

DATE: January 11, 2012

SUBJECT: PennDOT Storm Water Facility Policies & Guidebook

TO: District Executives

FROM: R. Scott Christie, P.E. /s/
Deputy Secretary for Highway Administration

This time neutral strike-off letter (SOL) replaces SOL # 470-10-03 dated June 24, 2010, and applies to Highway Occupancy Permits (HOP) issued after June 24, 2010. We are updating a number of Publications in order to use consistent terminology (i.e. use of the term “storm water” rather than “drainage”) and introducing the HOP Storm Water Facility Guidebook. This Guidebook (attached) assists in the installation or modification of storm water facilities during the HOP process and includes alternative storm water designs. It will be placed on PennDOT’s website under Highway Occupancy Permits and references the “Co-Applicant Agreement”, an example of which can also be accessed online.

Also attached are replacement sheets to be used to update existing publications. Please remove and destroy replaced sheets:

- Pub. 170, HOP Manual, Chapter 3.8, Construction of Sidewalk, Curb, or Storm Water Facilities, pp 2 through 3, 80 through 81, and 119.
- Pub. 282, HOP Guidelines, Chapter 3.7, Construction of Sidewalk, Curb, or Storm Water Facilities, pp 2 through 3, pg. 5, pp 64 and 65, pg. 91, and pg. 191.
- Pub. 23, Chapter 8.5, Storm Water Maintenance Responsibilities Concerning Municipalities, pp 8-i, 8-10 & 11, and Exhibit 7, Background for Storm Water Facilities Policy, pp 8-22 and 23.

Other chapters of Pub. 23 will be impacted by these terminology changes and will be revised through future updates.

It is vital that District HOP application reviewers continue to meet with applicants and their engineer before design begins, since the HOP policy requires a local government to be a co-applicant for certain types of permits. If the local government does not wish to be a co-applicant the use of alternative storm water designs should be considered. In such cases the private land owner would be the sole HOP applicant.

If you have any questions in regards to the attached policy, please contact Daryl St. Clair, P.E., Acting Director, Bureau of Highway Safety and Traffic Engineering, at (717) 787-7350.

Attachments

4700/DRS/hmq

CC: Pennsylvania State Association of Township Supervisors
Pennsylvania State Association of Boroughs
Pennsylvania State Association of Township Commissioners
Pennsylvania League of Cities and Municipalities
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determined will then serve as the basis for the remuneration requested from the property owner.

2. Drainage Structures. -- In order to conform to Title 23, Code of Federal Regulations (CFR), applicants for a permit may not be permitted to encroach or install structures on the right-of-way unless:
 - a. It is in the “public interest”, and
 - b. The encroachment will not impair the highway (as defined) or interfere with the safe and free flow of traffic and drainage.

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

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

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

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

Construction of Sidewalk, Curb, or Storm Water Facilities

Free Permits will be issued in the name of a local government for the construction or modification of sidewalk, curb or storm water facilities being installed at no additional cost or expense to PennDOT. Local governments are townships, cities, boroughs, incorporated towns, home rule municipalities, and counties. The Department may also issue a permit to an individual property owner for the construction of such structures within its property frontage limits provided the permit is recorded. A local government may impose additional requirements upon a property owner for the construction of curbs and sidewalks provided that they do not conflict with the Department's standards. *(See Chapter 5.1 – Storm Water Facility Maintenance – Responsibility for additional guidance on who shall apply for certain storm water facility modifications).*

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

Storm water facilities are to be designed and installed consistent with applicable provisions of Design Manual, Part 2, Chapter 2; the Maintenance Manual, Chapter 8.5; Publication 408 and Roadway Construction Standards RC-30M thru RC-46M. Also see Sections 417 and 421 of the State Highway Law.

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

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

If the proposed sidewalk, curb or storm water facilities would have an adverse effect on highway drainage or change the rate, volume, or quality of storm water runoff, the Permittee will be required to (1) construct all remedial storm water facilities, (2) assume all future maintenance obligations of the storm water facilities, and (3) record the permit.

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

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

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

Storm Water Facility Maintenance -- Responsibility

Authority. PennDOT has statutory authority to maintain adequate highway storm water (State Highway Law, 36 P.S. Section 670 - 417) and to regulate the use of State highways (State Highway Law, 36 P.S. Section 670 - 420; 67 Pa. Code Section 441.2). Refer to Chapter 8 of the Maintenance Manual for additional information related to maintenance responsibilities.

