OS-299 (11-13)

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DEPARTMENT OF TRANSPORTATION
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TRANSMITTAL LETTER

PUBLICATION:
Publication 581

DATE:
September 2017

SUBJECT:

Publication 581
Highway Beautification Manual
September 2017 Edition

INFORMATION AND SPECIAL INSTRUCTIONS:

This new edition of the Highway Beautification Manual was revised to reflect the following policy and procedures:

- The Department issuing new permit tags to all sign owners
- The decertification of the Market Street Advertising District in Philadelphia
- The certification of the Borough of Delaware Water Gap
- Policy and procedures relating to on-premise gateway signs.

Revisions were incorporated into the following Chapters:

CHAPTER 2 - ADMINISTRATION

Section 2.01.C - Added language to ensure permit tags are attached to new sign structures when the District OAD Manager is performing the Sign Inspection.

Section 2.02 - Added section detailing the new permit tags that were issued to all sign owners during Fall/Winter 2017. This section provides details on the new permit tags and provides guidance on where the permit tags are to be attached to the sign structure.

Section 2.07.4 - Removed Philadelphia and added the Borough of Delaware Water Gap.

Section 2.13 - Removed language referring to the certification of the Market Street East Advertising District in Philadelphia and added language referring to the Borough of Delaware Water Gap.

CHAPTER 3 - PERMITTED SIGNS

Section 3.05.B - Added section detailing the Department's policy and procedures regarding On-premise Gateway Signs.

CHAPTER 4 - NONCONFORMING SIGNS

Section 4.02 - Added language requiring permit tags to be attached to nonconforming signs.

CHAPTER 5 - SIZE, SPACING, AND LIGHTING

Section 5.03.D - Removed language referring to the Market Street East Advertising District in Philadelphia and added language referring to the Borough of Delaware Water Gap.

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	APPROVED FOR ISSUANCE BY: George W. McAuley, P.E. Deputy Secretary Highway Administratioin

HIGHWAY BEAUTIFICATION MANUAL

September 2017 Edition

pennsylvania
DEPARTMENT OF TRANSPORTATION

PUB 581 (9-17)

CHAPTER 1 – INTRODUCTION 1-1
1.01 LAW AND REGULATIONS 1-1
1.02 PURPOSE OF ACT 1-2
1.03 NEED FOR LOCAL PERMIT 1-2
1.04 DEFINITION OF OUTDOOR ADVERTISING DEVICE 1-2
1.05 HIGHWAYS SUBJECT TO CONTROL 1-2
1.06 AREAS SUBJECT TO CONTROL 1-3
A. WITHIN 660 FEET 1-3
B. BEYOND 660 FEET 1-3
1.07 SIGNS SUBJECT TO CONTROL 1-3
A. WITHIN 660 FEET 1-3
B. BEYOND 660 FEET 1-4
CHAPTER 2 – ADMINISTRATION 2-1
2.01 SIGN PERMIT APPLICATION PROCESSING VIA THE HIGHWAY BEAUTIFICATION MANAGEMENT SYSTEM (HBMS) 2-1
A. PAPER APPLICATIONS 2-1
B. ELECTRONIC APPLICATIONS 2-2
C. APPLICATION APPROVAL PROCEDURES 2-4
D. APPLICATION DENIAL PROCEDURES 2-5
E. SIGN INFO CHANGE APPLICATIONS 2-5
F. PROCESSING OFF-PREMISE APPLICATIONS (RW-745) 2-5
G. ON-PREMISE APPLICATIONS (RW-744) 2-5
H. APPLICATION FOR DIRECTIONAL OR PUBLIC SERVICE (SCHOOL BUS SHELTER) OUTDOOR ADVERTISING DEVICE PERMIT (RW-746) 2-5
2.02 PERMIT TAG REQUIREMENTS 2-6
2.03 ANNUAL PERMIT BILLING 2-7
2.04 PERMIT RECONCILIATION – MAINTAINING DISTRICT FILES 2-8
2.05 PERMIT BILLING CHANGES 2-9
2.06 UNPAID PERMIT BILLINGS 2-10
2.07 SIGN SURVEILLANCE 2-10
2.08 TRANSFER OF SIGN PERMITS TO NEW OWNERS 2-11
2.09 PERMIT REVOCATION 2-12
2.10 REMOVAL OF ILLEGAL SIGNS (BOTH WITHIN AND OUTSIDE RIGHT-OF-WAY) 2-15
2.11 ADMINISTRATIVE HEARINGS 2-17
2.12 FORMAL COMPLAINT PROCEDURE, 1 PA. CODE CHAPTER 35 2-17

2.13 SIGNS IN PITTSBURGH AND THE BOROUGH OF DELAWARE WATER GAP 2-18
2.14 PENNSYLVANIA BYWAYS 2-18
CHAPTER 3 – PERMITTED SIGNS 3-1
3.01 EXCEPTION (IV): INTERSTATE "COTTON AREA" SIGNS 3-1
A. COTTON AREA RIGHT-OF-WAY DEFINED 3-1
B. BOUNDARIES OF COTTON AREA 3-1
C. ZONING OF COTTON AREA 3-2
D. REPRESENTATIONS IN APPLICATIONS 3-2
3.02 EXCEPTION (V): INTERSTATE "KERR AREA" SIGNS 3-2
A. KERR AREA – TYPE 1 3-2
B. KERR AREA – TYPE 2 3-3
C. REPRESENTATIONS IN APPLICATIONS 3-3
3.03 EXCEPTION (VI): FAP – NHS COMMERCIAL OR INDUSTRIAL AREA SIGNS 3-3
A. ZONED COMMERCIAL OR INDUSTRIAL AREAS 3-3
B. UNZONED COMMERCIAL OR INDUSTRIAL AREAS 3-4
3.04 EXCEPTION (VIII): DIRECTIONAL SIGNS 3-6
A. PRIVATELY OWNED DIRECTIONAL SIGNS 3-6
B. PUBLIC SERVICE SIGNS 3-6
3.05 EXCEPTIONS (II) AND (III): ON-PREMISE SIGNS 3-7
A. ON-PREMISE SIGNS IN GENERAL 3-7
B. ON-PREMISE GATEWAY SIGNS 3-7
C. PREMISES 3-8
D. ON-PREMISE SIGN PERMITS 3-8
E. COMPLIANCE WITH REGULATIONS 3-8
3.06 EXCEPTION (I): OFFICIAL SIGNS AND NOTICES 3-8
A. DEFINITIONS 3-9
B. APPLICATION AND PERMIT 3-9
C. WITHIN RIGHT-OF-WAY ONLY 3-9
3.07 EXCEPTIONS (VII) AND (IX): OTHER PERMITTED SIGNS 3-9
A. DIRECTIONAL INFORMATION SIGNS 3-9
B. OTHER SIGNS 3-10
CHAPTER 4 – NONCONFORMING SIGNS 4-1
4.01 DEFINITION 4-1

4.02 PERMITS REQUIRED 4-1
4.03 COMPENSATION FOR REMOVAL 4-1
4.04 CONTINUANCE OF NONCONFORMING SIGN 4-1
4.05 REMOVAL OF NONCONFORMING SIGN 4-2
4.06 ABANDONED NONCONFORMING SIGN 4-2
A. PRESUMPTION 4-2
4.07 RESTORATION OF DAMAGED OR PARTIALLY DESTROYED NONCONFORMING SIGNS 4-3
A. SIGN MAY BE REPAIRED 4-3
B. SIGN MAY NOT BE REPAIRED 4-3
C. 50% DETERMINATIONS 4-4
D. 60 DAYS TO REPAIR 4-4
E. APPLICATION OF CHAPTER 445.7 4-5
F. TIMELY AND FAIR APPLICATION OF CHAPTER 445.7 4-5
4.08 REMOVAL OF ABANDONED NONCONFORMING SIGN 4-5
CHAPTER 5 – SIZE, SPACING, AND LIGHTING 5-1
5.01 DIRECTIONAL AND OFFICIAL SIGNS 5-1
5.02 ON-PREMISE SIGNS 5-1
A. SIZE 5-1
B. LIGHTING 5-1
5.03 OFF-PREMISE SIGNS IN ZONED OR UNZONED COMMERCIAL OR INDUSTRIAL AREAS 5-1
A. SIZE 5-1
B. SPACING 5-1
C. LIGHTING 5-3
D. PITTSBURGH AND THE BOROUGH OF DELAWARE WATER GAP 5-3
CHAPTER 6 – CHANGEABLE MESSAGE SIGNS 6-1
6.01 CHANGEABLE MESSAGE SIGNS 6-1
A. INTRODUCTION 6-1
B. LEGAL CONSIDERATIONS 6-1
C. POLICY APPLICABLE TO CHANGE OF MESSAGE 6-2
D. APPLICATION FOR OUTDOOR ADVERTISING DEVICE PERMIT 6-2
CHAPTER 7 – REMOVAL OF PROHIBITED SIGNS 7-1
7.01 RESPONSIBLE PERSONS 7-1
7.02 CRIMINAL COMPLAINT 7-1
7.03 REMOVAL BY DEPARTMENT 7-1

CHAPTER 8 – USE OF LIMITED ACCESS HIGHWAY RIGHT-OF-WAY PROHIBITED AND PRESERVATION OF VEGETATION 8-1
8.01 USE OF LIMITED ACCESS RIGHT-OF-WAY 8-1
A. DENIAL OF PERMIT 8-1
B. REVOCATION OF PERMIT 8-1
8.02 VEGETATION CONTROL 8-1
A. APPLICABLE LAWS AND REGULATIONS 8-1
B. INITIAL APPLICATION FOR A PERMIT 8-2
C. REVOCATION OF PERMIT AND PENALTIES FOR ILLEGAL VEGETATION REMOVAL 8-2
D. TRIMMING AND CUTTING IN RELATION TO EXISTING SIGNS 8-3
CHAPTER 9 – INTRODUCTION TO JUNKYARDS 9-1
9.01 LAW AND REGULATIONS 9-1
9.02 PURPOSE 9-1
9.03 AUTOMOTIVE DISMANTLER AND RECYCLER 9-2
9.04 JUNKYARDS AND JUNK 9-2
9.05 HIGHWAYS SUBJECT TO CONTROL 9-2
9.06 ZONE OF CONTROL AND LOCAL CONTROL 9-2
9.07 NONCONFORMING FACILITIES 9-3
9.08 LICENSING 9-3
9.09 ZONED AND UNZONED INDUSTRIAL AREAS 9-4
9.10 SCREENING 9-4
9.11 SCREENING MAINTENANCE 9-5
9.12 SCREENING INFEASIBLE 9-6
9.13 EXPANSION 9-6
CHAPTER 10 – JUNKYARD PROCEDURES 10-1
10.01 APPLICATION AND LICENSE ISSUANCE 10-1
10.02 LICENSE DENIAL 10-2
10.03 DISPLAY OF LICENSE 10-2
10.04 SURVEILLANCE – PERIODIC INSPECTION 10-2
10.05 LICENSE VIOLATIONS 10-3
10.06 LICENSE REVOCATION 10-3
10.07 UNLICENSED JUNKYARDS 10-4
10.08 ABANDONED JUNKYARDS 10-5
CHAPTER 11 – RENEWALS & TRANSFERS 11-1
11.01 LICENSE RENEWALS 11-1
11.02 RENEWAL PROCEDURE 11-1
11.03 PROCESSING RENEWAL FEES 11-2

11.04 PAYMENTS NOT RECEIVED 11-2
11.05 TRANSFER OF LICENSE 11-4
APPENDIX A-HIGHWAY BEAUTIFICATION MANUAL FORMS A-1

CHAPTER 1

INTRODUCTION

1.01 LAW AND REGULATIONS

1. The control of outdoor advertising devices is governed by:

   a. The Outdoor Advertising Control Act of 1971, Act No. 160, December 15, 1971, P.L. 596, as amended (36 P.S. §2718.101 et. seq.). References hereafter to Act No. 160 (sometimes also referred to simply as the Act) will be by citing the applicable section in 36 Purdon Statutes; and

   b. Title 67, PA Code, Chapter 445, entitled "Outdoor Advertising Devices," promulgated pursuant to 36 P.S. §2718.106. References hereafter to the regulations will be by citing the applicable section. Chapter 445 may be found on the web at www.pacode.com/secure/data/067/chapter445/chap445toc.html.

2. Act No. 160, effective December 15, 1971, was enacted and Chapter 445 promulgated in response to Federal law at U.S. Code Title 23, Section 131, Control of Outdoor Advertising, Federal regulations at 23 CFR Chapter 1, Part 750, Highway Beautification, and the Federal-State Agreement, dated January 6, 1972, between the Pennsylvania Department of Transportation and the U.S. Department of Transportation, Federal Highway Administration. See generally 36 P.S. §2718.108 providing for this agreement to preserve the Commonwealth's entitlement to its full share of Federal road funds.

23 U.S. Code Section 131(b) states, in part: (b) Federal aid highway funds apportioned … to any state which the Secretary determines has not made provision for effective control of … outdoor advertising signs… shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such state … until such time as such State shall provide for such effective control.

Demonstration by PennDOT of effective control, as defined in Section 131(c), is, essentially, the administration and enforcement of Act 160 and the regulations. However, on December 18, 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) amended 23 U.S.C. 131 by adding Section 131(r) to further define "effective control" as "the removal of illegal signs by the owner of the sign, or by the State, within 90 days (i.e., within 90 days of identification of said sign as illegal)." See Section 2.10 of this manual on removal of illegal signs.

Historically, sign control tied to Federal funding was introduced by the 1958 Federal "Bonus Act." In 1961, Pennsylvania implemented sign control adjacent to interstate highways only. More widespread sign control was implemented by Federal legislation in 1965.

3. Legal decisions impacting advertising control come from the courts as well as PennDOT's Administrative Docket. Decisions from the Administrative Docket, whether by a Hearing Officer or the Secretary of Transportation, are not binding precedent in subsequent cases, but are instructive and the docket has an obligation to be consistent in its decisions. These administrative decisions are sometimes appealed to the Commonwealth Court. Allowance to appeal a Commonwealth Court decision can be sought from the Pennsylvania Supreme Court. Reported decisions of the Commonwealth and Supreme Courts are binding precedent in future cases. Unreported decisions of the courts are not binding in future cases.

4. There is a compendium of legal decisions located on the P drive at penndot shared\Outdoor Advertising Compendium Act 160. The Administrative Docket, Commonwealth Court and Supreme Court cases cited can be found in this compendium.

5. Federal law can be considered when interpreting the Act and the regulations; however, the words of the Act and the regulations are binding regardless of Federal law. Where possible, PennDOT policy is not to be more restrictive than State or Federal law.

6. Requests for formal legal opinions should be submitted in writing to the Chief, Utilities and Right-of-

Way Section, who will consult with the Office of Chief Counsel, Real Property Division. Requests for informal opinions and advice should be directed to the Central Office Right-of-Way Administration Unit, who will consult with the Office of Chief Counsel, Real Property Division, as required. See Section 2.11 of this manual on administrative hearings.

1.02 PURPOSE OF ACT

36 P.S. §2718.102 states the purposes of the Act as follows: "The people of this Commonwealth would suffer economically if the Commonwealth failed to participate fully in the allocation and apportionment of Federal-aid highway funds since a reduction in such funds would necessitate increased taxation to support and maintain the Commonwealth's road program and system. Therefore, for the purpose of assuring the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in the interstate and primary systems; to promote the welfare, convenience and recreational value of public travel; and to preserve natural beauty, it is hereby declared to be in the public interest to control the erection and maintenance of outdoor advertising devices in areas adjacent to the interstate and primary systems within this Commonwealth."

1.03 NEED FOR LOCAL PERMIT

36 P.S. §2718.113 states "Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which are more restrictive than the provisions of this act."

Therefore, PennDOT requires an applicant for a PennDOT sign permit to confirm that the proposed sign complies with local ordinances by providing a copy of the relevant local approval (e.g. zoning permit, building permit). If not, the permit application will be denied even though the proposed sign would otherwise be permitted under Act 160 and the regulations.

In *Philadelphia Outdoor Advertising v. Department of Transportation*, 690 A. 2d 789 (Pa. Cmwlth. 1997), the Commonwealth Court agreed that PennDOT's inquiry into the existence of and the compliance with local regulations was reasonable because Section 13 of the Act "contemplates equally or more restrictive local controls of the outdoor advertising devices in keeping with the statutory goals and the state's interests sought to be achieved."

1.04 DEFINITION OF OUTDOOR ADVERTISING DEVICE

36 P.S. §2718.103(5) states "any outdoor sign, display, light, figure, painting, drawing, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform."

Most signs are attached to free standing structures fixed to the ground. However, signs attached to, or painted on, the wall of a building, or the side of a trailer parked by the highway, etc., are also signs subject to control (see Section 1.07). In *Department of Transportation v. Pindar*, 474 A.2d 420 (Pa. Cmwlth. 1984), the Commonwealth Court found that a metallic shed which displayed an advertisement and was located within 660 feet of a limited access highway was subject to the Act.

1.05 HIGHWAYS SUBJECT TO CONTROL

As stated in 36 P.S. §2718.102, signs are subject to control in areas adjacent to the interstate and primary systems within this Commonwealth.

The definition of primary highway incorporates those highways made part of the National Highway System that were not primary highways under the old designation system. This is consistent with the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) that amended Section 131 (Control of Outdoor Advertising) of Title 23 United States Code (U.S.C.) to require control of signs along the Interstate System and the Federal-aid primary system as they existed on June 1, 1991, and, when designated, all portions of the approved National Highway System. Effective October 1, 2012, a new Federal transportation appropriation bill referred to as MAP-21 amended Title 23 United States Code, Section 103, and extended the definition of routes under the National Highway System

(NHS) to cover routes classified as principal arterials (among other roads).

Each District has been provided a map showing the Interstate and Federal-aid Primary Systems as of June 1, 1991. Each map is certified "For the Control of Outdoor Advertising Signs, designated by the Pennsylvania Department of Transportation and approved by the Federal Highway Administration pursuant to Title 23, United States Code, Highways, and Pennsylvania Act 160, Outdoor Advertising Control Act of 1971, as amended," and was signed by Howard Yerusalim, Secretary, Pennsylvania Department of Transportation, on August 30, 1994, and M. A. Marks, Division Administrator, Federal Highway Administration, Pennsylvania Division, on October 12, 1994. These highways must continue to be controlled, plus any new highways that are identified in the Roadway Management System (RMS) with NHS code "y" which is defined as "National Highway System."

