



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505

February 5, 2013

MEMORANDUM

TO: ALL DISTRICT ENGINEERS/MANAGERS

**FROM: PAUL A MATTOX, JR., P. E.
SECRETARY OF TRANSPORTATION/
COMMISSIONER OF HIGHWAYS**

A handwritten signature in black ink that reads "Paul A. Mattox, Jr." in a cursive script.

SUBJECT: OIL AND GAS ROAD POLICY ADDENDUM

Upon further review of the Oil and Gas Roads Policy dated January 3, 2012 (Policy), the Division of Highways (DOH) recognizes a need to expand the scope of its Policy to include pipeline and compressor station operations that are anticipated to have significant impacts on State roadways and to ensure continued maintenance of the State's local roadways in light of heavy road traffic attendant to these types of oil and gas development operations.

This Policy Addendum hereby supplements the Policy, as follows:

A. GENERAL:

1. The requirements set forth in this Policy Addendum shall be limited to oil and gas companies engaged in the developing and constructing of gather lines facilities, midstream gas transmission infrastructure, or compress facilities; shall not supersede an existing pipeline's integrity management program; and, subsequently shall not preference existing pipeline systems in comparison to future development. This does not prevent the Facilities Owner/Operator from performing routine maintenance. In an emergency situation, the Facilities Owner/Operator will notify the DOH as soon as reasonably possible.
2. Bonding shall be required for only those highways classified as "state local service" roads in accordance with WV Code §17-1-28 and as defined in WV Code §17-4-2(d) (e.g., CR XX/X) (hereinafter referred to as "Covered Roads"). Highways that carry an interstate, state or corridor system designation are not Covered Roads and shall not be included in determining bonding amounts.

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3. **Permits for oversized/overweight vehicles are not subject to the conditions of this Policy Addendum and shall be handled through applicable DOH procedures as identified in WV Code 17C-17 and legislative rules.**
4. **Definitions:**
 - a) **“Anticipated Damage” is the added potential stress placed on a highway and/or structure due to the road degradation created during pipeline installation and usage and also due to the increased temporary use of the Covered Roads by heavy vehicles.**
 - b) **“Proposed Project” is limited to new major construction or major pipeline replacement (not routine maintenance) due to which Anticipated Damage and corresponding Required Major Improvements to Covered Roads may be reasonably foreseen. Proposed Project shall be defined as beginning with site clearing and continuing until site reclamation.**
 - c) **“Required Major Improvements” are those modifications to Covered Roads that are necessitated by traffic anticipated for a Proposed Project and may include but are not limited to sight distance improvements, signage, signalization, road widening, construction of new roadways, and acquisition of rights-of-way; provided, however, said modifications shall be limited to those improvements deemed necessary to maintain the roadway in a condition as good as before commencement of the project. If appropriate, Owner may enter into an Improvement Project in order to provide clear travel.**
 - d) **“Facilities Owner/Operator” is a company engaged in the developing, constructing and gathering lines, midstream gas transmission infrastructure, or compressor.**
 - e) **“Restrictions” are requirements directed at the protection of the traveling public, including, but are not limited to, pilot cars, hours of operation, etc.**

B. PERMIT APPLICATION REQUIREMENTS:

1. **The Facilities Owner/Operator shall provide written notice to the appropriate district engineer/manager of its intent to engage in a Proposed Project covered by this Policy Addendum at a location within the subject District. The written notice shall include the exact location of the Proposed Project along with the proposed routes to be used by the contractor for access. Proposed routes may be changed during construction operations by an addendum added to the approved permit.**

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- 2. Within 10 business days of the receipt of the notice provided pursuant to B.1, above, the district engineer/manager, or his appointed representative, shall conduct an on-site meeting with the operator, or his appointed representative, to determine if the roadway meets the requirements of both the Facilities Owner/Operator and the DOH. The Facilities Owner/Operator shall provide a 24 hour point-of-contact for use by the DOH.**
- 3. Within 10 business days of the meeting contemplated in B.2. above, the route shall be filmed by DOH [or Facilities Owner/Operator at the discretion of DOH] and an inspection report shall be written documenting the condition of the route along with a good-faith estimate of depreciation being caused by other industrial vehicles of similar weight and size. The Facilities Owner/Operator shall have the opportunity to review the video and inspection report in order to propose comments or revisions associated therewith.**
- 4. Within 20 business days of the on-site meeting, the DOH shall negotiate with the Facilities Owner/Operator to secure an Oil and Gas Bonding Agreement (“Agreement”) defining the responsibilities of both parties which shall include, at a minimum, any Required Major Improvements before, during and after the Facilities Owner/Operator has completed the Proposed Project; provided, however, the responsibility of the Facilities Owner/Operator shall be limited to its percentage share of any Required Major Improvements based upon the good-faith estimate contemplated in B.3. above. Any work within the DOH right-of-way shall be consistent with DOH standards and specifications and subject to DOH final approval.**
- 5. The DOH shall provide the Facilities Owner/Operator with a permit stipulating that Covered Roads shall be maintained in accordance with the Agreement.**
- 6. The Agreement may stipulate any appropriate Restrictions and shall require a bond.**
- 7. Upon completion of the Proposed Project, the Facilities Owner/Operator shall notify the DOH. Thereafter, the DOH shall have a period of fourteen days to schedule an on-site meeting to determine if the conditions of the Agreement have been fulfilled. If it is determined that the conditions of the Agreement have been fulfilled, any bonding applicable to the Proposed Project shall be promptly released. If, however, it is determined by the DOH that any condition of the Agreement has not been fulfilled, the DOH shall prepare a written notification of objection to release of bonding, which, at a minimum, shall cite each specific contention that must be fulfilled by the Facilities Owner/Operator prior to release of the bonding applicable to the Proposed Project.**