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

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

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

Of course, if a nonfunctioning pipe culvert is creating or has the potential to create a hazardous roadway condition, PennDOT may, after appropriate notice, take action to eliminate the hazard (and invoice the property owner for all costs under Program 612, using the applicable Object Codes). Under Regulation 441.10, PennDOT has the authority to remove, sever or block drainage structures constructed or altered without a permit or in violation of the regulations.

Where storm water structures (other than a pipe culvert under a minimum use driveway) are permitted in PennDOT right-of-way or are permitted to connect to PennDOT storm water facilities, the Permit shall state that the permittee is responsible for future maintenance of the storm water structures being installed (see Permit Condition Code #388). Permits that allow the above types of storm water facilities need to be recorded.

It is recommended that every new land development project be designed to retain the site development storm water runoff or a design that does not require storm water to be directed to the State highway right-of-way. However, this is not always possible and PennDOT is faced with site development storm water designs that are directing and discharging storm water toward and within the State highway right-of-way.

In addition, many municipalities, by ordinance, require, as part of the local land development process, the installation of curbing along the site frontage adjacent to a State highway. Often when curbing is introduced, there is a need to manage storm water via the installation of enclosed surface storm water facilities. PennDOT prefers the design of storm water systems through the use of open ditches and cross pipes which reduces the cost of highway projects and future maintenance.

New land development should be designed to ensure that the quantity and volume of storm water directed onto the State highway right-of-way is properly managed. PennDOT is not obligated to issue a highway occupancy permit for the use of its right-of-way for storm water purposes, but may do so in such situations within its discretion for economy of maintenance as well as supporting land development. Permits related to new land development may be issued to private applicants if for open surface storm water facilities. Permits for enclosed surface storm water facilities connecting to highway storm water facilities shall be issued to a local government or a local government and the private owner of the new land development as co-applicants. This policy applies to permits being issued after June 24, 2010. Exceptions may be granted from PennDOT's Central Office for land development plans approved before June 24, 2010. Condition Code #389 should be used if there is a private co-applicant. Permits for enclosed surface storm water facilities not connected to highway storm water facilities can be issued to public or private applicants if they can be defined as a utility facility under Pa Code, Title 67, Chapter 459. Local governments are townships, cities, boroughs, incorporated towns, home rule municipalities, and counties.

Additional guidance, broken into five different scenarios, indicating who the permit applicant shall be for a particular type of proposed storm water facility within PennDOT right-of-way is as follows:

1. **Storm water facilities draining or conveying drainage under a proposed driveway or local road.**
 - a. Permittee – driveway/local road applicant.
 - b. Examples – driveway pipes, culverts, ditches, swales and/or associated open and enclosed surface storm water facilities under or appurtenant to the driveway or local road that serve to drain the driveway or local road or convey drainage under the driveway or local road.

2. **Open Surface storm water facilities draining more than a proposed driveway or local road, whether connected to a highway storm water facility or not.**
 - a. Permittee – driveway/local road applicant.
 - b. Examples – ditches, curbing, swales and inlets servicing development of the land in general and typically not under or appurtenant to the driveway or local road.
 - c. Local government approval is required if a local ordinance addressing storm water exists. If a local ordinance does not exist, county government should be consulted to determine if there are any county imposed requirements for which approval must be obtained from the county. [As a matter of policy for local coordination purposes.]
 - d. PennDOT is not required to allow use of its right-of-way for this general land development storm water; but may do so within its discretion for economy of maintenance as well as supporting land development.

3. **Enclosed surface storm water facilities draining more than a proposed driveway or local road and physically or hydraulically connected to an existing or new highway storm water facility.**
 - a. Permittee – local government or local government and landowner as co-permittees. [The local government may pass responsibility onto landowner through land development process.]
 - b. Examples – pipes servicing development of the land in general and typically not under or appurtenant to the driveway or local road.
 - c. PennDOT is not required to allow the use of its right-of-way for this general land development storm water; but may do so within its discretion for economy of maintenance as well as supporting land development.
 - d. The following conditions shall be added to the permit if there is a private co-applicant (Condition Code #389):
 1. STORM WATER FACILITIES INSTALLED BY THIS PERMIT ARE THE PRIMARY RESPONSIBILITY OF THE LOCAL GOVERNMENT TO CONTINUALLY MAINTAIN OR REPLACE.
 2. LANDOWNER CO-PERMITTEE IS RESPONSIBLE FOR PROVIDING FUNDING TO THE LOCAL GOVERNMENT TO OFFSET FUTURE MAINTENANCE COSTS ASSOCIATED WITH THE PERMITTED STORM WATER FACILITY(IES).
 - e. Maintenance responsibilities under the permit only apply to the storm water facilities installed as part of the permit.
 - f. A local maintenance indemnity and funding agreement (co-applicant agreement) is recommended to be recorded so that the agreement will legally bind any subsequent owner of the property serviced by the facility.

