pennsylvania
DEPARTMENT OF TRANSPORTATION

470-11-04

DATE: March 18, 2011

SUBJECT: Guidance on the Issuance of Utility Permits to Facility Owners

TO: District Executives
Attn: District Permit Managers

FROM: Daryl St. Clair, P.E., Acting Director
Bureau of Highway Safety and Traffic Engineering

This Strike-off Letter (SOL) provides further clarification on "who may execute applications" as defined in Chapter 459.3(b), Occupancy of Highways by Utilities (Utility Regulation). This policy is considered to be time-neutral, effective immediately, and supersedes SOL 470-10-10.

There has been a recent increase in the number of applications for utility permits by facility owners whose classification of whether they are in the business of providing utility service or not is unclear (for example, the marcellus shale natural gas industry). Accordingly, District Permit Managers should intitally review the requirements of Chapter 459 regarding applicants who are in the business of providing utility service and those who are not. The below guidance will be incorporated in Chapter 2 of Publucation 170, the HOP Manual, with the next update.

Utility facility applicants who are "in the business of providing utility service"

When a District is unsure of whether to classify an applicant as "in the business", Chapter 459.3(b)(1), or not, the Permit Manager shall consult with the Bureau of Highway Safety and Traffic Engineering. Generally, if the applicant's core business function is to provide, manufacture, produce, deliver, mine, transmit, gather, process, or distribute a consumer utility product (communications, power, electricity, light, heat, gas, oil, crude proects, 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), then that applicant qualifies as in the business of providing utility service.

Utility facility applicants who are "not in the business of providing utility service"

Where the District receives applications from a facility owner that does not qualify as being in the business of providing utility service under Chapter 459.3(b)(1) and the guidance above, Districts will use the following additional guidance to determine how to treat such utility applicants under Chapter 459.3(b)(2). This section of the regulation includes both mandatory

requirements and discretionary considerations. The District may determine the application with the minimum submission required, after considering the following:

1) Has the applicant demonstrated past practice of ability/capability of properly restoring the highway in accordance with Chapter 459 and Publication 408?
2) Has the Applicant demonstrated ability to respond timely under an EPC and to effectively and properly restore the pavement and/or shoulder?
3) Has or will the applicant be applying for a substantial number (approximately 25 or more) of utility permits annually?
4) Does the applicant qualify or has it established a monthly billing account?

Where the applicant has not demonstrated the ability to install facilities in compliance with Department regulations/policies, or most importantly, has not demonstrated the ability to respond to emergencies associated with their facilities in a timely and effective manner, the District should exercise all appropriate options in Chapter 459.3(b)(2) to preserve and assure proper maintenance and restoration of the State Highway Right-of-Way. Additionally, if a utility facility falls under §459.3(b)(2), the utility permit should be recorded in association with any driveway permit that is needed for access to service and maintain the facility.

For utilities that anticpate making several applications annually, the Permit Manager should recommend that the utility consider utilizing the monthly billing account program. This guidance will streamline the application process by eliminating the need to obtain and submit individual insurance and security for each application the utility applies.

Should you have any questions regarding this policy, please contact Glenn C. Rowe, P.E., Chief, Transportation Operations Division, at 717-787-2806.

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