



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

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Charleston, West Virginia 25305-0430 • (304) 558-3505

Thomas J. Smith, P. E.
Secretary of Transportation/
Commissioner of Highways

October 1, 2018

MEMORANDUM

TO: ALL DISTRICT ENGINEERS/MANAGERS

**FROM: THOMAS J. SMITH, P. E.
SECRETARY OF TRANSPORTATION/
COMMISSIONER OF HIGHWAYS**

A handwritten signature in blue ink, appearing to read "Thomas J. Smith".

SUBJECT: UPDATED OIL AND GAS ROAD POLICY

The Division of Highways (DOH) recognizes a need to further develop the scope of its Oil and Gas Road Policy (Policy) on vertical and horizontal drilling operations, transmission and production pipeline and compressor station operations, storage and injection wells, and well abandonments that are anticipated to have significant impacts on State roadways. This policy also includes smaller oil and gas development operations which may have significantly less potential to impact the conditions of local roadways. The DOH must ensure continued maintenance of the State's local roadways in light of the additional road traffic consequent to these oil and gas development operations.

This policy supersedes all previous oil and gas road policies and addenda currently in effect.

A. GENERAL:

1. The requirements set forth in this Policy shall apply to oil and gas operators as defined in WV Code §22-6-1(z).
2. This Policy, as it pertains to transmission and production pipeline and compressor operations, shall be limited to oil and gas companies engaged in the development and constructing of gathering lines, facilities, midstream gas transmission infrastructure or compression facilities; shall not supersede an existing pipeline's integrity management program; and subsequently shall not preference existing pipeline systems in comparison to future development.

MEMORANDUM - OIL AND GAS ROAD POLICY

October 1, 2018

Page 2

- 3. This policy does not prevent the Facility Owner/Operator (“Operator”) from performing routine maintenance. In an emergency situation, the Operator shall notify the DOH as soon as is reasonably possible.**
- 4. This Policy, as it pertains to vertical and horizontal drilling operations, storage and injection wells, and well abandonments broken into wells that are utilized for drilling, stimulation activities, injection and/or storage of 5,000 or more barrels of liquids, and those that utilize less than 5,000 barrels, shall be identified as beginning with the onset of site preparation and concluding with the completion of well fracturing and reclamation at a site. Where more than one well is drilled at a site within a period of 12 months, the project will conclude with the completion of well fracturing for the last well, and no additional wells are scheduled to be drilled or fractured for a period of at least 12 months. For ultimate project completion, site reclamation must be coordinated with and approved by the applicable regulatory agencies.**
- 5. 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/XX, hereafter referred to as “Covered Roads.” Highways that carry an Interstate, WV, US or corridor system designation are not Covered Roads and are not to be included in determining bonding amounts. Terms and conditions of bonding Covered Roads will be defined in Road Maintenance Agreement. Should these routes incur damages from the additional traffic loads by oil and gas operations, the Operator’s responsibility will be evaluated on a case-by-case basis. The determination of whether the routes incurred additional damage from an Operator’s traffic loads, as a result of oil and gas operations will be in the sole discretion of the DOH.**
- 6. Permits for oversized/overweight vehicles are not subject to the conditions of this Policy and shall be handled through normal DOH procedures, as identified in WV Code §17C-17 and legislative rules.**
- 7. 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, drilling operations, compressor station installation, well fracturing operations, injection and/or storage well operations and also due to the increased temporary use of the Covered Roads by the high volume of construction vehicles.**
 - b. “Closed Roads” are county roadways which are still a part of the state highway system but are no longer maintained by the DOH or are intended to be open to traffic. If you are unsure if a road falls under this definition, contact the District Maintenance Engineer or his/her designee.**