- 4. New or modified enclosed surface storm water facilities draining the highway and/or adjacent properties.**
 - a. Permittee – local government or local government and landowner as co-permittees. [The local government may pass responsibility on to developer through land development process.]
 - b. Examples – enclosed surface storm water facilities created due to the installation of curbing along the highway. [This scenario is different from scenario three because the facility is draining the highway and/or adjacent properties rather than the landowner's property.]
 - c. PennDOT is not required to allow the use of its right-of-way for this general land development storm water; but may do so within its discretion for economy of maintenance as well as supporting land development.
 - d. The following conditions shall be added to the permit if there is a private co-applicant (Condition Code #389):
 1. STORM WATER FACILITIES INSTALLED BY THIS PERMIT ARE THE PRIMARY RESPONSIBILITY OF THE LOCAL GOVERNMENT TO CONTINUALLY MAINTAIN OR REPLACE.
 2. LANDOWNER CO-PERMITTEE IS RESPONSIBLE FOR PROVIDING FUNDING TO THE LOCAL GOVERNMENT TO OFFSET FUTURE MAINTENANCE COSTS ASSOCIATED WITH THE PERMITTED STORM WATER FACILITY(IES).
 - e. Maintenance responsibilities under the permit only apply to the storm water facilities installed as part of the permit.
 - f. A local maintenance indemnity and funding agreement (co-applicant agreement) is recommended to be recorded so that the agreement will legally bind any subsequent owner of the property serviced by the facility.

- 5. Enclosed storm water drainage facilities not connected to a highway storm water facility.**
 - a. Permittee – landowner or local government. [These are utility facilities under Pa Code, Title 67, Chapter 459.]
 - b. Examples – pipes servicing the development of the land in general that are independent of highway storm water facilities.
 - c. The system must be deemed to directly or indirectly serve the public or any part thereof. §459.1(definition of utility facility). [This is an easier determination if the permittee is the local government.]

The above scenarios have been developed in view of several circumstances: Section 421 of the State Highway Law, 36 P.S. § 670-421, which indicates: "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 constitutional right of access held by landowners abutting non-limited access highways; the public nature of local governments as well as their historic and statutory responsibility for storm water management within their geographic boundaries and their review and approval of land development plans, which frequently include storm water management; Pa Code, Title 67, Chapter 441 and

Chapter 459; and the Department's Maintenance Manual, Department Publication 23, Chapter 8.

Asset Management of Cross Pipes

Storm water maintenance responsibilities will be recorded in the Roadway Management System (RMS) along with other Systematic Techniques to Analyze and Manage Pennsylvania Pavements (STAMPP) inventory and condition data as defined in Publication 73, the Drainage Condition Survey Field Manual. Use a "0" for non-PennDOT maintained, and a "1" for PennDOT maintained cross pipes. This will allow the facility to be plotted on the straight-line-diagrams. Field data is expected to be available in the RMS database for input after January 2010.

New cross pipe information shall be provided to the District RMS Coordinator when other highway occupancy permit (HOP) pavement related data is provided through the Pavement History Update Policy implemented in March 2009. *Publication 282 Highway Occupancy Permit (HOP) Guidelines*

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

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

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

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

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

Construction of Sidewalk, Curb, or Storm Water Facilities

Free Permits will be issued in the name of a local government for the construction or modification of sidewalk, curb or storm water facilities being installed at no additional cost or expense to PennDOT. Local governments are townships, cities, boroughs, incorporated towns, home rule municipalities, and counties. The Department may also issue a permit to an individual property owner for the construction of such structures within its property frontage limits provided the permit is recorded. A local government may impose additional requirements upon a property owner for the construction of curbs and sidewalks provided that they do not conflict with the Department's standards. *(See Chapter 5.1 – Storm Water Facility Maintenance – Responsibility for additional guidance on who shall apply for certain storm water facility modifications).*

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

Storm water facilities are to be designed and installed consistent with applicable provisions of Design Manual, Part 2, Chapter 2; the Maintenance Manual, Chapter 8.5; Publication 408 and Roadway Construction Standards RC-30M thru RC-46M. Also see Sections 417 and 421 of the State Highway Law.