The Federal Highway Administration has a map of all NHS highways on its website: http://www.fhwa.dot.gov/planning/national_highway_system/nhs_maps/pennsylvania/index.cfm. This map, along with the maps showing the Interstate and Federal-aid Primary System as of June 1, 1991, show all highways subject to control under the Act.

The Highway Beautification Management System (HBMS) also contains a GIS based map showing all controlled routes and the location of current billboards if the GPS coordinates are recorded in HBMS.

1.06 AREAS SUBJECT TO CONTROL

A. Within 660 Feet

As indicated by 36 P.S. §2718.104(1), the area of control is 660 feet from the nearest edge of the right-of-way.

B. Beyond 660 Feet

In addition, if located outside of urban areas, the area of control is also more than 660 feet from the nearest edge of the right-of-way (36 P.S. §2718.104(2)). An "urban area" is defined at Chapter 445.2 as "an urbanized area or an urban place designated by the United States Bureau of Census as having a population of 5,000 or more and whose boundaries have been approved by the Secretary of the United States, Department of Transportation" (www.Census.gov).

In other words, in urban areas (greater than 5,000 population), the area of control stops at 660 feet from the edge of the right-of-way. In "rural areas" (defined at 445.2 as "an area not included in an urban area"), the control extends beyond 660 feet from the edge of the right-of-way.

Note: As indicated, Act 160 controls areas from the edge of the right-of-way outwards. Act 160 does not apply to areas designated as highway right-of-way or to signs located within the highway right-of-way. See Section 2.10 of this manual on removal of illegal signs.

1.07 SIGNS SUBJECT TO CONTROL

A. Within 660 Feet

A sign is subject to control if it is located within 660 feet (see Figure 1-1) of the nearest edge of the right-of-way (of a controlled highway) "if any part of the advertising or informative contents is visible from the main-traveled way (of the controlled highway) (36 P.S. §2718.104(1))."

"Visible" is defined at 36 P.S. §2718.103(10) as "capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity."

"Main-traveled way" is defined at 445.2 but also included in "traveled way" at 36 P.S. §2718.103(8). "Traveled way" shall mean "the portion of a roadway for the movement of vehicles, exclusive of shoulders." The term "main-traveled way" means "the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. The term does not include such facilities as frontage roads, turning roadways, or parking areas."

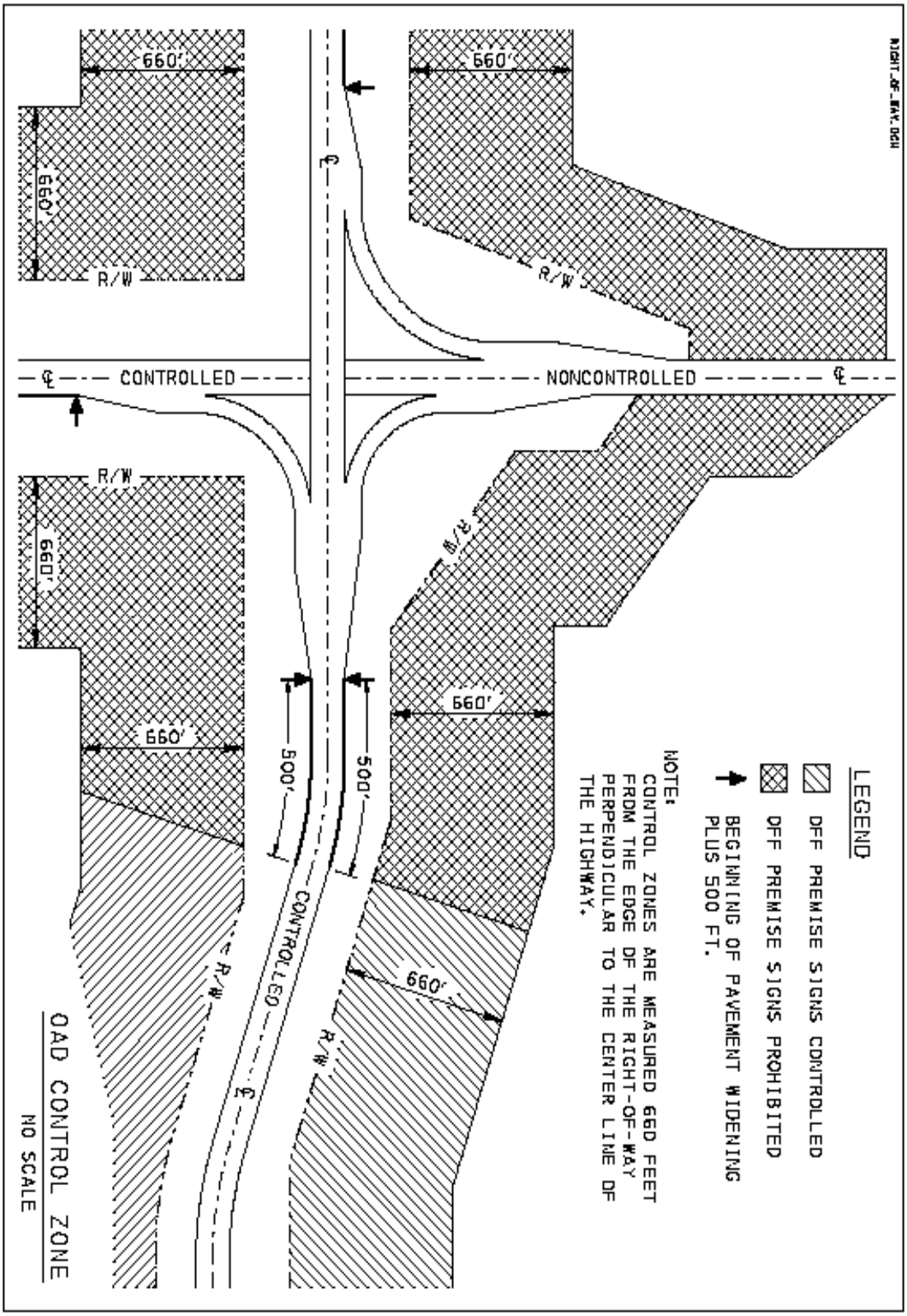
In other words, a sign, within 660 feet, is controlled if the message can be seen, even though it may not be readable, from the main-traveled way. On a divided highway, a sign, adjacent to the eastbound lanes and not visible there from, but is visible from the westbound lanes, is controlled. A sign that is visible from an entrance or exit ramp, but is not visible from the main-traveled way, is not controlled. If a sign is erected adjacent to the primary system, but is within 660 feet of the right-of-way and visible from the main-traveled way of an interstate highway, the more restrictive interstate requirements apply.

In *Whiteco Metrocom v. Department of Transportation*, 616 A.2d 193 (Pa. Cmwlth. 1992), appeal denied 622 A.2d 1379, 533 Pa. 647, the Commonwealth Court confirmed that signs located along a ramp, but visible from the interstate highway were controlled by the spacing requirements of Act 160.

B. Beyond 660 Feet

As indicated above, the test to determine sign control within 660 feet is whether or not the contents are visible from the main-traveled way. The test for signs beyond 660 feet, outside of urban areas, is visible and "erected with the purpose of its message being read from such a main-traveled way, with certain exceptions (36 P.S. §2718.104(2))." Determining whether the sign was erected with the purpose of its message being read from the main-traveled way should be based on all the facts and circumstances, especially the orientation of the sign.

Because the exceptions allowed beyond 660 feet do not include off-premise signs, the effect of Section 104(2) is to prohibit off-premise signs erected beyond 660 feet in rural areas if the message is visible from the main-traveled way of the controlled highway. Such signs are sometimes referred to as "jumbo" signs because they usually exceed the 1200 square foot maximum permitted size. There are "jumbo" signs that continue to exist as "nonconforming signs" (defined at Chapter 445.2) because they were legally erected prior to December 19, 1975, the effective date of the amendment that established 36 P.S. §2718.104(2).


RIGHT_OF_WAY.DGN
660'
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CONTROLLED
NONCONTROLLED
500'
500'
CONTROLLED
LEGEND
OFF PREMISE SIGNS CONTROLLED
OFF PREMISE SIGNS PROHIBITED
BEGINNING OF PAVEMENT WIDENING PLUS 500 FT.
NOTE:
CONTROL ZONES ARE MEASURED 660 FEET FROM THE EDGE OF THE RIGHT-OF-WAY PERPENDICULAR TO THE CENTER LINE OF THE HIGHWAY.
OAD CONTROL ZONE
NO SCALE

FIGURE 1-1

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CHAPTER 2

ADMINISTRATION

2.01 SIGN PERMIT APPLICATION PROCESSING VIA THE HIGHWAY BEAUTIFICATION MANAGEMENT SYSTEM (HBMS)

All requests for permits to erect signs, or to change or modify existing signs, shall be directed to the Outdoor Advertising Control Manager in the Engineering District responsible for that county where the structure will be (or is currently) located.

A. Paper Applications

1. All paper requests for permits to erect or modify signs shall be made on the proper Right-of-Way form:

RW-744 Application for On-Premise Sign Permit (Interstate Locations)

RW-745 Application for Off-Premise Sign Permit

RW-746 Application for Directional or Public Service Sign Permit

The current editions of these forms are available for customer downloading at the following web site:

http://www.penndot.gov/ProjectAndPrograms/ProjectRequirementsResources/Right-ofWayandUtilities/Pages/Outdoor-Advertising-and-Junkyard-Control.aspx#.Vk8_qKMo69I

or may be mailed directly to the customer by the District.

2. All applications received shall be promptly and accurately date and time stamped and initialed by the person recording the date and time, in the space provided on the last page of each application form.

3. Although the application is submitted on the appropriate paper form, HBMS will be utilized to process and store the application. The details from the paper application will be entered into HBMS on behalf of the applicant and it will then proceed through the HBMS workflow for the remainder of the application review process.

4. Thirty days from submission in HBMS or from the date/time stamp at the District Office, is a reasonable target to either approve or deny the application. If a longer period is needed, the file will reflect the reason for delay.

5. Verify that the indicated highway is a controlled highway because it is part of the National Highway System. See Section 1.05 of this manual discussing controlled highways. If the highway is not controlled, a State permit is not required. A letter to that effect shall be sent to the applicant, enclosing the original application.

6. Verify that the applicant used the correct application. If not, return the incorrect form, along with a copy of the correct application to them, and an explanatory letter.

7. If two applications compete for limited spacing, the first complete application that is received and which conforms to the Act and regulations will be approved for the permit. This was confirmed in *Morgan Sign Company v. Department of Transportation*, 676 A.2d 1284 (Pa. Cmwlth. 1998).

8. Review the application carefully for completeness:

   a. If the sign owner is different than the land owner, a copy of the lease or other agreement must accompany the application.

b. If the application is being submitted by an agent acting on behalf of the sign owner, a letter from the sign owner authorizing the agent to act on their behalf must accompany the application.

c. An incomplete application shall not be denied. The "incomplete" box will be marked, dated and signed on the last page and returned to the applicant with a letter identifying all missing or incorrect information and/or documents.

d. If resubmitted, the application will be logged and handled as any new permit application.

9. If the incomplete application is for an off-premise sign permit, include Form RW-745I, Instructions & Information. It should be recognized that, unlike sign companies who know the requirements, there are sign permit applicants who are not familiar with the requirements, but who are seeking a permit for one or two signs to advertise their business, etc. These latter applicants require appropriate customer service to help them through the process.

10. If the application is otherwise proper and complete, proceed to enter the information contained on the paper application into HBMS on behalf of the applicant. The data must be entered into HBMS exactly as the applicant entered the information on the paper form. While the application information is being entered, the application will be in Draft status in HBMS.

11. Once all details are entered, the District user will submit the application in HBMS. Upon submission of the application in HBMS, the application will be in "Submitted" status in HBMS and will now be accessible from the OAD Manager's Work Queue for their review.

12. After submission of the application in HBMS, the application processing steps for paper and electronic applications will be the same. See Section 2.01.B for the application process procedures.

B. Electronic Applications

1. After a permit application is submitted in HBMS, the appropriate District OAD Manager will receive an email notification stating that there is a new application for them to review. The District OAD Manager will click the "Start Review" button in HBMS and proceed to determine whether or not the proposed sign complies with Act 160 and the regulations. By clicking the "Start Review" button, the application status will change to Under Review within HBMS.

a. See Section 445.6(b) on permit applications in general, including the requirement that the application provide an affidavit attesting that there is a valid lease agreement between them and the owner of land on which the sign is to be located or that the sign owner is also the land owner. If the sign owner is not the land owner, a copy of the lease or other agreement must be submitted with the permit application. If the sign owner is the land owner, a copy of the deed may be requested.

b. PennDOT is generally entitled to accept representation in applications because they are verified as being true. However, this reliance is inappropriate where PennDOT can tell the representation is inaccurate based on other information provided in the application. See *Philadelphia Outdoor Advertising v. Department of Transportation*, 690 A.2d 789 (Pa. Cmwlth. 1984), where the Commonwealth Court determined PennDOT could rely on the applicant's representation that a sign would not be located in a Cotton or Kerr Area where it could not determine otherwise from the information provided in the application.

2. Under Review Status. During the in-depth review of the application the District OAD Manager has the ability to:

a. Return to Applicant. If an application error is found prior to the field inspection, the application will be returned to the applicant for correction. The OAD Manager will place the application in Returned status in HBMS.

b. Proceed to Field Inspection. If the application appears acceptable, the OAD Manager will contact the applicant and schedule a field view in order to inspect the proposed sign location. Once the field view is scheduled, the District OAD Manager will place the application in Field Inspection status in HBMS.

c. Propose Denial. If it appears that the application is in violation of Act 160 and the regulations, the District OAD Manager will propose a denial to Central Office. In order to propose denial, the District OAD Manager will select "Propose Denial" in HBMS and the application status will change to Under CO Review. The application will now appear in the Central Office OAD Manager's work queue for review. See Section 2.01.B.4 for Central Office review procedures.

3. Field Inspection Status. After the field inspection the District OAD Manager will enter the date that the field inspection was held and any relevant comments on the Application Processing Screen. After documenting the field inspection details the District OAD Manager can:

a. Return to Applicant. If an application error is found during the field inspection, the application will be returned to the applicant for correction. The District OAD Manager will place the application in Returned status in HBMS.

b. Approve. If no issues are discovered during the field inspection and the proposed sign location is not along an interstate, the District OAD Manager can approve the permit application. See Section 2.01.C for the application approval procedures.

c. Recommend Approval. If no issues are discovered during the field inspection and the proposed sign is along an interstate, the District OAD Manager can recommend approval to Central Office. Once approval is recommended, the application status will update to Under CO Review in HBMS. The application will now appear in the Central Office OAD Manager's work queue for review. See Section 2.01.B.4 for Central Office review procedures.

d. Propose Denial. If it is clear that the application is in violation of the highway beautification regulations, the District OAD Manager will propose a denial to Central Office. In order to propose denial, the District OAD Manager will select "Propose Denial" in HBMS and the application status will change to Under CO Review. The application will now appear in the Central Office Manager's work queue for review. See Section 2.01.B.4 for Central Office review procedures.

4. Under CO Review Status. A permit application will be under Central Office review when the District OAD Manager recommends approval of a proposed sign along an interstate or proposes denial of a permit application. During the Central Office review of a permit application, the Central Office OAD Manager can:

a. Recommend Return to Applicant. If an application error is found during the Central Office review, the application will be returned to the applicant for correction. The Central Office OAD Manager will place the application in Ready to Return status in HBMS. The application will now appear in the District OAD Manager's work queue for return to the applicant. The District OAD Manager will place the application in Returned status in HBMS.

b. Advise Approval. If the Central Office review concurs with the recommendation to approve a permit application or does not agree with the proposed denial, the Central Office OAD Manager will place the application in Ready for Approval status in HBMS. The application will now appear in the District OAD Manager's work queue for approval. See Section 2.01.C for the application approval procedures.

c. Advise Denial. If the Central Office review concurs with the proposed denial of a permit application or does not agree with the recommended approval, the Central Office OAD Manager can advise the District to deny the application. The Central Office OAD Manager will place the application in "Ready for Denial" status. The application will now appear in the District OAD Manager's work queue for denial. See Section 2.01.D for the application denial procedures.

d. Consult Legal. If the Central Office review determines that it is necessary to obtain Office of Chief Counsel's opinion on whether an application should be approved or denied, the Central Office OAD Manager will select "Consult Legal" in HBMS. The application status will update to Under Legal Review and the application will now appear in the Office of Chief Counsel's work queue for their review.

5. Under Legal Review Status. A permit application will be Under Legal Review when the Central Office OAD Manager requests the Office of Chief Counsel's opinion on whether an application should be approved or

denied. After the Office of Chief Counsel performs their review, they will document their opinion in the workflow comments section and select "Complete Review". The application status will update to Under Central Office Review and will now appear in the Central Office OAD Manager's work queue. The Central Office OAD Manager will take into consideration the comments provided by the Office of Chief Counsel and make a final approval or denial decision.

C. Application Approval Procedures

If a permit application meets all of the criteria outlined in the state regulations, it will be approved by the Department.

1. Approved Pending Payment. Once it has been determined that the permit application will be approved, the District OAD Manager will place the application in Approved Pending Payment status. Placing the application in Approved Pending Payment status in HBMS will prompt the system to automatically generate and send a New Sign Permit Invoice to the applicant notifying them to submit payment for the initial annual fee within thirty calendar days. If the applicant did not elect to receive electronic notifications, the District OAD Manager will mail the New Sign Permit Invoice to the applicant. If the applicant fails to submit the initial annual fee within thirty calendar days of the date of the invoice, the Department may place the application into Returned status.

When generating the New Sign Permit Invoice, HBMS will also transmit an XML message to SAP which creates an Accounts Receivable (AR) in the Commonwealth's accounting system. The sign permit applicant will submit the initial annual permit fee to the Comptroller's Office. Upon receipt of the required fees from the applicant, the Comptroller's Office will credit those fees against the open AR in SAP. Once the fees are credited against the open AR, SAP will transmit an XML message to HBMS which will mark the New Sign Permit Invoice as paid and the permit will be renewed for another year.

