

DATE: April 15, 2013

SUBJECT: HOP Security Requirements

TO: District Executives

FROM: Charles C. Goodhart, Director /s/ by *Stephen J. Grimme*
Bureau of Maintenance and Operations

Security requirements for projects in PennDOT's Highway Occupancy Permit (HOP) program are being updated. This Strike-off Letter (SOL) is intended to update SOL 470-09-1, issued January 23, 2009 and change Department policy in Publications 170 and 282, as well as revise Department form M-950 L (Letter of Credit). This SOL is time and cost neutral.

Municipal Security. If security is contemplated as part of a municipally initiated driveway or local road permit being issued to that municipality, the Department will waive the required letter of credit (Form M-950 L), individual bond (Form M-950 K), or escrow agreement when the municipality already has other acceptable security in place. To ensure the work is secured, the following condition shall be placed on the permit: "The municipality will obtain security adequate to ensure completion of the permitted work prior to the start of work in Department right of way consistent with 36 P.S. §670-420 and 67 Pa. Code §441.6 Damage to highway." This permit condition is now available for selection in the ePermitting System as condition code #314.

Third-party letters of credit. For all driveway or local road permits requiring security, the letter of credit (Form M-950 L) may be provided by a third party who is not the permit applicant or property owner if permit work and regulatory requirements during the permitted construction period and damage, restoration and maintenance for two years after completion of the work will be secured. The Department form M-950 L (Letter of Credit) has been modified to allow third party letters of credit.

These changes are effective immediately, and Publications 170 and 282 have been revised to include these changes. The following sheets are to be used to update the existing Publications. Please place in the Publications:

- Pub. 170, HOP Manual, Chapter 3.7, pp 67-69A (replaces pp 67-69)
- Pub. 170, HOP Manual, Chapter 8.1, pp 240-240A (replaced pp 240)
- Pub. 282, HOP Guidelines, Chapter 3.6, pp 51-53A (replaces pp 51-53)
- Pub. 282, HOP Guidelines, Chapter 8.1, pp 176-176A (replaces pp 176)

Also, attached is the following:

- Revised form M-950 L – Letter of Credit

Should you have any questions, please contact, Glenn Rowe, P.E., Chief, Traffic Engineering and Permits Section, at 717-783-6479.

Attachments

4940/TJJ/hmq

cc: Pennsylvania State Association of Boroughs
Pennsylvania State Association of Township Supervisors
Pennsylvania State Association of Township Commissioners
Pennsylvania Municipal League
Timothy Scanolon, P.E., Turnpike Traffic Engineer, Turnpike Commission
Assistant District Executives – Construction
Assistant District Executives – Design
Assistant District Executives – Maintenance
Scott Fletcher, P.E., Assistant District Executive – Services, Engineering District 6-0
District Permit Managers
District Traffic Engineers
Bryan Kendro, Director, Policy Office
William Cressler, Chief Counsel, Office of Chief Counsel
Thomas Haist, Assistant Chief Counsel, Office of Chief Counsel
Charles C. Goodhart, Director, BOMO
George Mcauley, P.E., Acting Director, BOPD
BOMO Division Chiefs
Jeff Roback, Field Operations and Special Projects, Municipal Services
Michael Dzurko, HOP Program Manager, BOMO
HOP Read File

3.7 -- ADDITIONAL HOP APPLICATION REQUIREMENTS

In addition to a properly completed application, certain circumstances may require the submission of additional forms or information as discussed below.

Security

- A. Utility Security. Consistent with Section 420(b) of the State Highway Law, the Department is authorized to require security for Highway Occupancy Permits, provided the amount of highway restoration security required for surface opening(s) is based upon highway restoration costs. The computation sheet for highway restoration security (Form M-945 J) should be used by District staff (not the applicant) as a guide for establishing a minimum security amount, adjusted for inflation. Place the completed form in the District Office Permit file for future reference. Security for surface opening(s) shall cover a period not in excess of two years from the Department's acknowledgment of completion of the work.

Following are guidelines for determining when to consider security on surface opening permits:

1. The permittee will be authorized to perform a substantial amount of work in the right of way. See 67 Pa. Code § 459.5(b).
2. Work involving a subsurface facility in limited access highway right-of-way.
3. Work involving trench openings of more than 500 feet in the pavement and/or shoulder of a non-limited access highway.
4. Work involving a situation which requires extreme care, as determined by the Department.
5. When backfill (other than flowable fill) is placed outside shoulders in layers more than eight inches in depth. See 67 Pa. Code § 459.8(g)(3)(ii).
6. In the case of a facility owner who is not in the business of providing utility service. See 67 Pa. Code §§ 459.3(b)(2)(i)(C), (D), and (E). (reference Regulation 459.3(b)(2)).
7. Where a permittee has requested a modification of conditions. See 67 Pa. Code § 459.12(b)(2). Work authorized under Regulation 459.12 (relating to modification of conditions).