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8. Any crossing of a DOH Right of Way by pipelines shall be in accordance with the manual for ACCOMODATION OF UTILITIES ON HIGHWAY RIGHT OF WAY or approved otherwise by the State Highway Engineer or his designee.
9. Access to the roadway at crossing sites, staging areas, storage sites, and compressor stations shall be in accordance with the MANUAL ON RULES AND REGULATIONS FOR CONSTRUCTING DRIVEWAYS ON STATE HIGHWAY RIGHTS-OF-WAY or approved otherwise by the State Highway Engineer or his designee.
10. The Facilities Owner/Operator shall be responsible for the development and maintenance of a traffic plan which shall be approved by the District Traffic Engineer. The Facilities Owner/Operator shall be responsible to provide all signing required for work zones, road closures, and detours. The Facilities Owner/Operator shall be responsible for public notification of closures.
11. When Facilities Owner/Operator impedes traffic for more than one hour, the Facilities Owner/Operator may be assessed a fine by enforcement personnel of all costs associated with exceeding the one hour time limit. Incidents that require the use of law enforcement or emergency services personnel are not subject to the one-hour time limit.

C. SECURITY:

1. SINGLE BONDS

For an individual Proposed Project covered by Section B above, bonding shall be based on the degree of Anticipated Damage to Covered Roads up to the following maximum amounts:

BOND	ROAD TYPE
\$100,000	Paved Mile
\$ 35,000	Tar and Chipped Mile
\$ 25,000	Graveled Mile

2. BLANKET BONDS

- a) As an alternative to C.1.a, Facilities Owner/Operator may elect to post either a (a) district wide or (b) statewide blanket amount to cover multiple roads. The maximum blanket bond shall \$250,000 per district or \$1,000,000 statewide and shall require a road maintenance agreement to be executed.

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b) Should the Facilities Owner/Operator elect to use blanket bonding, projects may be added/deleted as they are initiated/completed. The DOH shall be provided with written notification of any changes to the blanket bond. Once a Proposed Project has been completed and the DOH finds the roadway to be acceptable, the DOH shall remove the Project from the blanket bond.

c) All agreements utilizing blanket bonds are negotiable and shall be handled by the DOH Central Office in Charleston.

3. FORMS OF SECURITY:

The form of the bond(s) described in C.1 and C.2, above, shall be approved by the DOH. The forms of security provided pursuant to this Policy Addendum may include, at the option of the, contractor, surety bonding, collateral bonding (including cash and securities), letters of credit, establishment of an escrow account, self-bonding, or a combination of these methods.

D. DAMAGE:

Should damages attributable to the Facilities Owner/Operator activities occur on a secured road, the DOH shall contact the Facilities Owner/Operator to agree upon the appropriate method of repair:

1. The Facilities Owner/Operator repairs the roadway to the DOH standards and specifications;
2. DOH repairs the road with reimbursement by Facilities Owner/Operator; or
3. DOH seeks reimbursement from the pledged security.

E. RELEASE OF SECURITY:

Provided that the requirements of any Agreement executed in accordance with this Policy Addendum have been met, or, where no Agreement is required by this Policy Addendum and the condition of the Covered Roads at the conclusion of the Proposed Project is at least as good as before the commencement of the Proposed Project, normal wear and tear excepted, the DOH will promptly return the security upon written notice that the Facilities Owner/Operator has:

1. Completed the Proposed Project identified in the single project; or
2. Notified the DOH that all Proposed Projects under a blanket bond are complete and the Facilities Owner/Operator anticipates no further work under the blanket bond.

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The DOH reserves the right to pursue a Facilities Owner/Operator for damages attributable to the Facilities Owner/Operator's activities that exceed the bonded amount. The DOH further reserves the right to pursue the assistance of the Facilities Owner/Operator with regard to damages which can be attributed to the project on all routes. Said assistance may include the Facilities Owner/Operator repairing or assisting in the repair of any damages that can be identified as a result of the project.

F. MULTIPLE OPERATORS SHARING A COMMON ROADWAY

In the event that damages occur on a shared section of roadway, the DOH shall seek an equitable reimbursement from all persons whose contractors or activities have contributed to road damages. A determination of reimbursement levels shall take into consideration the number of trips/loads and associated weights attributable to each operation/activity and a credit shall be provided for any improvements funded by a Facilities Owner/Operator.

G. NIGHT TIME TRAVEL

Night time hauling of oversized loads may be authorized in writing by the State Highway Engineer in certain circumstances to improve traffic safety.

H. APPEAL PROCESS

Should the Facilities Owner/Operator and the district representative not reach agreement on the conditions to be stipulated in the Agreement or permit or on an equitable allocation under Sec. E, the operator may progressively appeal to:

1. District Engineer/Manager
3. Central Office Coordinator
4. State Highway Engineer
5. Commissioner of Highways

I. TERMINATION

This policy shall remain in effect until amended or modified.

PAM:Hb

**cc: AC, CH, LL, HD, HO, OM
Marvin Murphy
Kathy Holtsclaw
Gary Clayton**