2. Approved Pending Completion. After the New Sign Permit Invoice has been updated as paid in HBMS, the District OAD Manager assigns the next available permit tag number and mails the metal permit tag to the applicant. At this time, the District OAD Manager will place the application in Approved Pending Completion status on the Application Processing screen. Once placed in Approved Pending Completion status, HBMS will automatically send a "Sign Permit Approved letter" (RW-745A) and a “Notice of Sign Completion" (RW-745C) to the applicant. The RW-745A states that their application is approved upon the condition that the sign structure is erected within 12 months. If the applicant has not elected to receive electronic communication, the District OAD Manager will need to print the RW-745A from the HBMS resource account and mail it to the applicant along with the metal permit tag and a copy of the approved application. A copy of the RW-745A should also be mailed to the land owner, if different than the sign owner. When in the Approved Pending Completion status the permit application will now appear in the applicant's Work Queue. The applicant can notify PennDOT of the sign completion via HBMS or by submitting a paper copy of the RW-745C. Once the District OAD Manager is notified, the application will be in Sign Inspection status in HBMS.

3. Sign Inspection. After receiving notification that the sign has been constructed, the District OAD Manager is required to perform a sign inspection to ensure that the sign was erected in conformance with the information provided on the approved application. The District OAD Manager will also ensure that the permit tag was attached to the sign structure in accordance with Section 2.02 below. During the sign inspection period, the District OAD Manager can:

a. Advise Corrections. If it is discovered that the sign structure was not built in accordance with the information provided on the approved application, the District OAD Manager will select "Corrections Required" and document the necessary corrections in HBMS. The permit application will return to Approved Pending Completion status and will appear in the applicant's work queue. If the applicant did not elect to receive electronic communication, the District OAD Manager must mail the required corrections to the applicant.

b. Return to Applicant. If an applicant fails to notify the Department that the sign structure has been erected within 12 months, the District OAD Manager will receive an email notification from HBMS and contact the applicant regarding the status of the sign structure. The District OAD Manager may begin the permit revocation process or work with the sign owner to get the sign erected past the 12 month period.

c. Finalize Approval. If the applicant notifies the Department that the sign structure has been erected within 12 months and the sign was erected in accordance with the information provided on the approved permit application, the District OAD Manager will finalize the approval process by documenting the final sign inspection date in HBMS and selecting "Approve". The permit application approval process is now complete and the application status will be Approved.

D. Application Denial Procedures

If a permit application does not meet all of the criteria outlined in Act 160 and the regulations, it will be denied by the Department. Once it is determined that the permit application will be denied the application will be placed in Ready for Denial in HBMS. The District OAD Manager can then select "Deny" in HBMS.

1. If the applicant elected to receive electronic communication, HBMS will automatically send a "Permit Denial" Letter (RW-745D) to the applicant. If the applicant did not elect to receive electronic notifications, the District OAD Manager will retrieve the RW-745D from the HBMS resource account and mail the hardcopy to the applicant. The RW-745D will explain the reason(s) for the denial.

a. The reason(s) must cite the section or sections of Act 160 and/or the regulations that require denial, and must be specific to the facts involved. A generic reference to the law requiring denial is not sufficient to meet the requirements of due process. The applicant must be able to clearly understand the specific reason for the denial.

b. The Districts must submit a draft of the denial letter to the Utilities and Right-of-Way Section for review and approval. The submission must include a copy of the application and all attachments, as well as any other information needed for review of the denial. The Utilities and Right-of-Way Section will coordinate its review with the Office of Chief Counsel, Real Property Division.

2. Verbal opinions on whether a site is a legal location for a sign should not be given. Request that an application be submitted.

E. Sign Info Change Applications

In order to change information regarding an existing approved permit, a sign owner can submit a Sign Info Change Application in HBMS or by completing the appropriate paper permit application (RW-744, RW-745, or RW-746). All Sign Info Change Applications will be reviewed and processed as outlined in 2.01.A and 2.01.B. Any Sign Info Change Applications that include structural changes will follow the approval procedures as outlined in 2.01.C.

F. Processing Off-Premise Applications (RW-745)

Form RW-745I and the online application instructions in HBMS provide detailed instructions and information for the completion of the application for an off-premise sign permit. It should also be a guide for processing applications. See Chapters 1, 3, 4, 5 and 6 providing information and guidance applicable to off-premise signs.

G. On-Premise Applications (RW-744)

See Chapter 3.05 of this manual for a discussion of on-premise signs.

Permits are required for on-premise signs along the interstate highways. Form RW-744, "Application for On-Premise Outdoor Advertising Device Permit – Interstate Highway" or the On-premise Sign application in HBMS is used for this purpose. A $30.00 fee will be billed annually, and the issued permit number will be tracked in the Central OAD Billing System.

Permits are not required for on-premise signs along highways that are not interstates. Questions on such signs should be handled through oral or written inquiries rather than the permit process.

H. Application for Directional or Public Service (School Bus Shelter) Outdoor Advertising Device Permit (RW-746)

Form RW-746 or the Directional or Public Service applications in HBMS are used to obtain a permit for privately-

owned directional signs and public service (school bus shelter) signs. See Section 3.04 of this manual for additional information.

2.02 PERMIT TAG REQUIREMENTS

Chapter 445.6 of the PA Code requires a sign owner to attach a permit tag to each sign structure. The permit tag must be attached to the front of the structure, below the sign face, on the side closest to the highway. If the permit tag cannot be attached below the sign face due to clearance or visibility restrictions, the permit tag should be attached above the sign face. If a permit tag cannot be attached above or below the sign face, it may be attached to the sign upright that is closest to the highway. If attached to the sign upright, the permit must be attached at a height that is clearly visible from the highway's travel lanes. See figures below for sample illustrations on permit tag location requirements.

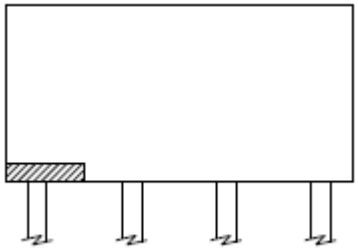


Figure 2.1 Permit tag attached to the structure below the sign face, closest to the highway.

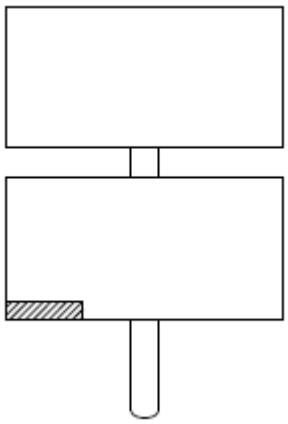


Figure 2.2 – Permit tag attached to the structure below the lowest sign face, closest to the highway.

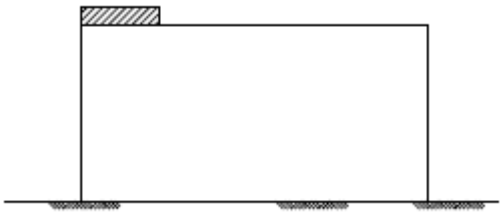
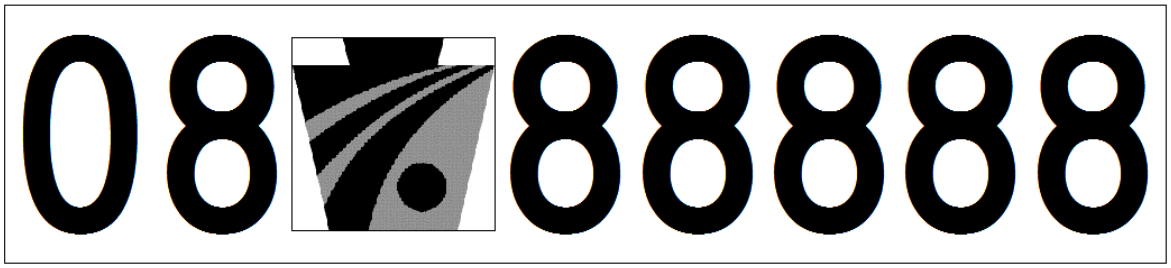


Figure 2.3 – Permit tag attached above the sign face, closest to the highway.

PennDOT will issue a permit tag to a sign applicant when the application is in Approved Pending Completion status in HBMS. The size of the permit tag will be dependent upon the size of the sign face(s). The different permit tag sizes are as follows:

Permit Tag Size	Permit Tag Dimensions	Sign Face Size
Small Permit Tags	3" X 12"	0 to 71 SF
Medium Permit Tags	4" X 18"	72 to 149 SF
Large Permit Tags	8" X 36"	150 SF and above

There will be one permit tag issued per sign structure and it will be used by PennDOT OAD Managers and the public to accurately and safely identify signs along Pennsylvania's controlled routes. Permit tags will contain a PennDOT District identifier as well as a PennDOT logo. The unique pattern is used to differentiate the PennDOT permit from asset tags that may be attached by a sign owner. An example illustration of a PennDOT permit tag is shown in Figure 2.4 below. All permit tags will have a white background with black numbering, except permit tags issued for non-conforming signs. Non-conforming signs will be issued permit tags with a yellow background with black numbers. The yellow background will aid the District OAD Managers when performing their biennial sign surveillance. The District OAD Manager will be able to quickly identify the sign as non-conforming in the field and be able to inspect it for compliance with the Department's policy on non-conforming signs.



After being notified that the sign construction has been completed, the PennDOT OAD Manager will verify that the sign permit tag has been properly attached to the sign structure during the sign inspection. Once attached, the permit must remain on the sign until the permit is no longer valid or the sign structure is removed to ground level. If a permit tag becomes illegible or is removed, it is the responsibility of the sign owner to contact their local PennDOT District Office to procure a replacement. The process of procuring a replacement tag must be initiated within 15 days of notice by the Department of the existing condition. The cost of a replacement tag is equal to the cost of the original application fee. Failure to initiate the process of procuring a replacement tag within the prescribed period will be considered abandonment of the sign.

If a replacement permit tag is requested by a sign owner, the District OAD Manager will contact Central Office to initiate a Special Charges invoice in HBMS. Central Office will generate the special charges invoice and transmit it to the sign owner. The District OAD Manager will mail the sign owner the new permit tag. Because the sign owner will be receiving a different permit number, the District OAD Manager must use the Update Permit screen in HBMS to change the sign owner's permit number and document the reason for the change. Using the Update Permit screen will link the new permit number with the old permit number and will preserve the historical documentation of the permit file.

2.03 ANNUAL PERMIT BILLING

1. The Outdoor Advertising Permit Billing System is maintained by the Central Office Right-of-Way Administration Unit's Highway Beautification Management System (HBMS).

2. All sign permits which have been approved are billed on an annual basis, usually on the anniversary of the month the permits were granted.

3. Some sign permit owners prefer to be billed annually, semi-annually or quarterly. By mutual agreement, these permit owners are then billed on the first period closest to the granting anniversary date.

4. On the first day of the month prior to a permit's anniversary month, the Highway Beautification Management System (HBMS) will automatically generate an Annual Sign Permit Renewal Invoice. If the sign permit owner elected to receive electronic notifications, an email with the permit renewal request attached will be sent directly to them. If the sign permit owner did not elect to receive electronic notifications, HBMS will send the permit renewal request to the HBMS Resource Account. The Right-of-Way Administration Unit will print the permit renewal request and mail the paper copies to the sign permit owners. When generating the Annual Sign Permit Renewal Invoice, HBMS will also transmit an XML message to SAP which creates an Accounts Receivable (AR) in the Commonwealth's accounting system.

5. The sign permit owner will submit payment for their annual renewal to the Comptroller's Office.

6. Upon receipt of the required fees from the sign permit owner, the Comptroller's Office will credit those fees against the open AR in SAP. Once the fees are credited against the open AR, SAP will transmit an XML message to HBMS which will mark the permit renewal invoice as paid and the permit will be renewed for another year.

7. If, in response to the annual billing, the sign owner provides new information, such as new landowner or removal of sign, the Central Office Right-of-Way Administration Unit will forward the original response to the District. At minimum, the District may only need to update HBMS and the District permit file. After the initial annual renewal invoice has been generated (60 days prior to the permit expiration date), the permit information cannot be updated until the renewal fees have been paid in full. If action is needed, the District will take the appropriate action, and update the permit data in HBMS within 30 days.

8. HBMS or the Central Office Right-of-Way Administration Unit will send an original permit renewal invoice and two follow-up renewal requests, if necessary. If the sign owner fails to renew the permit, and fails to respond to the billings, the Central Office Right-of-Way Administration Unit will forward the billing records to the appropriate District Office, which will then initiate permit revocation procedures.

2.04 PERMIT RECONCILIATION – MAINTAINING DISTRICT FILES

1. In order to comply with the Act, a centralized billing system for the renewal of sign permits was established in 1989. This system reflects all permits generated as of 1989, and all active permits issued since then, as well as all permits which have become inactive because of cancellation or revocation.

2. In 1997, the Comptroller's Office (Audit Report 5E0003), recommended that all District records be reconciled against the central billing system "master list" as follows:

   a. In January and July of each year, the Central Office Right-of-Way Administration Unit will send to each District the computer generated list of approved sign permits. An additional list of permits discontinued or revoked which have no removal verified date will also be sent.

   b. The District will reconcile both lists with their records, and update the permit data in the Highway Beautification Management System (HBMS) in order to resolve any discrepancies within 30 days of receipt of the list.

3. To facilitate reconciliation, the District outdoor advertising sign permit files shall be maintained as follows:

   a. Active Permit Files

   The District sign permit file is the only file for active permits. Therefore, it must contain the original approved application and all memos, changes, correspondence, etc., that pertain to the permit number.

   b. Discontinued Permit Files

   Permits that are discontinued because of cancellation or revocation are indicated on HBMS Report titled HBMS003 – Discontinued (Pending Verification) Permits. After removal is verified and the permit status has been changed to Sign Removed in HBMS, these files shall continue to be maintained, but most file

material may be purged, so that the file need contain only:

(1) the original application; and

(2) the memo, correspondence, etc. that cancelled or revoked the permit.

When District surveillance verifies that sign has been removed, access the Discontinued (Pending Verification) section of the work queue and select the appropriate application link. Once the application link is selected, the Application Processing Screen in HBMS will be used to update the permit status to Sign Removed by selecting the Verified Sign Removed action.

c. File in Numerical Order

The District shall maintain a file, as indicated above, for all permit numbers on the computer generated list. The files, approved and discontinued, shall be maintained together, in numerical order. Sequential discontinued permit numbers may be filed in one file folder to conserve space; however, the material for each active permit number must be filed in its individual file.

d. No Other Permit Files

The District shall not maintain any sign permit file for any permit number not on the computer list. For a sign to remain legal the permit must be renewed annually, otherwise it is an abandoned sign as defined at 67 Pa. Code Chapter 445.8(b)(3). Therefore, all pre-1989 files not reflected on the list shall be destroyed.

e. Metal Sign Permit Number Tags

In April, 1990, all Districts received a supply of metal sign permit number tags and a directive to provide the permit number tag to the owner of each currently existing off-premise advertising sign, and to issue a permit number tag with each newly approved sign application. The computer generated list of permits is therefore an inventory of issued permit number tags. If the permit number is on the list, the permit number tag should not be in a box of unissued metal tags. Districts shall issue the lowest available metal permit number tag to fill in missing numbers between issued permits. HBMS will not allow duplicate permit numbers to be issued.

f. Illegal Sign Files

In August, 1988, the Districts began assigning illegal sign numbers, and maintaining an Illegal Sign Log for tracking purposes. As part of the process, an illegal sign number file was established and maintained. Today, the illegal sign log is maintained in HBMS. See Section 2.10 on illegal signs. Any illegal sign files in existence prior to the implementation of HBMS, should be maintained through its final resolution.

2.05 PERMIT BILLING CHANGES

Prior to the implementation of HBMS, sign permit owners frequently used the annual billing form to advise PennDOT of changes in sign or owner status. These changes were addressed in different ways, by various PennDOT units. Because the sign permit owners no longer return the annual billing form to PennDOT, it cannot be used to advise PennDOT of changes in sign or owner status. The sign permit owner must utilize HBMS or paper permit applications to notify PennDOT of any sign or owner changes. After the initial annual renewal invoice has been generated (60 days prior to the permit expiration date), the permit information cannot be updated until the renewal fees have been paid in full.

1. A common change provided was the sign owner's advice of a change in the land owner, noted on the return copy of the annual billing. In order to update the land owner information, a sign permit owner will need to submit a new paper permit application or a Sign Info Change Application in the Highway Beautification Management System (HBMS). A new paper application or a Sign Info Change Application is required in order for the permit owner to submit a new lease between the sign owner and land owner.

2. Another change frequently found on the annual billing return was a notice that the permittee's sign no

longer exists. For one reason or another, the sign has been taken down or removed. This was usually indicated on the billing notice by one of the permit numbers being lined out, or just a simple note. A sign permit owner can notify PennDOT that their sign no longer exists by clicking "notify sign discontinuation" on the Sign Details Screen in HBMS or by submitting a statement on company letterhead stating their desire to no longer renew their sign permit to the District OAD Manager.

a. Once notification is received from the sign owner, the District OAD Manager will change the permit status to "Discontinued (Pending Verification)" by accessing the Application Process Screen and selecting the Discontinue Notice Received action. The sign owner will not be billed while the permit is in Discontinued (Pending Verification) status.

b. HBMS will keep track of the permits that are in Discontinued (Pending Verification) status and are awaiting verification of their removal.

c. When the District OAD Manager verifies that the sign has been removed, the permit status will be updated to Sign Removed in HBMS. If it is discovered that the sign was not removed, the District OAD Manager will work with Central Office to get the status of the permit back to Approved in HBMS so that the sign owner will be billed for the annual fee plus any back fees.

2.06 UNPAID PERMIT BILLINGS

1. Annual sign permit billings are normally e-mailed or mailed during the first week of the month preceding the renewal month (i.e., the April bills are sent out during the first week of March, the October billing is sent out during the first week of September, etc.) This gives the sign permit owners almost a 60-day notice.