The following security options are acceptable for utility permits:

1. Irrevocable Letter of Credit --Use of Form M-945 L is preferred. If the issuer requires use of their letterhead, then the letter of credit must contain all the information as shown on Department Form M-945 L. A letter of credit may be issued by either a Pennsylvania or a non-Pennsylvania bank. Letters of credit issued outside the United States are not acceptable.
2. Individual or "blanket" Bond --Form M-945 K.
3. Assignment of Cause of Action --Form M-945 M.
4. Escrow Agreement: There is no standard form required because escrow agreements are drafted on a case-by-case basis. If a permittee proposes, and the District allows, an escrow agreement, advance arrangements must be made to allow sufficient time

for the proposed escrow agreement to be drafted, executed, and approved as to legality and form (when the Commonwealth is a party to, and executes, the agreement) by the Office of Chief Counsel, the Comptroller, the Office of General Counsel, and the Office of Attorney General. Approximately six weeks is necessary for approval as to form and legality.

- B. Access Security. Section 420 of the State Highway Law (36 P.S. § 670-420) authorizes the Department to condition issuance of driveway and local road highway occupancy permits on the posting of appropriate security. The State Highway Law does not impose a two-year limit on security for other than "surface openings". However, the duration of all permit security should be two years after the Department's acknowledgment of completion of highway occupancy permit work unless special circumstances dictate otherwise. Security amounts must be based on the Department's anticipated cost to complete construction or to modify unpermitted construction. Such costs may include anticipated inspection costs, inflation, and attorney's fees.

Following are guidelines for determining when to consider security on an access permit:

1. Work involving inspection on a more than spot inspection basis. *See* 67 Pa. Code § 441.4(d).
2. Work involving auxiliary lanes (e.g., acceleration, deceleration, left turn standby) or additional thru-lanes.
3. Substantial work requiring an agreement. *See* 67 Pa. Code § 441.5(f).
4. Substantial work requiring a highway occupancy permit condition statement.
5. Work involving a situation which requires extreme care as determined by the Department (e.g., work involving a design waiver).

Note: Do not require security on minimum use driveways without the prior approval of the Bureau of Maintenance and Operations (BOMO) Director.

Acceptable forms of security for access permits are:

1. Irrevocable Letter of Credit (Form M-950L): A letter of credit is required absent compelling reasons. Compelling reasons include, but are not limited to the following:
 - a) Prior permit work history with the permittee - If a permittee has a substantially proven track record of being reliable in completing their HOP obligations on projects of similar size and scope.
 - b) Size and scope of the project - If the project is larger than normal or affects a major section of the highway and therefore has significant costs.
 - c) Impact of the offsite improvements - If it can be determined that the proposed offsite improvements, if not completed by permittee, pose low risk to the safety of the traveling public if not addressed immediately.
 - d) A pre-existing blanket bond - If the applicant/permittee currently has a blanket bond enough to fulfill the cost of the proposed construction improvements.

The District Executive or his designee will make the determination on whether to accept another form of security. Letters of credit are required because they are a safer and easier form of security in that the Department may go directly to the bank, present the letter of credit, and collect the funds without going through an insurance company or initiating a legal action. A letter of credit may be issued by either a Pennsylvania or a non-Pennsylvania bank. Districts may no longer require a letter of credit be issued or confirmed by a Pennsylvania bank. Issuing banks may not change the language of Form M-950L; however, they may retype the form on their own letterhead and they may rearrange the wording. The Office of Chief Counsel is available for consultation on changes to Form M-950L.

The letter of credit (Form M-950 L) may be provided by a third party who is not the permit applicant or the property if permit work and regulatory requirements during the permitted construction period and damage, restoration and maintenance for two years after completion of the work will be secured.