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

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

If the proposed sidewalk, curb or storm water facilities would have an adverse effect on highway storm water or change the rate, volume, or quality of storm water runoff, the Permittee will be required to (1) construct all remedial storm water facilities, (2) assume all future maintenance obligations of the storm water facilities, and (3) record the permit.

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

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

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

Turnpike Permits

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

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

Storm Water Facility Maintenance -- Responsibility

Authority. PennDOT has statutory authority to maintain adequate highway storm water (State Highway Law, 36 P.S. Section 670 - 417) and to regulate the use of State highways (State Highway Law, 36 P.S. Section 670 - 420; 67 Pa. Code Section 441.2). Refer to Chapter 8 of the Maintenance Manual for additional information related to maintenance responsibilities.

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

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

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

Of course, if a nonfunctioning pipe culvert is creating or has the potential to create a hazardous roadway condition, PennDOT may, after appropriate notice, take action to eliminate the hazard (and invoice the property owner for all costs under Program 612, using the applicable Object Codes). Under Regulation 441.10, PennDOT has the authority to remove, sever or block storm water structures constructed or altered without a permit or in violation of the regulations.

Where storm water structures (other than a pipe culvert under a minimum use driveway) are permitted in PennDOT right-of-way or are permitted to connect to PennDOT storm water facilities, the Permit shall state that the permittee is responsible for future maintenance of the storm water structures being installed (see Permit Condition Code #388). Permits that allow the above types of storm water facilities need to be recorded.

It is recommended that every new land development project be designed to retain the site development storm water runoff or a design that does not require storm water to be directed to the State highway right-of-way. However, this is not always possible and PennDOT is faced with site development storm water designs that are directing and discharging storm water toward and within the State highway right-of-way.

In addition, many municipalities, by ordinance, require, as part of the local land development process, the installation of curbing along the site frontage adjacent to a State highway. Often when curbing is introduced, there is a need to manage storm water via the installation of enclosed surface storm water facilities. PennDOT prefers the design of storm water systems through the use of open ditches and cross pipes which reduces the cost of highway projects and future maintenance.

New land development should be designed to ensure that the quantity and volume of storm water directed onto the State highway right-of-way is properly managed. PennDOT is not obligated to issue a highway occupancy permit for the use of its right-of-way for storm water purposes, but may do so in such situations within its discretion for economy of maintenance as well as supporting land development. Permits related to new land development may be issued to private applicants if for open surface storm water facilities. Permits for enclosed surface storm water facilities connecting to highway storm water facilities shall be issued to a local government or a local government and the private owner of the new land development as co-applicants. This policy applies to permits being issued after June 24, 2010. Exceptions may be granted from PennDOT's Central Office for land development plans approved before June 24, 2010. Condition Code #389 should be used if there is a private co-applicant. Permits for enclosed surface storm water facilities not connected to highway storm water facilities can be issued to public or private applicants if they can be defined as a utility facility under Pa Code, Title 67, Chapter 459. Local governments are townships, cities, boroughs incorporated towns, home rule municipalities, and counties

Additional guidance, broken into five different scenarios, indicating who the permit applicant shall be for a particular type of proposed storm water facility within PennDOT right-of-way is as follows:

- 1. Storm water facilities draining or conveying drainage under a proposed driveway or local road.**
 - a. Permittee – driveway/local road applicant.
 - b. Examples – driveway pipes, culverts, ditches, swales and/or associated open and enclosed surface storm water facilities under or appurtenant to the driveway or local road that serve to drain the driveway or local road or convey drainage under the driveway or local road.

- 2. Open Surface storm water facilities draining more than a proposed driveway or local road, whether connected to a highway storm water facility or not.**
 - a. Permittee – driveway/local road applicant.