2. Bills remaining unpaid after their expiration date are rebilled again in the middle of the next month (i.e., on March 15th, unpaid February billings are sent a second/final notice via e-mail or first-class mail, and unpaid January billings are sent a third or expired/abandoned notice via e-mail or first class Certified Mail/Return Receipt Requested).

3. If at any time a bill is returned as "undeliverable" or "unclaimed," it is forwarded immediately to the appropriate District for action.

4. If the third, expired/abandoned notice has been received by the sign owner, and still has not been paid by the end of the month, the HBMS will automatically notify the District OAD Manager.

5. The District is asked to first verify if the sign has been removed. If it no longer exists, the District OAD Manager will update the permit status as Sign Removed in HBMS and the District may mark their file as inactive.

6. If the sign is still in existence, the District shall begin the revocation process. See Section 2.09 of this manual on revocations.

2.07 SIGN SURVEILLANCE

1. The requirement for all Districts to conduct regular, on-going surveillance for illegal outdoor advertising structures was established to ensure compliance with State and Federal law. See generally 23 CFR 750.705(b) providing, in short:

"(b) assure that signs erected under §750.704(a)(4) and (5) comply, at minimum with size, lighting and spacing criteria contained in the agreement between the Secretary and the State;

(d) Remove illegal signs expeditiously;

(i) Establish enforcement procedures sufficient to discover illegally erected or maintained signs shortly after such occurrence and cause their prompt removal;"

2. These requirements provides for surveillance of both off-premise and on-premise signs:

   a. A minimum surveillance of all controlled highways within the District is required to be completed and documented on a two calendar-year (biennial) cycle, with updated photographs.

   b. Conduct surveillance on a more frequent cycle on routes in more populated areas that attract a higher advertising interest.

3. The District OAD Manager will utilize the Trimble Geo 7X handheld device to conduct the sign surveillance. The District OAD Manager will use the Export Trimble Data feature in HBMS to load the targeted routes onto their Trimble Geo 7X. While in the field, the District OAD Manager will update the sign details including GPS coordinates, capture a current photo of the front and back of the sign, and document any pertinent comments and observations. After the surveillance is conducted in the field, the District OAD Manager will use the Import Trimble data feature in HBMS to load the updated surveillance records into HBMS. Refer to the HBMS User Guide for instructions on importing and exporting data between the Trimble Geo 7X and HBMS.

4. See Section 2.13 of this manual on signs in Pittsburgh and the Borough of Delaware Water Gap.

5. The monthly total miles surveilled is to be reported to the Central Office Right-of-Way Administration Unit by the fifth working day of each month using the Highway Beautification Surveillance Miles Log (RW-788). The RW-788 provides space for each month's individual results, total cumulative miles surveyed, and year-to-date. With the implementation of the Federal transportation appropriation bill referred to as MAP-21, certain highways were added to the National Highway System (NHS), thus increasing the controlled miles for surveillance for each District. Please see Section 1.05 for a link to the complete list of controlled highways.

2.08 TRANSFER OF SIGN PERMITS TO NEW OWNERS

1. In order to correctly transfer sign permit ownership, the submission of a new paper application (RW-744, RW-745, or RW-746) or a Sign Info Change Application via the Highway Beautification Management System (HBMS) is required, with the accompanying fee (See 445.6(c)(3)). Form RW-749, Information Change for Sign Owner, is to be completed and signed by the current owner and sent to the District with the paper application or uploaded into HBMS during the Sign Info Change Application process.

   a. If Central Office is notified that a transfer has taken place by means other than a new application or a Sign Info Change Application, a copy of the correspondence indicating that a transfer has taken place is forwarded to the District, and a tickle file is maintained by the Central Office Right-of-Way Administrative Unit.

   b. The District must make contact with the parties involved, and ensure that a new application is completed, any unpaid renewal fees are satisfied, and that the new initial annual fee is also paid.

   c. Once the new paper application or Sign Info Change Application is submitted in HBMS, the District OAD Manager will follow the same application processing procedures as outlined in Section 2.01.

   d. If the application for change of owner is approved, the applicant will be sent a "Transfer of Sign Permit Approved" letter (RW-745N). A copy of the approval letter should also be sent to the landowner if different than the sign owner. If the applicant has elected to receive electronic notifications, HBMS will automatically email the RW-745N to the applicant and land owner. If the applicant did not elect to receive electronic notifications, HBMS will send the RW-745N to the HBMS Resource Account. The District OAD Manager will then print the RW-745N and mail the paper form to the applicant and land owner.

2. Permits that have expired (permits for which payments have not been received) or have fees in arrears cannot be transferred until all outstanding fees are collected.

2.09 PERMIT REVOCATION

1. All legally erected signs regulated under Act 160 require a current, valid annual sign permit. See 36 P.S. §2718.107 and Section 445.6.

2. If a sign is presumed to be abandoned as defined in Section 445.8(b), and a permit has been issued for that sign, the permit shall be revoked. See also Chapter 4 of this manual on non-conforming signs.

3. All revocations shall begin by issuing a "Notice of Intent to Revoke Permit" (RW-750), unless specifically exempted by the Chief, Utilities and Right-of-Way Section. This gives the sign owner the opportunity to resolve the matter, if it can be resolved within the requirements of Act 160 and regulations. This policy is good for customer service purposes and may avoid unnecessary litigation.

The "Notice of Intent to Revoke Permit" (RW-750) shall be sent to both sign owner and land owner to:

a. indicate the violation(s) charged;

b. quote the appropriate sections of Act 160 and the regulations; and

c. restate the violation specifics, so they are easily understood by a layperson.

A generic reference to the law requiring revocation is not sufficient to meet the requirements of due process. The applicant must be able to clearly understand the specific reason for the revocation.

4. The District must receive approval of the RW-750 from the Chief, Utilities and Right-of-Way prior to sending it to the sign owner and land owner. The District OAD Manager will use the Update Permit Information Screen in HBMS to propose the Intent to Revoke to Central Office. The District OAD Manager will select "Propose Intent to Revoke" and the application status will change to Intent to Revoke (Under CO Review). The application will now appear in the Central Office Manager's work queue for review. The submission must include all information needed for review of the intent to revoke. The Utilities and Right-of-Way Section will coordinate its review with the Office of Chief Counsel, Real Property Division. During their review, the Central Office OAD Manager can:

a. Approve Intent to Revoke. If the Central Office review concurs with the proposed intent to revoke a permit, the Central Office OAD Manager can advise the District to send the Intent to Revoke Notice. The Central Office OAD Manager will place the permit in Intent to Revoke (Ready to Send) status. The permit will now appear in the District OAD Manager's work queue to send the Notice of Intent to Revoke Permit to the sign owner and land owner.

b. Deny Intent to Revoke. If the Central Office review does not concur with the proposed intent to revoke a permit, the Central Office OAD Manager can advise the District not to send the Notice of Intent to Revoke Permit. The Central Office OAD Manager will place the permit in Intent to Revoke (Ready for Denial) status. The permit will now appear in the District OAD Manager's work queue to cancel the revocation or to re-propose the intent to revoke.

c. Consult Legal. If the Central Office review determines that it is necessary to obtain Office of Chief Counsel's recommendation on whether the Intent to Revoke Notice should be sent, the Central Office OAD Manager will select "Consult Legal" in HBMS. The permit status will update to Intent to Revoke (Under Legal Review) and the permit will now appear in the Office of Chief Counsel's work queue for their review. Once the Office of Chief Counsel provides their recommendation, the permit will appear back in the Central Office OAD Manager's work queue for them to approve or deny the intent to revoke.

5. If Central Office approved the intent to revoke, the permit will appear in the District OAD Manager's work queue in Intent to Revoke (Ready to Send) status. The District OAD Manager will select "Send Intent to Revoke" and the permit status will update to Intent to Revoke Sent. If the sign owner elected to receive electronic communication, HBMS will automatically send a "Notice of Intent" Letter (RW-750) to the sign owner. If the applicant did not elect to receive electronic notifications, the District OAD Manager will retrieve the RW-750 from the HBMS resource account and mail the hardcopy to the sign owner and land owner via Certified Mail, Return Receipt Requested. If an e-mail address was provided for the land owner, the RW-750

will also be emailed to the land owner. If an email address was not provided for the land owner, the District OAD Manager will retrieve the RW-750 from the HBMS resource account and mail the hardcopy to the land owner via Certified Mail, Return Receipt Requested. The RW-750 will explain the reason(s) for the intent to revoke.

Copies of the final notice of intent letter should be forwarded to both the Office of Chief Counsel and the Central Office Right-of-Way Administration Unit.

6. If the sign owner or land owner responds within thirty days, the District must consider the response to determine whether revocation is appropriate. The District should contact the Central Office Right-of-Way Administration Unit before making a determination whether to pursue revocation. Central Office will consult with the Office of Chief Counsel, Real Property Division.

a. If a decision is made not to pursue revocation, the file should be so documented and a letter should be sent to the sign owner and land owner indicating the decision. A copy of the letter should be forwarded to both the Office of Chief Counsel and the Central Office Right-of-Way Administration Unit. At this time, the District OAD Manager will use the Update Permit Data screen in HBMS to cancel the revocation. The permit status will be updated to Approved status.

b. If a decision is made to pursue revocation, the procedures set forth below on issuing revocation notices should be followed.

7. If neither the sign owner nor the land owner responds within thirty days to attempt to resolve the problem, the District will then issue a "Revocation Notice of Advertising Device Permit" (RW-745R) to both the sign owner and land owner indicating the violation(s) charged as set forth in the notice of intent letter. The District must receive approval of the revocation notice from the Chief, Utilities and Right-of-Way prior to sending it to the sign owner and land owner. The District OAD Manager will use the Update Permit Information Screen in HBMS to propose the revocation notice to Central Office. The District OAD Manager will select "Propose Revocation Notice" and the application status will change to Revocation Notice (Under CO Review). The application will now appear in the Central Office Manager's work queue for review. The submission must include all information needed for review of the revocation notice. The Utilities and Right-of-Way Section will coordinate its review with the Office of Chief Counsel, Real Property Division. During their review, the Central Office OAD Manager can:

a. Approve Revocation Notice. If the Central Office review concurs with the proposed revocation notice, the Central Office OAD Manager can advise the District to send the Revocation Notice of Advertising Device Permit. The Central Office OAD Manager will place the permit in Revocation Notice (Ready to Send) status. The permit will now appear in the District OAD Manager's work queue to send Revocation Notice of Advertising Device Permit to the sign owner and land owner.

b. Deny Revocation Notice. If the Central Office review does not concur with the proposed revocation notice, the Central Office OAD Manager can advise the District not to send the Revocation Notice of Advertising Device Permit. The Central Office OAD Manager will place the permit in Intent to Revoke (Ready for Denial) status. The permit will now appear in the District OAD Manager's work queue to cancel the revocation or to re-propose the revocation notice.

c. Consult Legal. If the Central Office review determines that it is necessary to obtain Office of Chief Counsel's recommendation on whether the Revocation Notice of Advertising Device Permit should be sent, the Central Office OAD Manager will select "Consult Legal" in HBMS. The application status will update to Revocation Notice (Under Legal Review) and the permit will now appear in the Office of Chief Counsel's work queue for their review. Once the Office of Chief Counsel provides their recommendation, the permit will appear back in the Central Office OAD Manager's work queue for them to approve or deny the revocation notice.

8. If Central Office approved the revocation, the permit will appear in the District OAD Manager's Work Queue in Revocation Notice (Ready to Send) status. The District OAD Manager will select "Send Revocation Notice" and the permit status will update to Revocation Notice Sent. If the sign owner elected to receive electronic communication, HBMS will automatically send a "Revocation Notice of Advertising Device Permit"

(RW-745R) to the sign owner. If the applicant did not elect to receive electronic notifications, the District OAD Manager will retrieve the RW-745R from the HBMS resource account and mail the hardcopy to the sign owner and land owner via Certified Mail, Return Receipt Requested. If an e-mail address was provided for the land owner, the RW-745R will also be emailed to the land owner. If an email address was not provided for the land owner, the District OAD Manager will retrieve the RW-745R from the HBMS resource account and mail the hardcopy to the land owner via Certified Mail, Return Receipt Requested. The RW-745R will explain the reason(s) for the revocation.

Copies of the final revocation notice should be forwarded to the Chief, Central Office Right-of-Way Administration Unit.

9. The revocation will be deemed final unless the parties notified request a hearing.

Requests for a hearing must be:

a. in writing;

b. accompanied by a copy of the revocation notice;

c. submitted within 30 days of the mail date of the revocation;

d. submitted to the Administrative Docket Clerk, Office of Chief Counsel, Commonwealth Keystone Building, 400 North Street, 9th Floor, Harrisburg, PA 17120-0096; and

e. also sent to the Outdoor Advertising Control Manager at the District Office issuing the revocation, and to the Outdoor Advertising Control Manager, PennDOT, PO Box 3362, Harrisburg, PA 17105-3362.

10. There is no fee required for requesting a revocation hearing.

11. A duly made request for a revocation hearing will stay the revocation of the permit, pending the outcome of the hearing. Once the request is received, the District OAD Manager will update the permit status to Revoked (Under Appeal) on the Update Permit Data screen in HBMS.

12. The procedures to be followed for a revocation hearing are the same as outlined in Section 2.11, *Administrative Hearing*. If the outcome of the revocation hearing is in favor of the sign owner, the District OAD Manager will access the permit from the work queue and cancel the revocation.

13. If a permit is revoked, there is no refund of any annual renewal fees.

14. If, after an additional thirty days, there is no response to the Revocation Notice, the sign shall be considered abandoned, and arrangements shall be made with District Maintenance to have the sign structure removed, as authorized by section 445.8(c), and the owner of record billed for these expenses, as outlined in the Maintenance Manual, Publication 23, Chapter 11.4. If the exact date that District Maintenance will remove the sign is known, the District OAD Manager should notify the sign owner and land owner, if possible. The District OAD Manager can document the communication of the date to the sign owner on the comments section of the Update Illegal Sign screen in HBMS. See Section 2.10 of this manual on removal of illegal signs. At this time, the District OAD Manager will access the permit from the work queue and select "Finalize Revocation" on the Update Permit Data screen. The permit status will update to Revoked (Pending Verification).

15. Consideration should be given to storing the sign for some reasonable period of time in the event the sign owner wishes to take possession of it. The sign owner will be responsible for storage costs incurred by the Department.

16. The Central Office Right-of-Way Administration Unit and Office of Chief Counsel, Real Property Division, shall be notified when the sign has been verified as removed, so they may close the file. Once the sign has been verified as removed, the District OAD Manager will access the permit from the work queue and update the permit status to Sign Removed on the Update Permit Data screen.

2.10 REMOVAL OF ILLEGAL SIGNS (BOTH WITHIN AND OUTSIDE RIGHT-OF-WAY)

1. Illegal signs, including those referred to as temporary signs, will normally be found during the required monthly surveillance of controlled highways in each District. Occasionally, a complaint about a possible illegal sign will be received from a concerned citizen.

Any temporary sign in PennDOT right-of-way which, by virtue of its location, size, manner of construction or any other attribute, obstructs visibility or interferes with the effectiveness of a traffic control device, or which poses any other form of safety hazard, should be removed by PennDOT as soon as practicable. Any temporary sign affixed in any way to a traffic control device should also be removed by PennDOT as soon as practicable. If a temporary sign interferes with actual or scheduled PennDOT maintenance operations, it should be removed prior to the operations. See also Publication 23, Maintenance Manual, Section 11.4.

2. All illegal signs will be logged in the Highway Beautification Management System (HBMS) using the Illegal Sign screen.

3. If the sign is in the right-of-way, log the illegal sign in HBMS and immediately send a copy of the "Illegal Sign on Right-of-Way" letter (RW-781) to the sign owner/advertiser and land owner:

   a. include the Illegal Sign Number assigned by HBMS;

   b. attach a photograph of the sign;

   c. include a copy of Publication 266, "Right-of-Way Encroachment & Outdoor Advertising Control";

   d. update the status to Sign in ROW Notice Sent (RW-781) in HBMS;

   e. send a copy of the RW-781 to the Central Office Right-of-Way Administration Unit;

   f. if not removed in thirty days, have District Maintenance forces remove the sign from the right-of-way, as soon as possible, as authorized by 36 P.S. §2718.110 and defined in section 445.8(b) and authorized by section 445.8(c). See also Maintenance Manual, Publication 23, Chapter 11.4); and

   g. update the status to Assigned to Maintenance in HBMS.

4. If not in the right-of-way, upon verifying that the sign is definitely illegal under the regulations (Title 67 Pa. Code Chapter 445), log the illegal sign in HBMS and issue a "Request to Remove Illegal or Abandoned Sign" letter (RW-790):

   a. include the Illegal Sign Number assigned by HBMS;

   b. attach a photograph of the sign;

   c. under "Reason(s) for Violation," first quote exactly the appropriate wording from those sections of Chapter 445 that apply;

   d. paraphrase those applicable sections so they are easily understood by a layperson;

   e. send a copy to the sign owner/advertiser and the land owner;

   f. if the sign is illegally erected but otherwise permittable, indicate this on the RW-790, and provide the URL for HBMS;

   g. send a copy of the RW-790 to the Central Office Right-of-Way Administration Unit; and

   h. update the status to Removal Notice Sent (RW-790) sent in HBMS.

5. In thirty days, verify that the sign has been removed, or a permit applied for.

6. If the illegal sign has not been removed, issue a "Final Notice to Remove Illegal or Abandoned Sign," (RW-790F):

   a. using the same Illegal Sign Number, follow the steps in [3] [b-f] above;

   b. update the status to Final Removal Notice Sent (RW-790F) in HBMS on the Illegal Sign screen; and

   c. send a copy of the RW-790F only to the Central Office Right-of-Way Administration Unit.

7. After an additional thirty days have elapsed, verify if the illegal sign has been removed, or a permit application submitted.

8. If the sign still exists, issue a memo or work order to District Maintenance forces to have the illegal sign removed to ground level, as authorized at 36 P.S. §2718.110 and defined in section 445.8(b) and authorized by 445.8(c). See also Maintenance Manual, Publication 23, Chapter 11.4. If a work order is issued to District Maintenance, update the status to Assigned to Maintenance in HBMS.