2. Individual or "blanket" Bond: Use of Form M-950K or M-950KI is required when a bond is acceptable security. The form may not be changed, and the permittee must be the obligee under the bond. The minimum amount required for a blanket bond is \$500,000. All blanket bonds must be pre-approved by Central Office Permits.
 3. Escrow Agreement: There is no standard form required because escrow agreements are drafted on a case-by-case basis. If a permittee proposes, and the District allows, an escrow agreement, advance arrangements must be made to allow sufficient time for the proposed escrow agreement to be drafted, executed, and approved as to legality and form (when the Commonwealth is a party to, and executes, the agreement) by the Office of Chief Counsel, the Comptroller, the Office of General Counsel, and the Office of Attorney General. Approximately six weeks is necessary for approval as to form and legality.
- C. The regulations specify that security (when required) be obtained as a prerequisite to issuance of a highway occupancy permit. The Department may, upon written request demonstrating good cause, allow security to be submitted subsequent to issuance of the highway occupancy permit, provided the security is received at least thirty (30) days prior to the start of work. See Permit Condition Code #315. Advise applicants who submit substitute security (e.g., escrow) that work under the highway occupancy permit can not begin until their security is approved as to form and legality by the Office of Chief Counsel.

Security is not normally necessary for PA State Agencies or Federal Agencies, because the level of risk posed by these Agencies does not warrant security.

If security is contemplated as part of a municipally-initiated driveway or local road permit being issued to that Municipality (e.g. traffic signal project, intersection improvement project), the Department will waive the security requirement so long as the municipality already has other acceptable security in place. To ensure work is secured, the following condition shall be placed on the permit: "The municipality will obtain security adequate to ensure completion of the permitted work

prior to the start of work in Department right of way consistent with 36 P.S. §670-420 and 67 Pa. Code §441.6 Damage to highway." See Permit Condition Code #314.

Districts may submit letters of credit or individual bonds for review as to form and legality using the Legal Agreement Tracking System (LATS); however, such review is not required unless there are changes to standard language.

District staff should not refer applicants to Central Office or the Office of Chief Counsel (directly or indirectly) concerning the status of applications or security documents submitted for review during the preceding two weeks.

The best means of assuring a timely and favorable review by Central Office and/or the Office of Chief Counsel is for both the applicant and the District Office to ensure all documents are complete and accurate prior to submission.

Irrevocable Letter of Credit (Access); Form M-950 LPurpose

This form is the required form of security to be used statewide when security is required pursuant to Chapter 441. This form may be retyped on the issuer's (bank's) letterhead if text is not modified.

Preparation

This form is to be prepared by the issuer.

The Letter of Credit (LOC) should not be issued until the Department is in a position to issue the highway occupancy permit.

1. Agreement Number is assigned by the District Office using the standard 6-digit number D.D.C.Y.N.N. where DD = District, C = County, Y = last number of current year, NN = sequential number of security documents in that County for current year (01-99).
2. Federal ID Number: LOC Applicant's Federal Identification Number.
3. Issuing Bank's Name: Name of issuer.
4. Issuing Bank's Address: Issuer's complete mailing address.
5. Applicant's Name: Name of LOC Applicant.
6. Applicant's Address: LOC Applicant's complete mailing address.
7. Issue Date: Date LOC is issued by issuer.
8. Irrevocable LOC No.: Number assigned by the issuer.
9. Expiry Date: Three years after issuance of the HOP if permit has been issued or three years after LOC issuance date unless otherwise directed by the Department.
10. Beneficiary: Engineering District organization number (e.g., 7-0) and mailing address.
11. Department Permit No.: 8-digit HOP number if HOP is issued; otherwise leave blank.
12. Department Application No.: 6-digit HOP application number.
13. HOP Applicant Name: If the HOP applicant/permittee differs from the LOC applicant, indicate so here. Otherwise, this should be marked "N/A."
14. Irrevocable LOC number (assigned by the issuer).
15. Complete address where the demand letter (Exhibit A) may be presented for collection.
16. Numerical amount of security as determined by the District.
17. Written amount of required security.
18. Expiry date which is three years after issuance of the HOP if permit has been issued or three years after LOC issuance date unless otherwise directed by the Department.
19. Typically 80% reduction unless otherwise directed by the Department.
20. Numerical amount equivalent to the percentage the LOC is being reduced.
21. The signatures must comply with the Signature Authority Guidelines found in Appendix F of the Right of Way Manual.

Exhibit A is a part of the LOC and must be included with the security document (Exhibit A is used only to demand payment from the issuer).

Districts may submit letters of credit to BOMO and the Office of Chief Counsel for review as to form and legality. However, such review is not required unless there is a change to the standard language.