MEMORANDUM - OIL AND GAS ROAD POLICY

October 1, 2018

Page 3

- c. **“Gas and Oil Wells”** means wells drilled for the purpose of extracting natural gas and/or oil. **“Shallow Well”** means any gas well, other than a coalbed methane well, drilled no deeper than one hundred feet below the top of the **“Onondaga Group.”** **“Deep Well”** means any well other than a shallow well or coalbed methane well, drilled to a formation below the top of the uppermost member of the **“Onondaga Group.”** **“Well”** means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. **“Well work”** means the drilling, redrilling, deepening, stimulating, pressuring by injection of any fluid, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another or plugging or replugging of any well. **“Well Operator”** or **“Operator”** means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined, as those terms are defined in WV Code §22-6-1(g), (j), (k), (t), (x), (y) and (z).
- d. **“Required Major Improvements”** are those modifications to Covered Roads that are necessitated by the increase in count and type of traffic anticipated for a Proposed Project and may include, but are not limited to sight distance improvements, signage and/or traffic control, signalization, road widening, construction of new roadways and acquisition of rights of way; provided said modification shall be limited to those improvements deemed necessary to maintain the roadway in a condition as good as before commencement of the Proposed Project. If appropriate, the Operator may enter into a Project-Specific Agreement in order to provide clear travel, via a separate bond. Subject to considering information provided by an Operator, the DOH shall have sole discretion to fully define the Required Major Improvements, as well as the Project-Specific Agreement.
- e. **“Restrictions”** are requirements directed at the protection of the traveling public including, but not limited to, pilot cars, hours of operation, etc.
- f. **“Proposed Project”** is the planned work to be completed by the Operator within and, in some cases, adjacent to DOH right of way.
- g. **“Project-Specific Agreement”** is an agreement between DOH and one or multiple Operators that defines a scope and terms of a Proposed Project. A Project-Specific Agreement is needed when the scope of work of a Proposed Project goes beyond maintenance activities and/or the DOH is to receive funding from a company(s) to perform a scope of work. The need for additional bonding to cover the Proposed Project’s

MEMORANDUM - OIL AND GAS ROAD POLICY

October 1, 2018

Page 4

scope of work will be discussed before the Project-Specific Agreement is finalized and will be evaluated on a case by case basis. Engineered plans will be required and approved by the District Engineer/Manager or his/her designee before any Proposed Project may proceed with planned work. A signed Permit document will be issued, once the Project Specific Agreement is finalized, as the official notice to proceed on the Proposed Project.

- h. “Road Maintenance Agreement” is an oil and gas bonding agreement which defines the Operator’s and DOH’s responsibility as it pertains to the bonding and maintenance requirements of the Covered Roads and/or hauling routes for a Proposed Project.
- i. “Oil and Gas Data Sheet” is a form provided by the DOH for the purpose of submitting the details of the Proposed Project needed to begin the permitting process. This sheet can be found at <https://transportation.wv.gov/highways/maintenance/Pages/Oil-and-Gas-Permits.aspx> or you may contact the local District Permits Office to obtain a copy.
- j. “Permit” is the approved and signed MM-109 document used to allow an Operator to work within DOH right of way. Scope of work under this document can include Maintenance Activities including repairs of damages caused by, or access to a Proposed Project. Each Permit is bonded based on the criteria found in Section C.
- k. “Maintenance Activities” as defined by DOH can be found within our Maintenance Management System - Performance Standard manual located at <https://transportation.wv.gov/highways/maintenance/Pages/Oil-and-Gas-Permits.aspx>.
- l. “Application” is the form of written notice provided to DOH by the Operator detailing the information needed to complete an approved Permit. Application should include, but may not be limited to the following items:

 - i. Oil and Gas Data Sheet
 - ii. Photos in each of the 4 directions
 - iii. Haul route map showing Covered Roads
 - iv. Plans for Proposed Project to include plan, profile and cross-sectional views as needed
 - v. Pipe calculations for uncased pipe crossing
 - vi. Method of repair plan for DOH route pipe crossings
 - vii. Traffic Control plans
 - viii. Overview map (optional)

MEMORANDUM - OIL AND GAS ROAD POLICY

October 1, 2018

Page 5

B. PERMIT AND/OR AGREEMENT APPLICATION REQUIREMENTS:

- 1. The Operator shall provide Application to the appropriate District Engineer/Manager or his/her designee of its intent to engage in a Proposed Project covered by this Policy at a location within the subject district. The Application shall include the exact location of the Proposed Project along with the proposed routes to be used by the Operator or the Operator's contractor. The Operator shall submit an Oil and Gas Data Sheet with this required information. Proposed routes may be revised during project construction or operations by a written request from the Operator, however, no routes shall be changed until approved in writing by the DOH. These proposed routes are the Covered Roads and may be changed by the DOH, even without written request from Operator, if DOH routes are being used for the Proposed Project.**
- 2. After the receipt of the Application provided, pursuant to B.1 above, the District Engineer/Manager or his/her designee may determine the need to conduct an on-site meeting with the Operator, or his/her appointed representative, to determine if the proposed routes are designed to meet the requirements of both the Operator and the DOH and/or to discuss the scope of the Proposed Project.**
- 3. If the Operator's proposed route is a "closed road" or contains a "closed road" within the route, the Operator shall be solely responsible for all costs associated with re-opening the road to meet the requirements of both the Operator and the DOH. The determination of whether the road meets DOH requirements will be solely within the discretion of the DOH. The Operator shall be solely responsible for all maintenance activities, including all "CORE" maintenance activities, required on the "closed road," during operations. "CORE" maintenance activities are defined as routine maintenance activities to include, but are not limited to, mowing/brush cutting, ditching, pothole patching and stabilization with aggregate material, as may be required for normal traffic operation. These CORE maintenance activities may be required by Operator when the Operator elects to utilize a "closed road." Routine Maintenance Activities may not require a full set of plans, but may be presented and approved with typical sections/drawings.**
- 4. Before the work commences on Proposed Project, the proposed routes shall be filmed by the DOH or the Operator, at the discretion of the DOH, or jointly between the DOH and the Operator, and the condition of the proposed route shall be documented before commencement of the project. The documentation shall record the condition of the road, along with a good-faith estimate of depreciation being caused by other industrial or commercial vehicles of similar weight and size. The Operator shall have the opportunity to review the video and inspection report in order to propose comments or revisions associated therewith. The DOH shall negotiate with the Operator to secure a Road Maintenance Agreement defining the responsibilities of both**