9. In accordance with 36 P.S. §2718.110, the person or persons responsible for the erection and maintenance of the sign shall be liable to PennDOT for the removal expenses, and neither the Secretary nor any other employee acting at his or her discretion shall be liable in any criminal or civil action for damages for any action taken in removing an illegal sign.

10. Consideration should be given to storing the sign for some reasonable period of time in the event the sign owner wishes to take possession of it.

11. Each phase of the illegal sign removal process should be recorded in HBMS. On a monthly basis, the Central Office Right-of-Way Administration Unit will run the Illegal Sign Surveillance report to track the number of illegal signs that have been logged and are in the process of being removed by the District. This report will be used in conjunction with the Highway Beautification Surveillance Miles Log (RW-788) to document effective control of illegal signs.

12. The illegal sign status should also be updated to Closed status in HBMS each time an illegal sign is removed, permitted, or otherwise satisfactorily accounted for.

13. If the Office of Chief Counsel was involved in the matter, they should also be advised when the illegal sign is removed, permitted or otherwise satisfactorily accounted for, so they may close their file.

14. See also Chapter 7 of this manual on removal of prohibited signs.

15. In *Department of Transportation v. Pindar*, 474 A.2d 420 (Pa. Cmwlth. 1984), the Commonwealth Court ordered that a sign be covered until a permit was sought to determine whether it was legal.

16. In *Condemnation by Department of Transportation of Two (2) Billboards Northeast Outdoor Advertising, Inc.*, 452 A.2d 81 (Pa. Cmwlth, 1982), the Commonwealth Court determined it was not a de facto taking when PennDOT removed a sign that was located within the right-of-way.

17. In *Condemnation by Department of Transportation of Two (2) Billboards of Northeast Outdoor Advertising, Inc.*, 452 A.2d 83 (Pa. Cmlth. 1982), the Commonwealth Court found that the removal of two billboards by PennDOT did not constitute a compensable de facto taking where the sign owner failed to obtain required permits under the Act. The removal was a valid exercise of PennDOT police power.

18. In *Mountainside Contracting, Inc. v. Department of Transportation* (Commonwealth Court, No. 177 C.D. 2004, Unreported Opinion dated October 6, 2004), the Commonwealth Court affirmed a decision of the Secretary requiring removal of a sign for failure to obtain a permit because the owner did not prove the sign was grandfathered as existing when the Act became effective.

19. In *Jim Gravatt Naomi Pines Real Estate, Inc. v. Department of Transportation*, (Commonwealth Court, No. 178 C.D. 2004, Unreported Opinion dated September 3, 2004), the Commonwealth Court affirmed a

decision of the Secretary requiring removal of a sign within highway right-of-way without permission under 36 P.S. §670-425 even though the encroachment was minor and removal would cause the owner economic hardship.

2.11 ADMINISTRATIVE HEARINGS

1. When an application for an Outdoor Advertising Device Permit has been denied or a permit revoked, the decision may be appealed, by the applicant, by asking for an administrative hearing. See Title 67 PA Code, Chapter 491, Administrative Practice and Procedures.

2. The trial attorney assigned to the case by the Office of Chief Counsel, Real Property Division, is in charge of PennDOT's case during the entire administrative hearing process. Settlement of the case is appropriate in some circumstances. This should be a consensus decision of the Office of Chief Counsel, Central Office Right-of-Way Unit and the District.

3. Hearings are conducted by an Administrative Hearing Officer.

4. When the hearing is scheduled, the Administrative Docket Clerk will notify all parties involved as to location, date and time.

5. The District OAD Manager will be contacted by the assigned PennDOT trial attorney and asked to provide pertinent documents and information.

6. District personnel may be required to testify at the hearing. Central Office personnel may also be required to testify.

7. The assigned trial attorney will schedule a pre-hearing conference with all Department witnesses.

8. Following the hearing, the Hearing Officer issues a report and proposed order. The report and proposed order are made available to both parties. Exceptions to the report may be filed with the Secretary of Transportation. If no exceptions are filed, the Hearing Officer's report and the proposed order becomes final. If exceptions are filed, the Secretary will rule on the exceptions. The permit applicant can appeal the Secretary's ruling to Commonwealth Court. PennDOT may file exceptions to an adverse report of a Hearing Officer, but cannot dispute a ruling of the Secretary.

9. When a permit is denied, the applicant has the burden of proving why it is entitled to a permit. When a permit is revoked, PennDOT has the burden of proving why the permit was revoked. In either case, however, PennDOT must be prepared to fully explain its actions.

10. The reasonableness of PennDOT's interpretation of Act 160 and the regulations must be demonstrated at the hearing. Although its interpretations as reflected by the Secretary will be given deference on appeal to the Commonwealth Court, this deference does not apply at the administrative hearing level. All interpretations must be supported by logical reasoning based on the words of the applicable provisions.

2.12 FORMAL COMPLAINT PROCEDURE, 1 PA. CODE CHAPTER 35

1. A third party such as a property owner or other sign owner can make an official complaint to the administrative docket under the above provision regarding a sign's compliance with Act 160 or the regulations.

2. If a District or Central Office receives an informal complaint alleging facts that suggest a violation of Act 160 or the regulations, one option to consider is advising the complainant to file a formal complaint with the docket. This should not be done without the consultation and concurrence of the Central Office Right-of-Way Administration Unit and the Office of Chief Counsel.

3. A formal complaint may be made by letter or other writing to the docket containing the name and address of the complainant, the name and address of the sign owner against whom the complaint is made, and a statement of the facts supporting violation of Act 160 or the regulations. Supporting material may be

submitted along with the complaint.

4. A copy of the formal complaint must be served on the permittee, who must file an answer within 20 days of service.

5. After the answer is filed, the District should consult with the Central Office Right-of-Way Administration Unit and the Office of Chief Counsel. If a determination is made that a violation of Act 160 or the regulations has been alleged and not satisfactorily addressed in the answer, the Office of Chief Counsel will advise the District to either invite the parties to an informal conference, set the matter for a formal hearing, or take such other action as deemed appropriate in consultation with the Central Office Right-of-Way Administration Unit and the Office of Chief Counsel.

2.13 SIGNS IN PITTSBURGH AND THE BOROUGH OF DELAWARE WATER GAP

1. 36 P.S. §2718.105(d) states "The Commonwealth and local political subdivisions shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes and the action of the Commonwealth and local political subdivisions in this respect will be accepted for the purposes of this act. At any time, that a political subdivision adopts regulations which include the size, spacing and lighting of outdoor advertising devices, the secretary may so certify to the Secretary of Transportation of the United States and control of outdoor advertising in commercial or industrial areas will transfer to subsection (b) under this section."

2. 36 P.S. §2718(b) states "In zoned commercial and industrial areas, the secretary may certify to the Secretary of Transportation of the United States as notice of effective control, that there has been established within such areas regulations which are enforced with respect to the size, lighting and spacing of outdoor advertising devices. In such areas, the size, lighting and spacing requirements set forth below shall not apply. For the purposes of this subsection, requirements as to the number or total size of signs, displays or devices permitted to a single plot or parcel will be considered to be a spacing requirement."

3. PennDOT has provided such certifications to FHWA for the City of Pittsburgh and the Borough of Delaware Water Gap. Therefore, PennDOT does not enforce the size, lighting, and spacing requirements of Act 160 in such areas.

4. The certifications granted to the City of Pittsburgh and the Borough of Delaware Water Gap can be cancelled if there are amendments or conditions that negate the certification requirements or if it is found the cities are not enforcing their regulations.

5. The certifications granted to Pittsburgh and the Borough of Delaware Water Gap only apply to signs in commercial or industrial areas. In other zones, Act 160 continues to apply and is to be enforced by PennDOT. PennDOT will conduct annual field visits and file audits as part of its oversight responsibilities.

2.14 PENNSYLVANIA BYWAYS

1. 23 U.S.C. 131(s) provides "signs must be prohibited, with limited exceptions, along scenic byways if a state has a scenic byway program."

2. There is a Pennsylvania scenic byways program, also known as "The Pennsylvania Byways Program," that is managed by PennDOT, with a coordinator located in the Center for Program Development and Management. While the designation limits the type of outdoor advertising that may be placed along the roads, there is no general statute providing that signs are prohibited along scenic byways. Rather, the sign-prohibition requirement of Federal law is met by special legislation prohibiting signs along a highway segment designated by the legislation as a scenic byway or by requiring the local government to enact an ordinance prohibiting signs along the highway segment sought to be considered a scenic byway.

3. The special legislative acts designating byways are typically amendments to Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, Chapter 83. The effect of the legislation is to prohibit all new off-premise signs, regardless of zoning. Except as follows:

a. Official signs and notices which are required or authorized by law and which shall conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to sections 131 of Title 23, United States Code.

b. Outdoor advertising devices advertising the sale or lease of the real property upon which they are located.

c. Outdoor advertising devices advertising activities conducted on the property on which they are located, including devices which display a message that may be changed at reasonable intervals by electronic process or remote control.

d. Directional signs, including but not limited to, signs pertaining to natural wonders, scenic and historical attractions, and other points of interest to the traveling public which shall conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to section 131 of Title 23, United States code.

4. Any legally erected signs which existed prior to the highway being designated as a Scenic Byway are permitted to remain as non-conforming signs, but cannot be improved or modified. See 67 Pa. Code Sections 445.2, 445.7 and 445.8.

5. See Form RW-745I for a list of State routes currently designated as a Pennsylvania Byways. The Center for Program Development and Management, which manages the Pennsylvania Byways program, also has a map showing the different Pennsylvania Byways. The PA Byways Statewide Map can be viewed at the following website:

http://www.dot.state.pa.us/public/Bureaus/Cpdm/Byways/PA%20Byways%20Manual.pdf

6. Should any additional State routes be designated as Pennsylvania Byways in the future, the owners of all existing off-premise signs adjacent to the Pennsylvania Byway shall be informed that their signs have been reclassified as legal non-conforming and of the effects of the non-conforming status as outlined in 67 Pa. Code Sections 445.2, 445.7 and 445.8. This notice shall be in writing, accompanied by pertinent information of the Act amending Title 74 - Transportation.

7. The owners of any illegal signs along the Pennsylvania Byway, under the regulations (Title 67 Pa. Code Chapter 445), shall immediately be issued a "Request to Remove Illegal or Abandoned Sign" (RW-790). See Section 2.10 of this manual relating to removal of illegal signs.

8. The above procedures only apply to Pennsylvania Byways designated by a special legislative act. A non-legislative Byway is a roadway nominated by a government entity, and then designated by the Secretary of Transportation as a "PA Byway". Where there is no special act prohibiting signs, the regular restrictions and allowances under Act 160 apply to the highway. However, as a condition of designation as a PA Byway, local governments are required to enact an ordinance prohibiting off-premise outdoor advertising along the byway. If PennDOT is asked to grant a permit along a non-legislative Pennsylvania Byway because the local government granted a permit, the District should notify the Utilities and Right-of-Way Section. They will notify Pennsylvania Byways Coordinator in the Center for Program Development and Management and the Office of Chief Counsel. No further action should be taken on the permit application until the District is provided guidance by the Utilities and Right-of-Way Section.

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CHAPTER 3

PERMITTED SIGNS

36 P.S. §2718.104 states "To effectively control outdoor advertising, while recognizing it to be a legitimate commercial use of property and an integral part of the business and marketing function, no outdoor advertising device shall be erected or maintained: (1) within six hundred sixty feet of the nearest edge of the right-of-way if any part of the advertising or informative contents is visible from the main-traveled way of an interstate or primary highway, except for nine classes of signs which are exceptions to the prohibition and which are permitted."

The nine exceptions are discussed below, but not in the order listed in the Act. The exceptions are grouped by the applicable sign permit application. Sections 3.01, 3.02, and 3.03 discuss off-premise sign exceptions which are applied for using paper application Form RW-745 or using the online Off-Premise sign application in the Highway Beautification Management System (HBMS). Section 3.04 discusses the exceptions for privately owned directional and public service signs which are applied for using paper application Form RW-746 or the online Directional or Public Service applications in HBMS. Section 3.05 discusses the on-premise sign exception which is applied for using paper application Form RW-744 or the online On-Premise application in HBMS. Sections 3.06 and 3.07 discuss sign exceptions to the application process.

3.01 EXCEPTION (IV): INTERSTATE "COTTON AREA" SIGNS

36 P.S. §2718.104(1)(iv) states "outdoor advertising devices in zoned or unzoned commercial or industrial areas along those portions of the interstate system constructed on right-of-way, any part of the width of which was acquired on or before July 1, 1956."

These areas are named after the senator who introduced the exemption. They were exempted from all controls in the 1958 federal law and Pennsylvania's 1961 Interstate Sign Control Act. The 1965 federal law allowing signs only in commercial or industrial Cotton areas was incorporated into Act 160.

A. Cotton Area Right-of-Way Defined

As indicated above, 36 P.S. §2718.104(1)(iv) refers to right-of-way acquired on or before July 1, 1956. 23 CFR Chapter 1 Part 750 Section 750.102(a) defines "acquired for right-of-way" as "acquired for right-of-way for any public road by the Federal Government, a state, or a county, city, or other political subdivision, by donation, dedication, purchase, condemnation, use, or otherwise. The date of acquisition shall be the date upon which title (whether fee title or a lesser interest) vested in the public for right-of way purposes under applicable Federal or state law." Chapter 445.2 defines "highway, road or street" as "a public right-of-way improved primarily for vehicles. Unimproved rights-of-way, private roads and drives are not to be regarded as highways, road, or streets."

Therefore, the pre-July 1, 1956, right-of-way may have been acquired as a "public road" for a city street or township road or a state highway. However, a Cotton area shall not be established by railroad or utility right-of-way, private right-of-way, or "paper" streets. In *Appeal of J.B. Stevens* (Administrative Docket No. 018 A.D. 1991), the Hearing Officer affirmed PennDOT's position that a right-of-way used to establish a Cotton area must be of public character and cannot be a private or "paper road".

B. Boundaries of Cotton Area

1. Crossing Cotton Area

A "Cotton Area" is located along those portions of the interstate system constructed on right-of-way, any part of the width of which was acquired on or before July 1, 1956. The boundaries of a Cotton area are determined by drawing lines perpendicular to the centerline of the interstate highway extending 660 feet from the edges of the right-of-way of the interstate highway through those points where the outside edges of any right-of-way acquired on or before July 1, 1956, and the edges of right-of-way for the interstate highway intersect.

A right-of-way plan sheet is required to document a Cotton Area, which is created by the pre-July 1, 1956

right-of-way crossing the interstate highway (refer to the illustrations on Form RW-745I, Instructions and Information for Completion of Application for Off-Premise Sign Permit, or the HBMS Online Application Instructions). The placement of the proposed sign within the Cotton Area must be shown. If the proposed Cotton Area sign site cannot be clearly documented on the right-of-way plan sheet, the services of a registered land surveyor may be necessary to provide clear documentation.

2. Parallel Cotton Area

The right-of-way for some Interstate Highways, and portions of others, was acquired before July 1, 1956. In such cases, all areas adjacent to such highways are "Cotton Areas". For example, all portions of the Pennsylvania Turnpike designated I-76, I-276, and I-476 are "Cotton areas".

Form RW-745I and the HBMS Online Application Instructions, provide a list of Interstate Highways, with beginning and ending points, that were constructed on pre-July 1, 1956 right-of-way. If the proposed sign site is located in any of these Cotton areas, a right-of-way plan sheet is not required and no further documentation is necessary.

C. Zoning of Cotton Area

The sign site within the Cotton Area must be currently zoned commercial or industrial by the local municipality or county, or must be located in an unzoned commercial or industrial area. Refer to the discussion of zoning in Section 3.03 below. The sign in a Cotton Area must also meet size and spacing requirements (see Section 5.03).

D. Representations in Applications

In *Philadelphia Outdoor Advertising v. Department of Transportation*, 690 A.2d 789 (Pa. Cmwlth. 1984), the Commonwealth Court found that PennDOT could ask in the permit application form if the sign will be in a Cotton or Kerr Area and could rely on the applicant's representation that the sign would not be located in a Cotton or Kerr Area where it could not determine otherwise from the information provided in the application.

3.02 EXCEPTION (V): INTERSTATE "KERR AREA" SIGNS

36 P.S. §2718.104(1)(v) states "outdoor advertising devices in areas zoned commercial or industrial along the interstate system and lying within the boundaries of any incorporated municipality as such boundaries existed on September 21, 1959, and devices located in any other area which, as of September 21, 1959, was clearly established by law as industrial or commercial."

This exemption is also named after the senator who sponsored it when included in Federal legislation.

As indicated, there are two variations of Kerr Area, which will be referred to as "Type 1" and "Type 2". Type 1 is an area within an "incorporated municipality," and Type 2 is located "in any other area". Size and spacing requirements apply.

A. Kerr Area – Type 1

Chapter 445.2 defines "incorporated municipalities" as "cities of all classes, boroughs, towns and first-class townships." However, in *Patrick Media Group, Inc. v, Department of Transportation*, 620 A.2d 1125 (Pa.1993), the Pennsylvania Supreme Court ruled that the Statutory Construction Act's definition of "municipal corporation" is applicable to the Act and does not include second class townships.

Therefore, a Kerr Area – Type 1 is: An area currently zoned commercial or industrial located within the boundaries of a city, borough, town, or first class township as such boundaries existed on September 21, 1959. Because of the above Supreme Court decision, only first class townships are included as a Type 1 Kerr Area.

Form RW-745I, Instructions and Information for Completion of Application for Off-Premise Sign Permit and the HBMS Online Application Instructions, provides a list of cities, boroughs, towns, and first class townships that will be accepted as a Kerr Area – Type 1. The list was compiled by references to the 1959 Pennsylvania Manual. When an applicant checks "yes" on the Off-Premise Permit Application, the applicant certifies that the sign location is

zoned commercial or industrial, and is within the boundaries of the incorporated municipalities that existed on September 21, 1959. Assuming the municipality is on the list, no other documentation is needed unless it becomes necessary to resolve a boundary question.

B. Kerr Area – Type 2

A Kerr Area – Type 2 is "any other area," (i.e., not an incorporated municipality) which, pursuant to the above Pennsylvania Supreme Court decision, means a second-class township, and which, as of September 21, 1959, was clearly established by law as industrial or commercial.

