be addressed fairly as it relates to maintenance and liability?

Response: The local government must be the applicant for subsurface storm water facilities connected to existing facilities within the right-of-way. The policy does not assign ownership of basins outside the right-of-way; however, the permittee has maintenance responsibility for all facilities and structures constructed under the permit and depicted on the approved permit plans insofar as anything affects the right of way.

Category 4: Subsurface storm water facilities draining the highway and/or adjacent properties

1. Where a new development requires a lane improvement that includes storm water facilities but storm water from the site is handled on site, is the Department responsible for future maintenance/replacement?

Response: No. The permittee is responsible to continuously maintain the facilities being installed within the Department's right-of-way so as to conform to the permit and so as not to interfere or be inconsistent with the design, maintenance, and drainage of the highway, or the safe and convenient passage of traffic upon the highway.

2. If a developer is improving the highway for the Department's benefit, adding capacity, improving drainage, providing for congestion management, the Department will not take responsibility for the drainage features?

Response: The permittee will only be required to add capacity or improve drainage facilities if necessary to accommodate new or altered drainage flow from a driveway, local road, or the property it serves that is being developed. The permittee is responsible to continuously maintain the facilities being installed within the Department's right-of-way so as to conform to the permit and so as not to interfere or be inconsistent with the design, maintenance, and drainage of the highway, or the safe and convenient passage of traffic upon the highway.

3. Who must be the applicant in the event that the development connects on the downstream side and does not add any storm water to the Department's right of way? The connection is inside the right of way but the eventual discharge is outside the right of way on the back side of the property.

Response: Whether to allow such a connection is within the discretion of the Department and subject to such reasonable conditions as the Department may want to require for highway safety and maintenance purposes. The local government would be the permittee for this type of connection because it is subsurface. The local government may be able to pass maintenance responsibility onto the landowner as part of the land development process.

Category 5: Subsurface storm water facilities not connected to a highway drainage facility

1. For Category 5, if a municipality is requesting to be an applicant with the property owner as co-applicant, why is there a need for two separate permits?

Response: The property owner must still apply for a separate permit for the driveway connection.

2. If a developer owns both sides of a state road, can the developer increase the size of the cross pipe under the state road if the township is the permittee and then has an agreement with the developer to maintain the new larger pipe?

Response: Yes. If the existing or new facility does not collect highway drainage (accommodate the road) then the local government does not have to be an applicant. This is because the facility is not connected to a Department owned or maintained storm water facility and is permissible under 67 Pa. Code, Chapter 459.

3. We have a situation where the municipality was required to be the permittee but the situation really is Category #5 where the new drainage facilities do not connect to the existing highway facilities. Can the municipality be retroactively removed as permittee and relieved of the maintenance responsibilities?

Response: Responsibility for compliance with the terms of the completed permit, including maintenance, cannot be assigned or transferred by the permittee without first obtaining approval from the Department after submitting Form M-948, Assignment of Permit or License.

General HOP Policy Comments/Response

1. What is the fee structure for these permits?

Response: Under Chapter 441, political subdivisions of the Commonwealth are exempt from permit issuance fees and general permit inspection fees. Under Chapter 459, political subdivisions of the Commonwealth are exempt from permit application fees and general permit inspection fees, except when placing a facility longitudinally within more than 100 total linear feet of pavement. However, if the Department determines that the permitted work is of sufficient magnitude or importance to warrant assignment of one or more employees to inspect the permitted work on a more than spot inspection basis, the permit will so indicate and the permittee shall be charged for salary, overhead, and expenses incurred by the Department for inspection.

2. What happens if a municipality is not willing to apply for a permit?

Response: The State Highway Law states: “It is unlawful for any person to discharge sewage or drainage, except surface drainage, on, or within the legal limits of, any State highway.” An exception exists for local governments due to their public nature and their review and approval of land development plans within their geographical boundaries. If the local government is unwilling to be the applicant for a storm water design which falls under Category 3 or 4, the developer has the option to provide a design that is consistent with the State Highway Law (i.e. maintain all drainage on site).

3. What would the penalty be if the municipality does not maintain the facilities – for whatever reason? Will the highway occupancy permit be revoked?

Response: The permittee is responsible to continuously maintain the facilities being installed within the Department’s right-of-way so as to conform to the permit and so as not to interfere or be inconsistent with the design, maintenance, and drainage of the highway, or the safe and convenient passage of traffic upon the highway. The Department has several remedies under 67 Pa. Code, Sections 441.10 or 459.11, such as revocation of the permit, work and bill, blocking an access, and/or fines. However, the local government should have an agreement with the property owner that addresses this issue, assuring that maintenance responsibility rests with the developer/property owner.

4. If the municipality does maintenance to the storm water facility due to a developer’s failure to do so, is the municipality required to comply with Second Class Township Code bidding requirements considering there is a maintenance agreement with the developer who will be billed for the work performed?

Response: Questions on the requirements of the Second Class Township Code should be addressed to your municipal solicitor.

5. What do you mean by “this strike-off letter is time increasing”?

Response: This is a term used by the Department to mean that it will require additional time for Department staff to complete a task. However, to avoid permitting delays, storm water management should be discussed early in the permitting process or it could adversely affect the permitting time frame.

6. Our municipality has adopted an agreement similar to the model agreement provided by the Department. A current developer has signed the agreement and would like to submit a highway occupancy permit application. I understand there are three parts: first, the application. The current form is not set up to be used with a co-permittee. Will this form still be used or will a new form be distributed? Second, will the land use questionnaire still be required? Third, who will be responsible for recording the document recording copy? Will it be recorded with the property deed?

Response: The current application form M-945A should be completed for the storm water facility permit. The Department will evaluate the need to modify the form to better facilitate co-applicants.

Except for projects located in the City of Pittsburgh or the County of Philadelphia, the land use questionnaire Form M-950MPC is required to be submitted by all low, medium, and high volume driveway highway occupancy permit applicants.

The permittee is responsible for recording costs including the cost of recording the permit in the County Office of the Recorder of Deeds when required. The Department currently has a process in place to have the permit recorded and is explained in the Department's Publication 282, Highway Occupancy Permit Guidelines. Generally, HOPs should be recorded in the Grantor-Grantee index with the Department as the Grantor and the Permittee as the Grantee.

7. If the municipality is taking over the storm water facilities will they need a highway occupancy permit approval for routine maintenance? If so, will they also expedite the approval process?

Response: No driveway, local road or drainage facility or structure shall be constructed or altered within State highway right-of-way and no drainage facility of the Department may be altered or connected onto without first obtaining a permit from the Department. A permit may not be required for maintenance. Please contact your local Engineering District Office for a determination on the specific type of routine maintenance being planned.

8. Is there a "deemed-approval" if a permit is not timely reviewed?

Response: The Pennsylvania Municipalities Planning Code requires the Department within 60 days of the date of receipt of an Access Application (Forms M-945A or M-950A) to either approve the permit, deny the permit, return the application for additional information or correction to conform with regulations, or notify the municipality and applicant in writing that no permit is required.