MEMORANDUM - OIL AND GAS ROAD POLICY

October 1, 2018

Page 6

parties. This action may not be needed if an Agreement was already in place. A single Road Maintenance Agreement per company may be utilized, especially when there will be several Proposed Projects in the same area or if Proposed Projects will be worked concurrently.

5. If the Proposed Project warrants the need, the DOH and the Operator shall secure a Project-Specific Agreement and Permit which shall include at a minimum, any Required Major Improvements before, during and after the Operator has completed the Proposed Project; provided, 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 referenced in B.4. above. Any work to be performed within the DOH right of way shall be performed to all DOH standards and specifications currently in effect, and will be subject to DOH final approval. The Operator shall not begin on Proposed Project until a Road Maintenance Agreement, Permit and if necessary, Project-Specific Agreement is reduced to writing and signed by all parties. The determination of whether any Required Major Improvements are necessary shall be solely within the discretion of the DOH. In making its determination, the DOH may take into consideration information provided by the Operator.
6. The Operator or Operator's contractor should invite the DOH to any pre-construction meetings to answer any questions and ensure the terms of the Road Maintenance Agreement, Project-Specific Agreement and/or Permit are clear to all parties. The DOH will make every effort to provide proper inspection of Proposed Project work that takes place within or could adversely affect DOH right of way with in-house workforce. The Operator will provide the DOH with as-built notes and plans for public roadways or any other documentation requested by the DOH necessary to verify the Proposed Project work was constructed in a correct manner and will not negatively affect the public roadways. Third-party inspection is encouraged especially during pipeline crossings, Required Major Improvements and any Proposed Project that will require a Project-Specific Agreement.
7. The DOH shall provide the Operator with a Permit stipulating that Covered Roads shall be maintained in accordance with the Road Maintenance Agreement. The DOH shall complete and issue an approved Permit within 45 days from the time when the Operator submits all required information, provided all conditions and requirements are met. Any time spent compiling the necessary information back and forth between the Operator and the DOH will not count against the 45-day time frame.
8. The DOH shall be responsible for all "CORE" maintenance responsibilities, unless the required maintenance is a result of the Operator's traffic load or oil and gas operations. The Operators shall also be responsible for all maintenance on "closed roads" that have been opened for their operations,

MEMORANDUM - OIL AND GAS ROAD POLICY

October 1, 2018

Page 7

including all “CORE” maintenance activities. If an Operator fails to perform any maintenance required under this Policy, the DOH, without waiving any other form of relief, may conduct the required maintenance activities and bill the Operator the costs incurred. Upon reclamation of the Proposed Project site and all conditions of agreements and permits are met, the operator is no longer responsible for “CORE” maintenance activities.

If additional approach permits are approved by the DOH for a “closed road,” the provisions of Section F of this Policy will control. Specifically, the Operators are required to enter into an agreement, which must include and maintenance responsibilities and resolutions for any liability issues. A copy of this Agreement must be provided to the DOH.