Chapter 445.2 defines "area clearly established by law as industrial or commercial" as "a zoned commercial or industrial area".

In *Kasha v. Department of Transportation*, 782 A.2d 15 (Pa. Cmwlth. 2001), the Commonwealth Court found that the above definition (pertaining to a Kerr Area – Type 2) was not an abuse of discretion.

Chapter 445.2 also defines "zoned commercial or industrial area" as "an area which is reserved for business, industry, commerce, trade or other business of any type or category under a State or local zoning law, ordinance or regulation" (See Section 3.03.A).

Therefore, in order for a sign to be permitted as a Kerr Area – Type 2, the sign site must be located in a township currently classified as second class, and the sign site must have been zoned commercial or industrial continuously since September 21, 1959. The applicant for a permit must provide appropriate documentation such as zoning maps.

C. Representations in Applications

In *Philadelphia Outdoor Advertising v. Department of Transportation*, 690 A.2d 789 (Pa. Cmwlth. 1984), the Commonwealth Court found that PennDOT could ask in the permit application form if the sign will be in a Cotton or Kerr Area and could rely on the applicant's representation that the sign would not be located in a Cotton or Kerr Area where it could not determine otherwise from the information provided in the application.

3.03 EXCEPTION (VI): FAP – NHS COMMERCIAL OR INDUSTRIAL AREA SIGNS

36 P.S. §2718.104 (1) (vi) states "outdoor advertising devices in zoned or unzoned commercial or industrial areas along the primary system [i.e. along the non-interstate national highway system]."

A. Zoned Commercial or Industrial Areas

If the municipality (or county) has enacted a zoning ordinance, a sign shall be permitted only in commercial or industrial areas.

36 P.S. §2718.103.(11) defines "zoned commercial or industrial area" as "an area which is reserved for business, industry, commerce, trade or other business of any type or category pursuant to a State, or local zoning law, ordinance or regulation."

1. Primary Purpose of Zoning

   Because zoning districts have various names, it is necessary to review the specific ordinance to determine whether or not the sign location is zoned commercial or industrial for the purpose of issuing a sign permit. The primary purpose for the district must be reserved for commercial or industrial activities. Zoning districts where commercial or industrial uses require a conditional use permit or special exception, or are secondary to the primary purpose (such as businesses in a residential or agricultural area) are not zoned commercial or industrial for sign permit purposes. In order to verify that the sign location meets zoning requirements, the applicant must submit the zoning ordinance (or pertinent parts) along with the permit application.

   In *Heffner Outdoor Advertising, Inc., v. Department of Transportation* (Unreported Opinion No. 532 C.D. 2001, Commonwealth Court, November 2, 2001), the Commonwealth Court affirmed the order of the Secretary of Transportation, filed to No. 014 A.D. 2000, affirming the denial of a permit in a zoned agricultural

area even though the zoning allowed for limited commercial uses and the site of the proposed sign was on land used for a commercial purpose. The primary purpose for the district was not to be reserved for commercial or industrial activities.

In *Appeal of Peak Media Group* (No. 001 A.D. 2002, decided September 27, 2002), the Secretary of Transportation affirmed a Hearing Officer's order that affirmed the denial of a permit for a sign located in an area zoned Municipal Services District. Even though some uses that may be considered industrial in nature were performed in the area, the Hearing Officer found that "governmental, municipal and public service type uses are not commercial or industrial activities and not generally recognized as commercial or industrial by zoning laws of the Commonwealth."

2. Municipal Zoning Variance

Even though a municipality may issue a variance to allow a sign to be erected in an area not zoned commercial or industrial, PennDOT shall not recognize the variance, and shall only consider the actual zoning at the sign location.

In *Weichert A D & P, Inc. v. Department of Transportation*, 631 A.2d 1106 (Pa. Cmwlth. 1993), appeal denied 655 A.2d 996, the sign company applied to PennDOT for a permit to erect a sign in an area zoned residential. Prior to application to PennDOT, West Conshohocken Borough had denied an application for a variance to erect the sign. On appeal, the Court of Common Pleas affirmed the Borough denial. On further appeal, Commonwealth Court, at No. 2381 C.D. 1987, reversed the Borough's denial. Consequently, the Borough issued the variance and a building permit. Regardless, PennDOT denied a permit under the Act because the location was not zoned commercial or industrial. The Secretary of Transportation affirmed the denial at No. 191 A.D. 1991 and Weichert appealed. The Commonwealth Court acknowledged its previous decision but then stated "We did not address the Act presently at issue." It went on to determine that a local municipality's issuance of a building permit for a sign pursuant to a variance from the local zoning code does not prevent PennDOT from denying a permit for the same sign if it fails to meet the requirements of Act 160. The zoning of the land controls, not the fact a variance from the zoning was granted.

3. Applicant's Representations

Permits are issued based upon the representations made by the applicant on the application. If a permit is issued based upon the representation of commercial zoning, and PennDOT determines years later that the zoning was residential at the time of application and continues to be residential, PennDOT is not prevented from applying the Act based upon the actual residential zoning. Also, the doctrine of laches, based upon many intervening years, may not be raised as a defense where the Commonwealth is attempting to enforce duties and obligations under its police power. *Adams Outdoor Advertising v. Department of Transportation*, 860 A.2d 600 (Pa. Cmwlth. 2004). See generally section 2.01 of this manual on the application process.

B. Unzoned Commercial or Industrial Areas

1. Unzoned Areas

If a municipality has no zoning ordinance, a sign may be erected in an "unzoned commercial or industrial area" which is defined at 36 P.S. §2718.103(9) as "an area which is not zoned by State or local law, regulation, or ordinance and on which there is located one or more commercial or industrial activities and the area along the highway extending outward 800 feet from and beyond the edge of such activity. Unzoned commercial and industrial areas shall not include land on the opposite side of the highway from said activities except that on two or three-lane non-controlled access highways the unzoned commercial or industrial area may be located on the opposite side of the highway from the commercial or industrial activity, if, in the opinion of the Secretary, the topographical conditions on the same side of the highway as the activity are such that it is not reasonably usable, and provided that the land on the opposite side of the highway has not been designated scenic by the Department. All measurements shall be from the outer edges of the regularly used building, parking lots, storage, or processing areas of the commercial or industrial activities, not from the property lines of the activities, and shall be along or parallel to the edge of the pavement of the highway."

2. Distances for Unzoned Area

Two distances - length along the highway and depth from the highway right-of-way - determine the unzoned area.

a. The sign must be located within 800 feet, measured along or parallel to the edge of pavement, from the outer edges of the regularly used building, parking lots, storage, or processing areas of the activity, and on the same side of the highway. The operative words are "regularly used". The 800 feet may extend from both sides of the activity. Thus the total length of the unzoned area may be 1600 feet plus the width of the activity itself. The 800 feet may cross a road or highway that intersects the controlled highway. The sign site may or may not be on land owned by the activity.

b. The regularly used building, parking lots, storage, or processing areas of the commercial or industrial activity must be within the sign control area, i.e., within 660 feet measured perpendicularly from the right-of-way of the controlled highway, and must be part of a single, integral site, i.e., the "parking lot" or "storage area" cannot be located some distance away from the primary activity to "create" a sign site.

3. Commercial or Industrial Activities

"Commercial or industrial activities" are designated at 36 P.S. §2718.103(12) as "those activities generally recognized as commercial or industrial by zoning law in the Commonwealth, except that none of the following activities shall be considered commercial or industrial:

(i) Outdoor advertising signs. Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.

(iii) Activities not visible from the main-traveled way.

(iv) Activities conducted in a building principally used as a residence.

(v) Railroad tracks and minor sidings."

Numerous Administrative Docket decisions provide clarification and guidance regarding activities not visible and activities in a residence. PennDOT interprets "visible" as not only being seen from the main-traveled way, but recognizable as a commercial or industrial activity. See *In re Application of Potomac*, 153 A.D. 1991, and *In re Application of Martin*, 386 A. D. 1996, supporting this interpretation. For this reason, an activity located in an agricultural building located in an agricultural setting may be "visible" but may not be recognizable as a commercial activity. The same concept that allows some limited commercial activities in a zoned residential or agricultural area but still prohibits signs should also be applied to ancillary commercial activities in an unzoned residential or agricultural area. If a person sells pet supplies from the barn and has some boarding kennels, the limited commercial activity may be secondary to the agricultural or residential activity. See *In re Application of Lennoxville Kennels*, 017 A.D. 2000, to this affect. Likewise, a person selling antiques on a limited basis, or doing welding or car repairs in a backyard garage, does not create an unzoned commercial or industrial area. Some factors to consider include:

a. Is the telephone and electricity billed to a residential or commercial name, and at a residential or commercial rate?

b. Is any part of the activity conducted in the home – such as office activities?

c. Is the activity part or full time and with regular operating hours?

d. Does the activity have hired employees?

The answers to any one of these questions is not controlling. The totality of the circumstances must be considered.

In *Zima Roofing Inc. v. Department of Transportation*, 672 A.2d 422 (Pa. Cmwlth. 1996), the Commonwealth Court found that an unzoned commercial or industrial area did not exist where a tractor-

trailer rig was occasionally parked at the driver's residence and there was a garage with a small "Trucking" sign on it, but there was no business office or business telephone line at the residence or the garage.

Zoning law and Administrative Docket decisions also provide guidance regarding whether or not the type of activity is commercial or industrial. It is PennDOT's interpretation that the following shall not establish an unzoned commercial or industrial area:

(1) Governmental facilities of any kind, including PennDOT and Turnpike maintenance sites. See *Appeal of Peak Media Group* (No. 001 A.D. 2002, decided September 27, 2002).

(2) Fire and police stations, post office facilities, museums, libraries, schools or colleges, health care facilities.

(3) Electrical utility substations, gas or oil wells.

(4) Recreational activities such as golf courses, camp grounds, swimming pools, or ski areas. See *In re Application of Statler's*, 043 A.D. 1989, and *In re Application of Penn Advertising*, 135 A.D. 1994.

(5) Closed, unused, commercial or industrial building.

(6) An alleged activity located in a temporary or easily moved structure, or structure not connected to utility services.

4. Required Documentation

Any permit application for a proposed sign in a municipality that does not have zoning must be accompanied by pictures of the commercial or industrial activity that is visible from the main traveled way. The applicant must also provide the following information for the industrial or commercial activity:

a. Activity name

b. Hours of operation

c. Number of years in operation

d. Phone number

e. Address

3.04 EXCEPTION (VIII): DIRECTIONAL SIGNS

A. Privately Owned Directional Signs

36 P.S. §2718.104(1)(viii) states "directional signs, including but not limited to, signs pertaining to natural wonders, scenic and historical attractions, and other points of interest to the traveling public which shall conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to section 131 of Title 23, United State Code."

The selection methods and criteria for directional signs erected by privately owned activities or attractions are set forth in Chapter 445.3(b)(6). Size (150 square feet maximum), lighting, spacing, and limited message content are also specified in Chapter 445.3.

Note that there are no zoning requirements that apply to directional signs. Applications for permits are processed on Form RW-746 or using the online application for directional signs in HBMS.

B. Public Service Signs

"Public service signs" are defined by Chapter 445.2 as "signs located on school bus stop shelters." These signs are

among several types of signs included in the definition of "directional and official signs and notices" in Chapter 445.2 and, therefore, are authorized by 36 P.S. §2718.104 (1) (i).

Size, message content, and location are specified in the definition of public service signs in Chapter 445.2. There are no zoning requirements. These signs are privately owned and usually generate income for the owner. Applications for permits are also processed on Form RW-746 or using the online application for public service signs in HBMS. The applicant must document that the location is an actual school bus stop as designated by the local school district.

3.05 EXCEPTIONS (II) AND (III): ON-PREMISE SIGNS

36 P.S. 2718.104(1) (ii) and (iii) state:

(ii) Outdoor advertising devices advertising the sale or lease of the real property upon which they are located.

(iii) Outdoor advertising devices advertising activities conducted on the property on which they are located.

A. On-Premise Signs In General

Signs that advertise the sale or lease of the real property upon which they are located, or advertise activities conducted on the property on which they are located, are "on-premise" signs. The main regulations that apply to on-premise signs are in section 445.5.

For sale or lease signs may be located anywhere on the property that is for sale or lease. Activity on-premise signs must be located in a manner consistent with the definition of premises. See B. below.

A sign owned by an outdoor advertising company and producing rental income to the owner is more than likely an off-premise sign and regulated accordingly. Sometimes a sign face of a multiple faced off-premise sign structure is used for on-premise advertising as rental payment to the land owner. This does not make it an on-premise sign.

Section 445.5(b)(3) states "an on-premise sign may not be permitted which contains, includes, or is illuminated by a flashing, intermittent or moving light or lights." However, 23 U.S. Code Section 131(c)(3) allows on-premise signs "which may be changed at reasonable intervals by electronic process or by remote control." In view of this and an applicable administrative docket decision, *Outdoor Advertising Device Permit No. 11-6038, J.B. Steven, Inc.* (006A.D. 1994, issued April 19, 1995), PennDOT allows electronic message displays on on-premise signs. See Chapter 6 of this manual discussing changeable message signs.

B. On-Premise Gateway Signs

"Gateway" signs or "Welcome" signs are signs that introduce or welcome visitors to a municipality.

The primary message on a Gateway sign must welcome visitors to the municipality. The sign should include the municipality's name composed in the largest-size print on the sign. Smaller-size supplemental slogans may be added, e.g., "The Red Rose City." A municipality's welcome sign may also give its population or date of foundation, or depict the town's crest/symbol.

Gateway signs located within the right-of-way must conform with PennDOT Publication 46 addressing municipal name signs.

Gateway signs maybe placed outside the right-of-way of a primary highway and along interstate highways as on-premise signs, subject to the permit requirement of 67 Pa. Code §445.6(c), if the sign is located within the confines of the municipality and the municipality holds fee title to or a lease to use the property for a Gateway sign. If the municipality cannot demonstrate it holds fee title to or a lease to use the property for a Gateway sign, the sign would then need to follow the off-premise sign regulations to be permitted.

The requirements and restrictions for on-premise signs in 67 Pa. Code §445.5 apply to Gateway signs.

No advertising, product logos, sponsorship information, directions, distances or names of officials are allowed on

Gateway signs.

Any additional signs attached to a Gateway sign are subject to regulation in accordance with the Act.

C. Premises

What is, and is not, to be considered part of the premises is paramount in identifying an on-premise sign. "Premises" is defined in 67 Pa. Code Section 445.2, as "the property upon which the activity is conducted as determined by physical facts rather than property lines. It is the land occupied by the buildings or other physical uses that are necessary or customarily incident to the activity, including such open spaces as are arranged and designed to be used in connection with the buildings or uses." The remainder of the definition is devoted to what are not considered part of the premises which include:

1. Land which is not used as an integral part of the principal activity, including land which is separated from the activity by a roadway, highway or other obstruction, and not used by the activity; and extensive undeveloped highway frontage contiguous to the land actually used by a commercial facility, even though it might be under the same ownership.

2. Land which is used for, or devoted to, a separate purpose unrelated to the advertised activity.

3. Land which is more than 100 feet from the principal activity, and in closer proximity to the highway than to the principal activity, and developed or used only in the area of the sign site or between the sign site and the principal activity and whose purpose is for advertising purposes only. In no event may a sign site be considered part of the premises on which the advertised activity is conducted if the site is located on a narrow strip of land which is nonbuildable land, or is a common or private roadway, or is held by easement or other lesser interest than the premises where the advertised activity is located.

Buildings include all buildings that are regularly used by the activity and physical uses are those necessary and customarily incident to the activity including parking areas, driveways, open spaces, etc. Open spaces include lawn, garden, and other landscaped or clearly maintained areas, all of which are part of the principal activity. Any on-premise sign that meets the criteria stated above is permitted.

An integral part of the activity, such as a parking area, located across the road from the building housing the activity, is also part of the premises. See *Highway News, Inc. v. Department of Transportation*, 789 A.2d 802 (Pa. Cmwlth. 2002), where the Commonwealth Court treated a sign located on a parking lot used in connection with a business on the other side of the highway as on-premise.

D. On-Premise Sign Permits

Section 445.6(a)(3) requires an annual permit for on-premise signs along the interstate system. An annual permit is not required for on-premise signs located along other controlled highways.

E. Compliance With Regulations

Even if a formal application and permit is not required or has not been issued, all on-premise signs must comply with 67 PA Code, Chapter 445, including Sections 445.2 and 445.5.

In *Kasha v. Department of Transportation*, 782 A.2d 15 (Pa. Comwlth. 2001), both the Hearing Officer and the Commonwealth Court recognized that an on-premise sign existed, but found no fault with PennDOT for not issuing a permit for this specific sign classification. The actual ruling was that Kasha's sign was not nonconforming to the Act because it was an on-premise sign prior to its advertising being changed in 1998, and could have been issued a valid permit as an on-premise sign prior to the change even though it was not.

3.06 EXCEPTION (I): OFFICIAL SIGNS AND NOTICES

36 P.S. §2718.104(1)(i) states:

"Official signs and notices which are required or authorized by law and which shall conform to the national

standards promulgated by the Secretary of Transportation of the United States pursuant to section 131 of Title 23, United States Code."

A. Definitions

Section 445.2 provides the following definitions:

Directional and official signs and notices – Only official signs and notices, public utility signs, service club and religious notices, public service signs and directional signs.

Official signs and notices – Signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal, State or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

Public utility signs – Warning signs, informational signs, notices or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.

Service club and religious notices – Signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs do not exceed 8 square feet in area.

See Section 3.04 for a discussion of public service signs and directional signs.

B. Application and Permit

An application and permit is required for municipalities, school districts, conservation districts, fire companies, and other public entities, to erect official signs located off the highway right-of-way. (See Ch 445.3 and 445.6(a)(1)).

The same applies to public utility signs, and service club and religious notices. Even though service club and religious notices are each limited to 8 square feet in area, multiple notices are often displayed on a single structure, which is acceptable for the purposes of Act 160.