- b. Examples – ditches, curbing, swales and inlets servicing development of the land in general and typically not under or appurtenant to the driveway or local road.
 - c. Local government approval is required if a local ordinance addressing storm water exists. If a local ordinance does not exist, county government should be consulted to determine if there are any county imposed requirements for which approval must be obtained from the county. [As a matter of policy for local coordination purposes.]
 - d. PennDOT is not required to allow use of its right-of-way for this general land development storm water; but may do so within its discretion for economy of maintenance as well as supporting land development.
- 3. Enclosed surface storm water facilities draining more than a proposed driveway or local road and physically or hydraulically connected to an existing or new highway storm water facility.**
- a. Permittee – local government or local government and landowner as co-permittees. [The local government may pass responsibility onto landowner through land development process.]
 - b. Examples – pipes servicing development of the land in general and typically not under or appurtenant to the driveway or local road.
 - c. PennDOT is not required to allow the use of its right-of-way for this general land development storm water; but may do so within its discretion for economy of maintenance as well as supporting land development.
 - d. The following conditions shall be added to the permit if there is a private co-applicant (Condition Code #389):
 - 1. STORM WATER FACILITIES INSTALLED BY THIS PERMIT ARE THE PRIMARY RESPONSIBILITY OF THE LOCAL GOVERNMENT TO CONTINUALLY MAINTAIN OR REPLACE.
 - 2. LANDOWNER CO-PERMITTEE IS RESPONSIBLE FOR PROVIDING FUNDING TO THE LOCAL GOVERNMENT TO OFFSET FUTURE MAINTENANCE COSTS ASSOCIATED WITH THE PERMITTED STORM WATER FACILITY(IES).
 - e. Maintenance responsibilities under the permit only apply to the storm water facilities installed as part of the permit.
 - f. A local maintenance indemnity and funding agreement (co-applicant agreement) is recommended to be recorded so that the agreement will legally bind any subsequent owner of the property serviced by the facility.
- 4. New or modified enclosed surface storm water facilities draining the highway and/or adjacent properties.**
- a. Permittee – local government or local government and landowner as co-permittees. [The local government may pass responsibility on to developer through land development process.]

- b. Examples – enclosed surface storm water facilities created due to the installation of curbing along the highway. [This scenario is different from scenario three because the facility is draining the highway and/or adjacent properties rather than the landowner's property.]
- c. PennDOT is not required to allow the use of its right-of-way for this general land development storm water; but may do so within its discretion for economy of maintenance as well as supporting land development.
- d. The following conditions shall be added to the permit if there is a private co-applicant (Condition Code #389):
 - 1. STORM WATER FACILITIES INSTALLED BY THIS PERMIT ARE THE PRIMARY RESPONSIBILITY OF THE LOCAL GOVERNMENT TO CONTINUALLY MAINTAIN OR REPLACE.
 - 2. LANDOWNER CO-PERMITTEE IS RESPONSIBLE FOR PROVIDING FUNDING TO THE LOCAL GOVERNMENT TO OFFSET FUTURE MAINTENANCE COSTS ASSOCIATED WITH THE PERMITTED STORM WATER FACILITY(IES).
- e. Maintenance responsibilities under the permit only apply to the drainage facilities installed as part of the permit.
- f. A local maintenance indemnity and funding agreement (co-applicant agreement) is recommended to be recorded so that the agreement will legally bind any subsequent owner of the property serviced by the facility.

5. Enclosed surface storm water facilities not connected to a highway drainage facility.

- a. Permittee – landowner or local government. [These are utility facilities under Pa Code, Title 67, Chapter 459.]
- b. Examples – pipes servicing the development of the land in general that are independent of highway storm water facilities.
- c. The system must be deemed to directly or indirectly serve the public or any part thereof. §459.1(definition of utility facility). [This is an easier determination if the permittee is the local government.]

The above scenarios have been developed in view of several circumstances: Section 421 of the State Highway Law, 36 P.S. § 670-421, which indicates: “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 constitutional right of access held by landowners abutting non-limited access highways; the public nature of local governments as well as their historic and statutory responsibility for storm water management within their geographic boundaries and their review and approval of land development plans, which frequently include storm water management; Pa Code, Title 67, Chapter 441 and Chapter 459; and the Department’s Maintenance Manual, Department Publication 23, Chapter 8.

Asset Management of Cross Pipes

Storm water maintenance responsibilities will be recorded in the Roadway Management System (RMS) along with other Systematic Techniques to Analyze and Manage Pennsylvania Pavements (STAMPP) inventory and condition data as defined in Publication 73, the Drainage Condition Survey Field Manual. Use a "0" for non-PennDOT maintained, and a "1" for PennDOT maintained cross pipes. This will allow the facility to be plotted on the straight-line-diagrams. Field data is expected to be available in the RMS database for input after January 2010.

New cross pipe information shall be provided to the District RMS Coordinator when other highway occupancy permit (HOP) pavement related data is provided through the Pavement History Update Policy implemented in March 2009. *Publication 282 Highway Occupancy Permit (HOP) Guidelines*

APPENDIX “B” SERIES

APPENDIX B -- Recommended HOP Application Process

APPENDIX B1 -- HOP Project Scoping Meeting Checklist

APPENDIX B2 -- TIS Scoping Meeting Criteria

APPENDIX B3 -- TIS Scoping Meeting Checklist

APPENDIX B4 -- HOP Storm Water Facility Guidebook