9. The Road Maintenance Agreement may stipulate any appropriate Restrictions and shall require an individual or statewide bond.
10. Upon conclusion of the Proposed Project, the Operator shall notify the DOH by written notification. Thereafter, the DOH shall as quickly as possible schedule an on-site meeting to determine if the conditions of the Road Maintenance Agreement, Project-Specific Agreement and/or Permit were satisfactorily fulfilled. If it is determined that the terms and conditions have been met, any bonding applicable to the Proposed Project shall be released a minimum of one (1) year after Project completion by written notice from the DOH to the Operator. The DOH will not release any bond if there are still outstanding issues that have not been resolved by Operator whether work was authorized via Project-Specific Agreement or Permit. If, however, it is determined by the DOH that any terms and condition have not been adequately fulfilled, the DOH shall prepare a written notification of objection to release the bonding, which at a minimum, shall cite each specific contention that must be fulfilled by the Operator prior to the release of the applicable bonding for the Proposed Project. DOH shall have sole authority to determine if the terms and conditions of the Road Maintenance Agreement, Project-Specific Agreement and/or Permit were met, and if not, Operator is responsible to meet the terms and conditions at their sole expense.
11. Any crossing of a DOH right of way by pipelines shall be performed and permitted in accordance with the manual for *ACCOMODATION OF UTILITIES ON HIGHWAY RIGHT OF WAY*, or otherwise approved by the State Highway Engineer, or his/her designee. Please reference the Oil and Gas Pipeline Crossing Requirements memo dated June 18, 2018, for additional information.
12. Access to the roadway at crossing sites, staging areas, storage sites, access roads and compressor stations shall be in accordance with the *MANUAL ON RULES AND REGULATIONS FOR CONSTRUCTING DRIVEWAYS ON STATE HIGHWAY RIGHTS-OF-WAY*, or otherwise approved by the State

MEMORANDUM - OIL AND GAS ROAD POLICY

October 1, 2018

Page 8

Highway Engineer, or his/her designee. Each access point will require a Permit.

13. The Operator shall be responsible for the development and maintenance of a traffic control plan which shall be approved by the applicable District Traffic Engineer. The Operator shall be responsible to provide all signage required for work zones, road closures and/or detours. The Operator shall be responsible for public and local E-911 center notifications of any road closures. The Operator shall provide a 24-hour point of contact for use by the DOH for emergency situations. The DOH general rule is traffic may only be held on the roadway for a maximum time of 15 minutes per stop. Please reference the *MANUAL ON TEMPORARY TRAFFIC CONTROL FOR STREETS AND HIGHWAYS, 2006 EDITION* for additional guidance.
14. When the Operator impedes traffic for more than one hour, the Operator may be assessed a fine by enforcement personnel of all costs associated with exceeding the one-hour limit. Incidents that require the use of law enforcement or emergency services personnel are not subject to the one-hour time limit.
15. With all new Oil and Gas permits and/or Agreements, the individual District Offices of the DOH will issue and advocate the usage of the one-page *Federal Highway Administration (FHWA) Summary of Pilot/Escort Vehicle Operators Best Practices Guidelines* for Oil and Gas Operators and their contractor(s). The full FHWA guidelines are found on the website at: <https://ops.fhwa.dot.gov/publications/fhwahop16051/index.htm>. The DOH may consult with ad hoc groups regarding pilot/escort vehicle best practices that reasonably build upon, but do not contradict these FHWA guidelines.

The DOH reserves the right to make these FHWA, and when deemed applicable the ad hoc group, guidelines a requirement of a Permit, when certain attributes present safety concerns as it pertains to all truck traffic associated with the Proposed Project. These attributes may include but are not limited to: geometry, ADT, and/or functional classification of a proposed a haul route. The determination of the presence of potential safety concerns shall be solely within the discretion of the DOH.

C. SECURITY:

1. SINGLE BONDS

- a. 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:

MEMORANDUM - OIL AND GAS ROAD POLICY

October 1, 2018

Page 9

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

- b. Exception is made for Operators of wells with less than 5,000 barrels of liquids or well abandonments; bonding shall be based on the degree of Anticipated Damage to Covered Roads negotiated up to a maximum amount of \$50,000 per well.
- c. All Single Bonds will require an executed Road Maintenance Agreement for each bond.
- d. The DOH may raise the maximum amount for a single bond if, in the determination of the DOH, a higher maximum amount is needed.

2. BLANKET BONDS

- a. As an alternative to C.1.a above, the Operator may elect to post either a district wide or statewide blanket amount to cover multiple roads. The maximum blanket bond shall be \$250,000 per district, or \$1,000,000 statewide.
- b. The DOH may require the Operator to obtain a single site specific bond, as set forth in C.1 above, if the DOH determines that a site specific bond is preferable to including the route on a blanket bond.
- c. As an alternative to C.1.b above, Operators of wells with less than 5,000 barrels of liquids utilized may elect to post a maximum statewide blanket bond of \$50,000.
- d. All Blanket Bonds shall require a Road Maintenance Agreement to be executed for each bond.
- e. The DOH may raise the maximum amount of a blanket bond if, in the determination of the DOH, a higher maximum amount is needed.
- f. Should the Operator elect to use blanket bonding, Proposed 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 Covered Roads to be acceptable, the DOH shall remove the Proposed Project from the blanket bond.