C. Within Right-of-Way Only

As with all of the provisions of the Act, these exceptions only apply to signs outside the right-of-way. Signs in the right-of-way are not subject to control under the Act. See Section 2.10 relating to removal of illegal signs and Publication 266, "Right-of-Way Encroachment & Outdoor Advertising Control."

3.07 EXCEPTIONS (VII) AND (IX): OTHER PERMITTED SIGNS

36 P.S. §2718.104(1) (vii) and (ix) state:

> (vii) Outdoor advertising devices in the specific interest of the traveling public which are authorized to be erected or maintained by the Secretary and which are designed to give information in the interest of the traveling public.
>
> (ix) Any other outdoor advertising devices permitted or authorized along the interstate system by the official agreement executed June 23, 1961, between the Commonwealth and the Federal Government; provided such outdoor advertising devices do not violate the provisions of Title 23, United States Code, "Highways".

A. Directional Information Signs

"Directional informational signs" are defined in Section 445.2 as "signs which existed on June 1, 1972, and contained specific directional information of a nature not defined under the directional and official signs and notices or the directional sign categories. These signs shall be limited to those devices which provide specific directional information for the traveling public to the following facilities; food services, lodging, gasoline and automotive

services, truck stops, campgrounds, resorts, tourist attractions, natural wonders, scenic and historical sites and areas of outdoor recreation."

There are no permitted or known existing signs which are identified as this category or classification.

B. Other Signs

This category is a carryover from the 1958 Federal and 1961 state laws that no longer apply. There are no permitted or known existing signs which are identified as this category or classification.

CHAPTER 4

NONCONFORMING SIGNS

4.01 DEFINITION

Section 445.2 defines "nonconforming sign" as "a sign which was legally erected but which does not conform to the requirements of the act."

Subsequent to the December 15, 1971, effective date of Act 160, approximately 12,000 signs were identified as nonconforming. Such signs were legally erected prior to December 15, 1971, in residential or agricultural areas or other areas not commercial or industrial.

However, not all nonconforming signs predate Act 160. If a sign is erected in a valid unzoned commercial area, but the business activity subsequently ceases to exist, the classification of the sign must be changed to nonconforming. Likewise for a sign in a zoned commercial or industrial area, if the zoning should change to a noncommercial or nonindustrial designation, the sign classification becomes nonconforming. If an existing non-controlled highway is designated NHS and, thereafter, subject to control for Act 160 purposes, any legally erected signs in noncommercial or nonindustrial areas are classified nonconforming as of the NHS designation date.

If PennDOT determines (through routine surveillance, etc.) that a previously conforming sign is now nonconforming, PennDOT will send Form RW-770 to the sign owner to advise of such change in classification. See Section 2.07 of this manual discussing surveillance.

4.02 PERMITS REQUIRED

Chapter 445.6(a)(4) requires an annual permit for signs "prohibited to be erected or maintained under 36 P.S. §2718.104 (i.e., nonconforming signs), until such time as each sign has been removed." Permit tags for non-conforming signs must be attached to the sign structure in accordance with Section 2.2.

4.03 COMPENSATION FOR REMOVAL

36 P.S. §2718.109 requires that just compensation be paid for the removal of nonconforming signs by eminent domain procedures. PennDOT is required to remove nonconforming signs provided that Federal funds are available to reimburse the Commonwealth for the Federal share of such costs. In the late 1970's and early 1980's, approximately 8,000 nonconforming signs were removed upon payment of just compensation.

The Intermodal Surface Transportation Act (ISTEA) of 1991 made highway trust funds available for the removal of nonconforming signs. As a result, FHWA set a two-year goal for the complete removal of all remaining nonconforming signs. Subsequent to FHWA's ruling, Congress passed technical corrections to ISTEA which included an amendment to Title 23, USC, Section 131(n), which provided that a State may use highway trust funds, "in its discretion" for this purpose. Thus, PennDOT may but is not required to remove nonconforming signs. The use of Federal funds for such removal is an available option, but is not mandated.

4.04 CONTINUANCE OF NONCONFORMING SIGN

With "customary maintenance and repair," a nonconforming sign may continue to exist indefinitely. However, as part of the definition of erect, Section 445.2 clarifies "customary maintenance and repair does not include major physical changes such as increase in size or height or addition of or change in lighting." Section 445.2 defines "maintain" as "to allow to exist." An example of customary maintenance would be painting and an example of customary repair would be the replacement of broken or rotted uprights at the same size and with the same materials.

The ownership of nonconforming signs may be transferred provided such change in ownership is documented

through an application for a new permit as required by Chapter 445.6 (c).

4.05 REMOVAL OF NONCONFORMING SIGN

A nonconforming sign may be removed:

1. Pursuant to the Act upon payment of just compensation under 36 P.S. §2718.109.

2. As a result of acquisition of right-of-way for a highway project upon payment for loss of personalty, or payment for relocation to a conforming site.

3. Because of acquisition for some other public purpose.

4. Through voluntary abandonment by the owner.

5. As a result of natural disaster or other nontortious conduct so that less than 50% of the sign remains intact (Chapter 445.7(b)(3)(iv)). See Section 4.07 below.

6. Because the sign has been abandoned as defined at Chapter 445.8(b). See Section 4.06 below.

4.06 ABANDONED NONCONFORMING SIGN

A. Presumption

The following nonconforming signs shall be presumed to be abandoned:

1. No Advertising or Lease

Pursuant to Section 445.8(b)(1), "a sign which has remained without bona fide advertising for 12 months or which has been without a current lease or license from the landowner for more than 90 days is presumed abandoned."

The presumption of abandonment based on no advertising may be refuted by evidence that the sign owner is attempting to lease the advertising space as reflected by a notice on the sign that the space is available, etc. Documentation to support the presumption would include dated photographs over a period of time which show no advertising or message (blank message area) or a message that is for a dated, long past event.

PennDOT must not become involved in disputes between the sign owner and landowner. However, in the case of a nonconforming sign, if the landowner clearly demonstrates that the sign owner does not have a lease or license (as required by Section 445.6(b)(2)(1)) and the landowner clearly demonstrates that the desired end result is removal of the sign (as opposed to a ploy to obtain increased rent payments), action to revoke the permit should be initiated.

2. No Permit

Pursuant to Section 445.8(3), "a sign for which a valid tag permit under Section 445.6(b) and (c) (relating to permits) was not issued is presumed abandoned." When the owner of a nonconforming sign refuses to obtain a permit, or to renew the annual permit, the sign is abandoned and must be removed.

In *Condemnation by Department of Transportation of Two (2) Billboards of Northeast Outdoor Advertising, Inc.*, 452 A.2d 83 (Pa. Cmlth 1982), the Commonwealth Court found that the removal of two billboards by PennDOT did not constitute a compensable de facto taking where the sign owner failed to obtain required permits under the Act. The removal was a valid exercise of PennDOT police power.

In *Stehly Sign Co., Inc., v. Department of Transportation* (Pa. Cmwlth., unreported opinion filed May 26, 1999, Nos. 1054 to 1957 C.D. 1998), allowance of appeal denied 910 to 913 W.D. Alloc. Dk. 1999, the Commonwealth Court upheld PennDOT's determination that numerous nonconforming signs had been abandoned by the sign owner's refusal to renew its permits after being given repeated opportunities to do so.

The Administrative Docket decision was at 366 A.D. 1995, 367 A.D. 1995, 368 A.D. 1995, 369 A.D. 1995, and 370 A.D. 1995, filed December 18, 1997.

3. Destroyed Sign

Pursuant to Section 445.8(4), "a sign may be considered abandoned under Section 445.7(b) (relating to restoration of damaged or partially destroyed nonconforming signs)." See Section 4.07 below.

4. Enlarged, Improved, Etc.

Pursuant to Section 445.8(5), "a nonconforming sign otherwise compensable under section 9 of the Act (36 P.S. §2718.109), which since the date on which the sign became eligible for compensation, has been enlarged, illuminated or structurally improved in any manner (except normal repairs) or the location of which has been changed is presumed abandoned." 23 CFR 750.707(d)(5) states "the sign must remain substantially the same as it was on the effective date of the State law or regulations."

There have been several Commonwealth Court decisions and numerous Administrative Docket decisions that have upheld abandonment of the nonconforming use when the sign has been enlarged, illuminated, or structurally improved, or the location changed. See e.g. *Park Outdoor Advertising Company v. Department of Transportation*, 485 A.2d 864 (Pa Cmwlth. 1984).

Conversion from fixed message to any form of changeable message (tri-vision, glow cube, LED or other electronic process or remote control) is considered an improvement giving rise to a presumption of abandonment.

Accurate surveillance records that document the size, location, materials, and lighting (including photographs) must be maintained by the District to properly prove changes in signs.

4.07 RESTORATION OF DAMAGED OR PARTIALLY DESTROYED NONCONFORMING SIGNS

A. Sign May Be Repaired

1. Section 445.7(b), nonconforming signs, states:

   (1) If a sign is damaged or destroyed as a result of tortious conduct such as vandalism, the sign may be repaired or replaced by the sign owner.

   (2) If a sign is damaged as a result of natural disaster or nontortious conduct so that 50% or more of its value remains intact, the sign may be repaired by the sign owner.

2. However, if replaced or repaired, Section 445.7(b)(3) applies:

   (ii) Replaced or repaired signs shall be of equal or lesser dimensions and constructed of the same or less durable material than the sign being replaced or repaired and shall contain no improvements or additions.

   (iii) If a sign is replaced the replacement sign shall remain at the same location.

   In *Keystone Outdoor Advertising v. Department of Transportation*, 687 A.2d 47 (Pa. Cmwlth. 1996), the Commonwealth Court affirmed that a nonconforming sign damaged by a storm was abandoned because the replacement sign was steel instead of wood and halogen lights had been added. The court rejected arguments based on traditional abandonment law in favor of PennDOT's police power arguments under the regulations.

B. Sign May Not Be Repaired

1. Section 445.7(3)(iv) states "if a sign is destroyed or damaged as a result of natural disaster or other nontortious conduct so that less than 50% of the sign remains intact, the sign may be repaired or replaced only in compliance with the provisions of this chapter. Determination of the value of the sign and the damage shall be made by the Department."

In other words, if more than 50% of the nonconforming sign is destroyed, it is abandoned and cannot be repaired or replaced at the nonconforming location. In *Miller's Smorgasbord v. Department of Transportation*, 590 A.2d 854 (Pa. Cmwlth. 1991), the Commonwealth Court confirmed that the Hearing Officer properly interpreted this section to provide that a nonconforming outdoor sign damaged in excess of 50% may not be replaced unless the replacement sign is in compliance with this chapter, that is, be conforming.

C. 50% Determinations

1. Value or Damage (Intact)

Section 445.7(b)(2) states "the sign may be repaired if 50% or more of its value remains intact." Section 445.7(b)(3)(iv) states "a sign may not be repaired or replaced at the nonconforming site if it is damaged so that less than 50% of the sign remains intact." Both provisions relate to damage as "a result of natural disaster or other nontortious conduct."

Sections 445.7(b)(3)(i) and (iv) both state "determination of the value of the sign and the damage shall be made by the Department."

Therefore, PennDOT shall determine whether or not a storm-damaged nonconforming sign can be repaired based upon 50% of value or 50% intact.

In *Mike's Sign Co. v. Department of Transportation*, 642 A.2d 634 (Pa. Cmwlth, 1994), the Commonwealth Court agreed that PennDOT may revoke a permit when a sign is damaged due to natural disaster or nontortious conduct if either (emphasis in opinion) less than 50% of the sign's value remains or if less than 50% of the sign remains intact physically.

2. 50% of Value

This method requires an appraisal to establish the value of the structure in place (reproduction cost less depreciation) before the storm damage, and an appraisal to establish the value of the structure after suffering the storm damage. If the value after the storm-damaged sign is less than 50% of the undamaged sign, the sign may not be repaired. The appraiser must be prepared to testify at a permit revocation hearing. Photographs are, of course, necessary to support the appraisal and testimony. Even though the regulation states that PennDOT shall determine the value, the sign owner will most likely present testimony of value also. The Hearing Officer will then make a decision based on the testimony presented.

3. 50% Intact

The Webster's Dictionary definition of "intact" is "untouched especially by anything that harms or diminishes: ENTIRE, UNINJURED." Since 1994, this definition of "intact" has been used by PennDOT for the purpose of applying this regulation.

Prior to 1994, PennDOT used an interpretation of "intact" to mean "upright, in place and uninjured or not damaged." However, in *Martin Media v. Department of Transportation*, 641 A.2d 630 (Pa. Cmwlth.1994), the Commonwealth Court concluded that PennDOT had improperly expanded the common ordinary meaning of "intact" to include the concepts of "upright" and "in place." The Commonwealth Court cited Webster's Third New International Dictionary 1173 (1986) for the common, ordinary meaning of "intact" as "untouched esp. by anything that harms or diminishes: left complete or entire: UNINJURED." PennDOT therefore adopted this definition of "intact." See Section 4.07.E below.

D. 60 Days to Repair

Section 445.7(3)(v) states "damaged or destroyed signs not replaced or repaired within 60 days of notice from the Department shall be considered abandoned."

When a nonconforming sign is damaged less than 50%, or greater than 50% as a result of tortious conduct, a Notice of Intent to Revoke Permit, Form RW-750, should be sent to the sign owner citing the above provision. The notice must advise that the sign must be repaired within 60 days of the notice, and request the owner to notify PennDOT when the repairs are completed. Photographs should be taken to document the condition of the sign prior to repair.

In the event repairs are not made, the permit should be revoked. See Sections 2.07 and 2.09 on surveillance and revoking permits.

E. Application of Chapter 445.7

Application of the 50% determination requires discretion and judgment in each situation. In "close calls," the benefit of the doubt should go to the sign owner. As indicated above, the 50% determination can be based on a before and after appraisal of value, or physical inspection. While an appraisal may be more precise, it must be accomplished without delay. Staffing, workload, and other factors often prevent such timely action. A determination based upon a physical inspection and documented by photographs can be accomplished immediately.

Applying the above-adopted definition of "intact" as "uninjured," more than 50% of the sign structure must be injured or damaged by the storm. A sign face lying intact on the ground as a result of all uprights broken, is more than 50% intact and can be repaired. If clearly more than 50% of the sign is blown down, uprights and stringers broken, and pieces of sign face scattered over a wide area, the sign cannot be repaired.

Immediately upon determination and photographic documentation of the greater than 50% damages, the sign owner must be sent Form RW-750, Notice of Intent to Revoke Permit, citing Section 445.7 and advising of PennDOT's determination.

F. Timely and Fair Application of Chapter 445.7

In the *Mike's Sign Company case*, the Commonwealth Court reversed the revocation of the sign permit even though photographs taken by the PennDOT representative shortly after the severe storm seemed to clearly document substantially more than 50% damage. The court seized upon the word "value" used by the Hearing Officer, presumably because of how PennDOT handled the situation. A review of the case leads to the conclusion that PennDOT did not administer the regulation in a responsible manner. In fact, it appears the sign owner was ambushed. The PennDOT representative watched the sign owner commence and complete repairs without comment before issuing a notice of intent to revoke. The Commonwealth Court rightly refused to sanction this abuse of power. The sign owner must be given notice immediately upon discovery of the damage. It is unethical to wait until after the sign owner has expended time and money to repair the sign.

4.08 REMOVAL OF ABANDONED NONCONFORMING SIGN

Section 445.8 (c) states "Signs that are abandoned shall be removed by the persons responsible for the erection or maintenance thereof within 30 days after notice by the Department of the abandonment. Upon 30 days notice the Department may remove signs that are abandoned at the expense of those responsible for the erection or maintenance of the signs."

See Section 2.10 of this manual discussing removal of illegal signs.

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CHAPTER 5

SIZE, SPACING, AND LIGHTING

5.01 DIRECTIONAL AND OFFICIAL SIGNS

See Section 445.3(2), (3) and (4) for size, spacing, and lighting requirements.

5.02 ON-PREMISE SIGNS

See Section 445.5.

A. Size

There are no restrictions to the number of, or the size of, on-premise signs except adjacent to an interstate highway where signs beyond 50 feet from the advertised activity are restricted to one for each direction of travel, and 150 square feet in size. See Section 445.3(c)(2) and (5).

B. Lighting

1. Lighting is permitted unless it interferes with the operation of vehicles on the highway. See Section 445.5(b)(4).

2. Electronic On-Premise Signs

Section 445.5(b)(3) states "an on-premise sign may not be permitted which contains, includes, or is illuminated by a flashing, intermittent or moving light or lights." However, 23 U.S. Code Section 131(c)(3) allows "signs, displays, and devices, including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located." Moreover, Section 445.4(b)(3)(iv) applies the same prohibition to off-premise signs but excepts signs that give "public service information such as time, date, temperature, weather or similar information." In view of this, PennDOT allows electronic message displays on on-premise signs, including those providing public service information.

PennDOT interprets "Public service information" as "messages that are non-commercial, not-for-profit, in nature." This interpretation was upheld by the Commonwealth Court in *Doug Corteal, t/d/b/a Divito Park v. Department of Transportation*, 821 A.2d 173 (Pa. Cmwlth. 2003).

See Chapter 6 on Changeable Message Signs for a complete discussion.

5.03 OFF-PREMISE SIGNS IN ZONED OR UNZONED COMMERCIAL OR INDUSTRIAL AREAS

A. Size

See Section 445.4(b)(1) for requirements relating to size (area), length, height, and configuration. Note that one permit is issued per sign structure regardless of the number of faces; however, the permit fee is based upon the size of and number of faces. See Section 445.6, Permits.

B. Spacing

See Section 445.4(b)(2).

1. Nonlimited Access Highways

   a. In cities and boroughs, the minimum spacing between signs is 100 feet.

b. In townships, the minimum spacing between signs is 300 feet.