District Permit staff will review submitted security for completeness and accuracy before forwarding the original to the Office of Chief Counsel using the Legal Agreement Tracking System (LATS). Instructions for registering and using LATS can be found here:
<http://dot.state.pa.us/pennidot/ChiefCounsel/ccpcspc.nsf>

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- C. The regulations specify that security (when required) be obtained as a prerequisite to issuance of a highway occupancy permit. The Department may, upon written request demonstrating good cause, allow security to be submitted subsequent to issuance of the highway occupancy permit, provided the security is received at least thirty (30) days prior to the start of work. See Permit Condition Code #315. Advise applicants who submit substitute security (e.g., escrow) that work under the highway occupancy permit can not begin until their security is approved as to form and legality by the Office of Chief Counsel.

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If security is contemplated as part of a municipally-initiated driveway or local road permit being issued to that Municipality (e.g. traffic signal project, intersection improvement project), the Department will waive the security requirement so long as the municipality already has other acceptable security in place. To ensure work is secured, the following condition shall be placed on the permit: 'The municipality will obtain security adequate to ensure completion of the permitted work

prior to the start of work in Department right of way consistent with 36 P.S. §670-420 and 67 Pa. Code §441.6 Damage to highway." See Permit Condition Code #314.

Districts may submit letters of credit or individual bonds for review as to form and legality using the Legal Agreement Tracking System (LATS); however, such review is not required unless there are changes to standard language.

District staff should not refer applicants to Central Office or the Office of Chief Counsel (directly or indirectly) concerning the status of applications or security documents submitted for review during the preceding two weeks.

The best means of assuring a timely and favorable review by Central Office and/or the Office of Chief Counsel is for both the applicant and the District Office to ensure all documents are complete and accurate prior to submission.

Irrevocable Letter of Credit (Access); Form M-950 LPurpose

This form is the required form of security to be used statewide when security is required pursuant to Chapter 441. This form may be retyped on the issuer's (bank's) letterhead if text is not modified.

Preparation

This form is to be prepared by the issuer.

The Letter of Credit (LOC) should not be issued until the Department is in a position to issue the highway occupancy permit.

1. Agreement Number is assigned by the District Office using the standard 6-digit number D.D.C.Y.N.N. where DD = District, C = County, Y = last number of current year, NN = sequential number of security documents in that County for current year (01-99).
2. Federal ID Number: LOC Applicant's Federal Identification Number.
3. Issuing Bank's Name: Name of issuer.
4. Issuing Bank's Address: Issuer's complete mailing address.
5. Applicant's Name: Name of LOC Applicant.
6. Applicant's Address: LOC Applicant's complete mailing address.
7. Issue Date: Date LOC is issued by issuer.
8. Irrevocable LOC No.: Number assigned by the issuer.
9. Expiry Date: Three years after issuance of the HOP if permit has been issued or three years after LOC issuance date unless otherwise directed by the Department.
10. Beneficiary: Engineering District organization number (e.g., 7-0) and mailing address.
11. Department Permit No.: 8-digit HOP number if HOP is issued; otherwise leave blank.
12. Department Application No.: 6-digit HOP application number.
13. HOP Applicant Name: If the HOP applicant/permittee differs from the LOC applicant, indicate so here. Otherwise, this should be marked "N/A."
14. Irrevocable LOC number (assigned by the issuer).
15. Complete address where the demand letter (Exhibit A) may be presented for collection.
16. Numerical amount of security as determined by the District.
17. Written amount of required security.
18. Expiry date which is three years after issuance of the HOP if permit has been issued or three years after LOC issuance date unless otherwise directed by the Department.
19. Typically 80% reduction unless otherwise directed by the Department.
20. Numerical amount equivalent to the percentage the LOC is being reduced.
21. The signatures must comply with the Signature Authority Guidelines found in Appendix F of the Right of Way Manual.

Exhibit A is a part of the LOC and must be included with the security document (Exhibit A is used only to demand payment from the issuer).

Districts may submit letters of credit to BOMO and the Office of Chief Counsel for review as to form and legality. However, such review is not required unless there is a change to the standard language.

District Permit staff will review submitted security for completeness and accuracy before forwarding the original to the Office of Chief Counsel using the Legal Agreement Tracking System (LATS). Instructions for registering and using LATS can be found here:
<http://dot.state.pa.us/pennodot/ChiefCounsel/ccpcspc.nsf>

Instructions on Completing Form M-950 L

This form is to be prepared by the issuer.

The Letter of Credit (LOC) should not be issued until the Department is in a position to issue the highway occupancy permit.