MEMORANDUM - OIL AND GAS ROAD POLICY

October 1, 2018

Page 10

- g. For public road pipeline crossings, the Operator will be required to maintain a \$75,000 operational blanket bond per District, or a statewide operational blanket bond of \$750,000, once the construction of the pipeline is complete.**
- h. All agreements utilizing blanket bonds are negotiable and shall be handled by the DOH Central Office in Charleston, WV.**

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 the security provided pursuant to this Policy may include, at the option of the Operator; 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 Operator's activities occur on a Covered Road, the Operator should coordinate with the DOH to agree upon the appropriate method of repair, with option 1 being the most preferable to the DOH:

- 1. The Operator repairs the Covered Road(s) to the applicable DOH standards and specifications, the DOH shall have sole approval of all repairs and methods used;**
- 2. The DOH repairs the Covered Road(s) with up-front reimbursement by the Operator; or**
- 3. The DOH seeks reimbursement from the pledged security in Section C above.**

E. RELEASE OF SECURITY:

Provided that the requirements of any Road Maintenance Agreement, Project-Specific Agreement or Permit executed in accordance with this Policy have been met, or, where no Road Maintenance Agreement, Project-Specific Agreement or Permit is required by this Policy and the conditions of the Covered Roads at the conclusion of the Proposed Project are at least as good as before the commencement of the Proposed Project, normal wear and tear excepted, the DOH shall promptly return the security to the Operator upon written notice from the Operator that the Operator has:

- 1. Completed the Proposed Project identified in the single bond and up to a year of time has elapsed without additional damage or incident from the Proposed Project; or**

MEMORANDUM - OIL AND GAS ROAD POLICY

October 1, 2018

Page 11

- 2. Notified the DOH that all Proposed Projects under a blanket bond are complete and the Operator anticipates no further work under the blanket bond; and up to a year of time has elapsed without additional damage or incident from the Proposed Projects; or**
- 3. All responsibility and authority of an Road Maintenance Agreement, Project-Specific Agreement or Permit has transferred another Operator due to the sale of certain assets to said Operator with an approved and current bond and Agreement.**

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

F. MULTIPLE OPERATORS SHARING A COMMON ROAD OR APPROACH:

- 1. In the event that damages occur on a shared section of roadways, approaches or Covered Roads, the DOH shall seek an equitable reimbursement from all persons whose contractors or activities have contributed to road damages on roadways or Covered Roads. The DOH shall consider the operations and activities by the Operator and their contractors, and credits may be provided for any improvements previously funded on a particular road, by an Operator. If all Operators cannot agree to an equitable solution, the DOH will decide the applicable distribution per Operator.**
- 2. In the event that two or more Operators share a common approach, the first permitted Operator will receive a Permit for the approach and assume ultimate responsibility for said approach. The second, and/or subsequent Operator(s) will receive a Permit of a different type (i.e. hauling) and will be required to obtain an agreement with the first Operator, which will include liability resolution if issues happen at the approach.**

G. NIGHT TIME TRAVEL:

Night time hauling of oversized loads may be authorized in writing by the State Highway Engineer, or his/her designee, in certain circumstances to improve traffic safety for the traveling public.

H. APPEAL PROCESS:

Should the Operator and the district representative be unable to reach an amicable agreement on the conditions to be stipulated in the Road Maintenance Agreement,

MEMORANDUM - OIL AND GAS ROAD POLICY

October 1, 2018

Page 12

Permit, Project-Specific Agreement or on an equitable reimbursement allocation under Section F above, the Operator may progressively appeal to:

- 1. District Engineer/Manager**
- 2. Central Office Oil and Gas Coordinator**
- 3. Director of Maintenance Division**
- 4. State Highway Engineer**
- 5. Commissioner of Highways**

I. DEP DRILLING CERTIFICATION LETTER:

An Operator's request for a DEP Drilling Certification Letter should be made to the Central Office Oil and Gas Coordinator. The Central Office Oil and Gas Coordinator will check with the District to ensure that the Operator is abiding by all terms and conditions of the Road Maintenance Agreements, all Permits and Project-Specific Agreements before issuing the signed letter. The Coordinator shall make reasonable efforts to issue the signed letter within 5 business days after obtaining all necessary information from the District to determine compliance with permits and agreements.

J. TERMINATION:

This Policy shall remain in effect until amended or modified by the Commissioner of Highways.

TJS:Bj

cc: SEC, CC, CB, CM, AC, AL, CH, HO, HD, OM