1. Agreement Number is assigned by the District Office using the standard 6-digit number D.D.C.Y.N.N. where DD = District, C = County, Y = last number of current year, NN = sequential number of security documents in that County for current year (01-99).
2. Federal ID Number: LOC Applicant's Federal Identification Number.
3. Issuing Bank's Name: Name of issuer.
4. Issuing Bank's Address: Issuer's complete mailing address.
5. Applicant's Name: Name of LOC Applicant.
6. Applicant's Address: LOC Applicant's complete mailing address.
7. Issue Date: Date LOC is issued by issuer.
8. Irrevocable No.: Number assigned by the issuer.
9. Expiry Date: Three (3) years after issuance of the HOP if permit has been issued or three (3) years after LOC issuance date unless otherwise directed by the Department.
10. Beneficiary: Engineering District organization number (e.g., 7-0) and mailing address.
11. Department Permit No.: 8-digit HOP number if HOP is issued; otherwise leave blank.
12. Department Application No.: 6-digit HOP application number.
13. HOP Applicant Name: If the HOP applicant/permittee differs from the LOC applicant, indicate so here. Otherwise, mark "N/A."
14. Irrevocable LOC number (assigned by the issuer).
15. Complete address where the demand letter (Exhibit A) may be presented for collection.
16. Numerical amount of security as determined by the District.
17. Written amount of required security.
18. Expiry date which is three (3) years after issuance of the HOP if permit has been issued or three (3) years after LOC issuance date unless otherwise directed by the Department.
19. Typically 80% reduction unless otherwise directed by the Department.
20. Numerical amount equivalent to the percentage the LOC is being reduced.
21. The signatures must comply with the Signature Authority Guidelines found in Appendix F of the Right of Way Manual.

Exhibit A is a part of the LOC and must be included with the security document (Exhibit A is used only to demand payment from the issuer).

Agreement No.: _____
(PennDOT Issuing Permit Office)

Federal ID No.: _____

(Issuing Bank's Name) (Letter of Credit Applicant's Name)

(Issuing Bank's Address) (Letter of Credit Applicant's Address)

Issue Date: _____
Irrevocable Letter of Credit No.: _____

Expiry Date: _____

Beneficiary: Commonwealth of Pennsylvania
Department of Transportation
Engineering District ____-0

PennDOT Highway Occupancy Permit (HOP) No.: _____
PennDOT HOP Application No.: _____
HOP Applicant/Permittee Name
(If different from Letter of Credit Applicant): _____

Gentlemen:

We hereby open our Irrevocable Letter of Credit No. _____ in your favor for the account of the above-named Letter of Credit applicant and authorize you to draw on us at our office located at _____ up to _____ an aggregate amount of _____ US\$

(_____) by presentment of:

1. Your written demand to pay on sight and in a form substantially similar to Exhibit A hereof

AND

2. The original of this Irrevocable Letter of Credit and any amendments thereto.

This Letter of Credit is non-transferable. Partial drawings are permitted.

This Letter of Credit shall remain in effect until _____, provided, however, that this Letter of Credit shall be automatically and annually extended without amendment for 1 (one) year from the present or any future expiration date thereof, unless at least 60 (sixty) days prior to any such expiration date the Issuer provides written notice to the Department of Transportation, at the above address, of its decision not to renew this Letter of Credit for such additional 1 (one) year period. Upon receipt of such notice, the Department of Transportation may immediately draw upon this Letter of Credit for the full amount remaining. The notice required hereunder will be deemed to have been given when received by you.

This Letter of Credit may be reduced by _____%, to US\$ _____, upon receipt by the Issuer of the Department of Transportation's written acknowledgement that all work authorized under the referenced Highway Occupancy Permit, and any supplements thereto, is completed and accepted and that the Letter of Credit may be reduced.

This Letter of Credit is subject to, and governed by, the laws of the Commonwealth of Pennsylvania and International Standby Practices (ISP 98). The issuer hereby agrees it is subject to the jurisdiction of the courts of the Commonwealth of Pennsylvania.

Issuing Officer

EXHIBIT A

Demand for payment under Irrevocable Letter of Credit No. _____

Re: Letter of Credit issued on _____ by _____
(Date) (Issuer)
in the original amount of \$ _____ to Commonwealth of Pennsylvania,
(Dollars)
Department of Transportation, for account of _____
(Letter of Credit Applicant)

Gentlemen:

Please pay, upon sight hereof, the amount of \$ _____ for account of the
above Letter of Credit.

We certify that (1) the above amount is properly and legally due to the Commonwealth
by the Letter of Credit Applicant; (2) the amount previously drawn is
\$ _____, and (3) after payment hereof, the balance available under the Letter
of Credit is \$ _____.

Commonwealth of Pennsylvania
Department of Transportation

BY _____
(District Executive)