2. Limited Access Highways

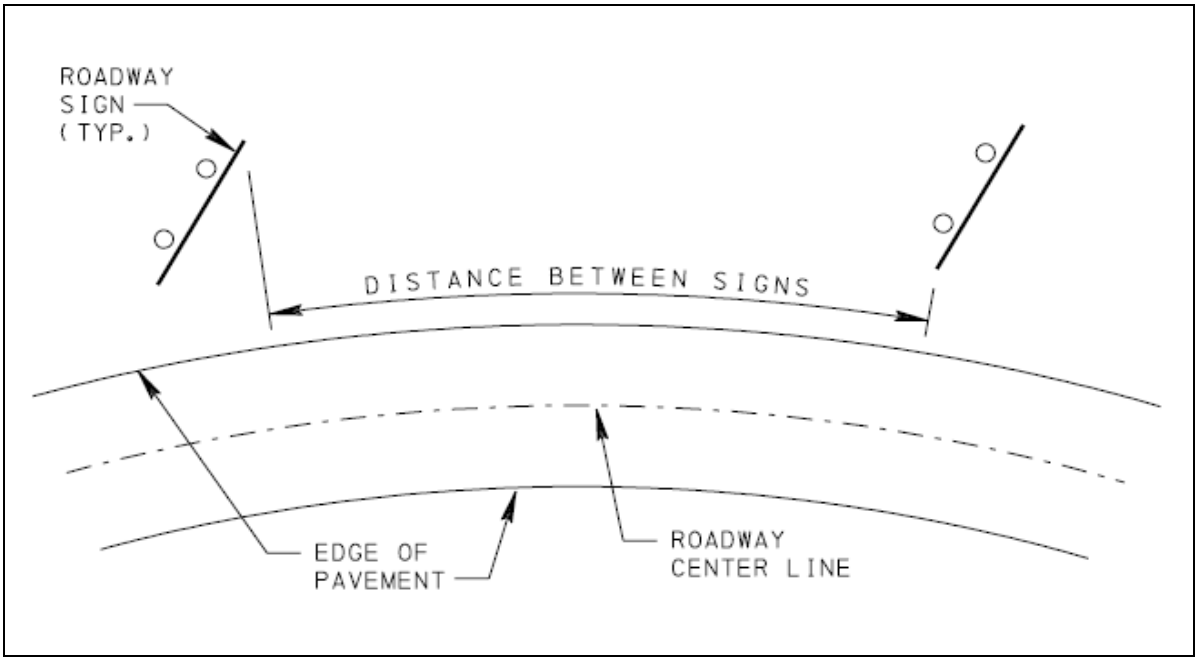
Regardless of location, the minimum spacing between signs is 500 feet.

3. Method of Measurement

Section 445.4(b)(2)(v) states "the distance between sign structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along the same side of the traveled way."

The distance between two sign structures shall be determined by establishing two lines perpendicular to the center line of the controlled highway. Each respective line will touch the sign structure point if its respective sign is closest to the second sign structure. The distance between each perpendicular line, as measured along the nearest edge of pavement, will determine the distance between the two sign structures.

The sign structure for this measurement does not include the light fixtures, catwalks, etc., but only the main structure itself. In *Appeal of Matt Outdoor Advertising* (No. 017 A.D. 2004), a Hearing Officer determined the measurement must be made "along the nearest edge of the pavement between points directly opposite the closest points of the signs, inclusive of borders and trims but excluding the base or apron, supports and other structural members and appurtenances."



In reality, the above method should only be necessary in circumstance where a precise measurement is required.

In *Penn Advertising v. Department of Transportation*, 730 A.2d 1060 (Pa. Cmwlth, 1999), the Commonwealth Court found that PennDOT's interpretation that the distance between signs is measured along the nearest edge of pavement of the controlled highway is controlling because it is not plainly erroneous or inconsistent with the statute or regulation. The sign owner's interpretation was merely different and beneficial to its position, not something the court was required or allowed to accept.

4. Interchange and Rest Area Spacing

a. The interchange spacing restriction does not apply in cities and boroughs (although the 500 foot spacing between signs applies).

b. In townships and Bloomsburg (the only town in Pennsylvania), "no structure may be erected adjacent to or within 500 feet of an interchange or safety rest area, measured along the interstate or limited access primary from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way." Section 445.4(b)(2)(i).

c. PennDOT interprets this prohibition to be adjacent to or within 500 feet of an interchange or safety rest area as measured from the beginning or ending of pavement widening at any or all exits from or entrances to the main-traveled way on either side of the highway. An Illustration of Interchange-Rest Area Spacing is provided on Form RW-745I, Instructions and Information for the Completion of Application for Off-Premise Sign Permit or on the Online Application Instructions.

This interpretation has been upheld in numerous administrative hearings and several Commonwealth Court decisions. See *George Washington Motor Lodge Co. v. Department of Transportation*, 545 A.2d 493 (Pa. Cmwlth. 1988) and *Martin Media v. Department of Transportation*, 661 A.2d 479 (Pa. Cmwlth. 1995), appeal denied 672 A.2d 312.

In addition, in *Martin Media v. Department of Transportation*, 700 A.2d 563 (Pa. Cmwlth.1997), the Commonwealth Court found that even though the word "pavement" is not defined in Act 160 or the regulations, PennDOT properly interpreted "pavement" to be "the paved portion of the roadway and exit exclusive of the shoulder, as distinguished from the markings painted on the paved portion of the roadway."

C. Lighting

See Section 445.4(b)(3).

Section 445.4(b)(3)(iv) states "signs which contain, include or are illuminated by a flashing intermittent or moving light or lights shall be prohibited, except those giving public service information such as time, date, temperature, weather or similar information."

PennDOT interprets "public service information" as messages that are noncommercial, not-for-profit, in nature. This interpretation was upheld by the Commonwealth Court in *Doug Corteal, t/d/b/a Divito Park v. Department of Transportation*, 821 A.2d 173 (Pa. Cmwlth. 2003).

This prohibition of flashing, intermittent or moving light or lights (except for public service information) is not interpreted as prohibiting changeable message signs. See Chapter 6 for the policy relating to changeable message signs.

D. Pittsburgh and the Borough of Delaware Water Gap

Pursuant to 36 P.S. §2718.105(b), PennDOT has certified that the City of Pittsburgh and the Borough of Delaware Water Gap have established, in areas zoned commercial or industrial, regulations which are enforced with respect to size, lighting, and spacing, and which may be different than Act 160. Therefore, PennDOT does not enforce the size, lighting, and spacing requirements of Act 160 in such areas.

See Section 2.13 on general sign control in these cities.

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CHAPTER 6

CHANGEABLE MESSAGE SIGNS

6.01 CHANGEABLE MESSAGE SIGNS

Outdoor advertising companies are increasing the use of signs that are capable of changing messages by an electronic process or remote control. This policy allows the use of such signs for advertising purposes in a manner that is consistent with the requirements of applicable laws and regulations.

A. Introduction

Messages change on nearly all signs. Traditionally this was done by posting a paper copy of the message on a sign face or by hand painting a message. More recently, preprinted vinyl covers are stretched on a sign structure. The interval of time between these kinds of message changes is days, months, or years.

Outdoor advertising signs are intended to attract the attention of passing motorists. However, such attraction should not distract the motorist from the primary task of safely operating the motor vehicle.

Technology has significantly shortened the duration of message change interval to less than a second for certain types of signs by using an electronic process or remote control. Such changeable message displays include rotating panels, glow cubes, electronically controlled lights, video displays, digital and/or LED, and other types and methods. There is nothing in Act 160 or the regulations which specifically addresses the duration of message change interval. Thus, PennDOT has established this policy regarding safe and reasonable message change intervals to promote the orderly display of outdoor advertising consistent with the Act's purpose.

B. Legal Considerations

Act 160 prohibits "signs that contain, include or are illuminated by a flashing, intermittent or moving light or lights, except those providing public service information such as time, date, temperature, weather or similar information." However, in *Outdoor Advertising Device Permit No. 11-6038, J.B. Steven, Inc., SR 279, Borough of Carnegie, Allegheny County* (No. 006 A.D. 1994, issued April 19, 1995), a Hearing Officer determined that "Tri-vision" and "glow-cube" type displays do not violate the Act because they are not flashing or intermittent.

It is appropriate in implementing State law and regulation to require that, for all types of changeable message displays, the frequency of message change should be uniformly established as a matter of policy consistent with Department regulation.

The Federal Highway Administration has made it clear that it is up to PennDOT to determine the frequency of message change for all changeable message type displays, so long as such displays comply with State law.

Other states allow changeable message displays. States that regulate the timing of Tri-Vision displays generally allow for an Exposure Dwell Time of 4-6 seconds. It is reasonable for PennDOT to consider the standards set by other states in deciding what the message display interval for controlled advertising devices should be. However, the message change interval must be consistent with the stated purpose of the Outdoor Advertising Control Act of "....assuring the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in the interstate and primary systems; to promote the welfare, convenience and recreational value of public travel; and to preserve natural beauty (36 P.S. §2718.102)."

There is no reference to the term "viewing zone" in Act 160 or the regulations. However, the Highway Vegetation Control Act, Act No. 79 of 1983, 36 P.S. §2720.1 et. seq., which allows for the removal of vegetation screening billboards, does address the concept of a "viewing zone." The Vegetation Control Act defines "obstruction of view" as "When the intent of the advertising is not discernible for a total of five seconds in the viewing zone." The Vegetation Act further defines the "viewing zone" as "That distance measured along the center of the lane of traffic of a highway which a vehicle will travel at the posted speed limit." This language indicates the General Assembly's recognition that a motorist traveling the interstate system needs at least 5 seconds to view and assimilate an outdoor

advertising device. Thus, the Vegetation Control Act provides a basis for establishing a message change interval or Exposure Dwell Time (EDT) of at least 5 seconds.

C. Policy Applicable to Change of Message

The following policy applies to all off-premise outdoor advertising signs located in zoned or unzoned commercial or industrial areas and on-premise signs that conform to the requirements of Act 160 and the regulations, where the message or any part of the display area of a sign can be changed by electronic process or remote control:

1. All messages/displays shall remain unchanged for a minimum of five (5) seconds.

2. The time interval used to change from one complete message/display to the next complete message/display shall be a maximum of one (1) second.

3. There shall be no appearance of a visual dissolve or fading, in which any part of one electronic message/display appears simultaneously with any part of a second electronic message/display.

4. There shall be no appearance of flashing or sudden bursts of light, and no appearance of animation, movement, or flow of the message/display.

5. Any illumination intensity or contrast of light level shall remain constant.

Although only on-premise signs along interstates require a permit, all on-premise signs, whether permitted or not, must comply with the changeable message policy. If an on-premise sign that is not along an interstate is found to be in violation of the changeable message policy, the District OAD Manager should document the sign on the Illegal Sign screen in HBMS, and send the Request to Remove Illegal or Abandoned Sign (RW-790) to the sign owner and land owner.

D. Application for Outdoor Advertising Device Permit

This policy has been incorporated into Form RW-745, Application for Off-Premise Sign Permit and the online Off-Premise application in the Highway Beautification Management System (HBMS). The application asks whether or not the sign message/display area will be controlled by electronic process or remote control. If the applicant responds, "yes," the permit will be granted under the condition that the applicant agrees to the above stated policy.

This policy has also been incorporated into Form RW-744, Application for On-Premise Sign Permit – Interstate Highway and the online On-Premise application in HBMS. See Section 3.05 of this manual regarding on-premise sign permits.

CHAPTER 7

REMOVAL OF PROHIBITED SIGNS

7.01 RESPONSIBLE PERSONS

Section 445.2 defines "maintain" as "to allow to exist." Both the sign owner and the landowner (if different persons) allow a sign to exist. If a sign is prohibited by Act 160, both the sign owner and landowner allow the illegal sign to exist, and therefore, both parties are responsible for the removal of the prohibited sign. Both the sign owner and landowner should be sent the appropriate notice of violation and request to remove the illegal sign. See Section 2.10 of this manual for the specific procedures. In the event the sign owner and/or landowner refuse to remove the illegal sign, PennDOT may take legal action (file a criminal or civil complaint) or exercise "self-help" by physically removing the sign.

7.02 CRIMINAL COMPLAINT

36 P.S. §2718.110 states "the secretary may institute any appropriate action or proceeding after thirty days' written notice of a violation to the person or persons maintaining or allowing to be maintained such device, to prevent, restrain, correct or abate a violation or to cause the removal of any advertising device erected or maintained in violation of the provisions of this act."

Implementing this provision requires coordination with the Office of Chief Counsel to file a legal action in the local county court or the Commonwealth Court. A request in this regard should be made to the Chief, Utilities and Right-of-Way Section, who will coordinate with the Office of Chief Counsel, Real Property Division.

36 P.S. §2718.111 provides the following penalties, which would apply to both the sign owner and landowner, for violation of Act 160:

"Any person who shall erect or cause or allow to be erected or maintained any advertising device in violation of this act, shall, upon summary conviction thereof, be sentenced to pay a fine of five hundred dollars ($500) to be paid into the Highway Beautification Fund, and in default of the payment thereof, shall undergo imprisonment for thirty days. Each day a device is maintained in violation of this act after conviction shall constitute a separate offense."

Implementing this provision requires the filing of a private criminal complaint, naming the sign owner and the landowner as defendants, filed at the local district justice office. Advice should be sought from the Central Office Right-of-Way Administration Unit and the Office of Chief Counsel on such filings as deemed necessary.

7.03 REMOVAL BY DEPARTMENT

36 P.S. §2718.110 also authorizes "the secretary to…have any such device corrected or removed by his employees. In the event of such removal, the person or persons responsible for the erection or maintenance of such device and the person or persons allowing such device to be maintained shall be liable to the Department for the cost of removal or correction of such device. Neither the secretary nor any other employee acting at his direction shall be liable in any criminal or civil action for damages for any action authorized by this act."

Both the sign owner and/or the landowner are liable to PennDOT for reimbursement of costs.

In *Condemnation by Department of Transportation of Two (2) Billboards Northeast Outdoor Advertising, Inc.*, 452 A.2d 83 (Pa. Cmwlth, 1982) the Commonwealth Court found that removal of two billboards by PennDOT for violation of Act 160 was pursuant to its police power and therefore, did not constitute a compensable de facto taking.

See Maintenance Manual, Pub. 23, Chapter 11, Section 11.4, for illegal sign removal procedures, and Chapter 17 for reimbursement procedures.

See also Section 2.10 of this manual for specific illegal sign removal requirements and procedures.

CHAPTER 8

USE OF LIMITED ACCESS HIGHWAY RIGHT-OF-WAY PROHIBITED

AND

PRESERVATION OF VEGETATION

8.01 USE OF LIMITED ACCESS RIGHT-OF-WAY

A. Denial of Permit

Section 445.9 (e) states "The Department will deny a permit for an outdoor advertising device if it determines that the device cannot be serviced in a feasible manner except from the right-of-way of a limited access highway…"

The field review of a proposed sign site must confirm that there is feasible access to the sign site other than from limited access right-of-way. If the field review identifies an access problem, the sign applicant should be given the opportunity to clarify or revise the application to cure the problem. For instance, document the manner (and right) for access from private property. If the problem cannot be cured to the reviewer's satisfaction, the application must be denied.

B. Revocation of Permit

Section 445.9 (b) states "A sign may not be erected, maintained or repaired from a portion of a limited access highway right-of-way. Sign owners or others responsible for the erection, maintenance or repair of a sign shall be required to perform these functions from areas maintained or controlled by them; nor may a vehicle be used in conjunction with an activity, be parked or stood within the limited access highway right-of-way."

Section 445.9 (d) provides for removal of signs for violation of Section 445.9 (b), except in the case of a first offense. In lieu of removal for a first offense, PennDOT may accept payment. When a payment is accepted in lieu of removal, the amount payable is $100.00 or double the value of the vegetation and the sign owner must post a bond, in a form acceptable to PennDOT, to guarantee removal of the sign in the event of a subsequent offense.

The District must coordinate with the Central Office Right-of-Way Administration Unit to determine how to proceed once an offense is discovered. This coordination will include deciding whether the in lieu of option should be exercised and, if so, the acceptability of the bond proposed by a permittee. The Central Office Right-of-Way Administration Unit will coordinate with the Office of Chief Counsel as necessary.

The violation must be documented by witness statement(s), photographs, etc., and a Notice of Intent to Revoke Permit, Form RW-750V, sent to the sign owner and land owner. If, in the case of a first offense, PennDOT is willing to accept payment, all documentation must be maintained by the District in the sign permit file and documented in the Highway Beautification Management System (HBMS) so that removal of the sign may be pursued in the event of a second offense.

8.02 VEGETATION CONTROL

A. Applicable Laws and Regulations

The Highway Vegetation Control Act (Act 79 of 1983, 36 P.S. §2720.1 et seq.), allows a sign owner to apply for a permit to take remedial action in relation to vegetation screening for any existing lawfully erected off-premise or on-premise sign. All off-premise signs must have a Department permit to be considered lawfully erected; only on-premise signs along the interstate system must have a Department permit to be considered lawfully erected.

As to vegetation control for the erection, repair or maintenance of signs, Section 445.9 (c) of the regulations states "vegetation located in the highway right-of-way may not be destroyed, damaged, removed or disturbed in

maintaining, repairing or erecting a sign." Section 445.9 (e) states "The Department will deny a permit for an outdoor advertising device if it determines…that the device would not be visible from the highway without destruction, damage, removal or disturbance of vegetation in the highway right-of-way."

In view of the above, there is a distinction between vegetation control for the erection, repair or maintenance of a sign (which is prohibited) and vegetation control to remediate screening that has grown in front of lawfully erected signs (which is allowed). That is, vegetation in the right-of-way cannot be trimmed or removed to facilitate repair, maintenance, or erection of a sign, but it can be trimmed or removed if it is screening the view of an existing sign.

B. Initial Application for a Permit

Act 79 only applies to pre-existing devices. It does not apply when a permit is being sought to erect a device.

A permit must be denied under Section 445.9 (e) if the sign would not be visible from the highway without destruction, damage, removal or disturbance of vegetation in the highway right-of-way.

If the field review identifies a vegetation problem, the sign applicant must be given the opportunity to clarify or revise the application to cure the problem. For instance, adjust the sign location, size, or height to eliminate conflict or potential conflict with highway vegetation. If the problem cannot be cured to the reviewer's satisfaction, the application must be denied.

Vegetation Control Permits (M-688 and M-688L) will not be issued for trimming, thinning, or removing vegetation to create visibility for the erection of a sign along a controlled highway. See Publication 23, *Maintenance Manual*, Chapter 13.5.

C. Revocation of Permit and Penalties for Illegal Vegetation Removal

Section 445.9 (d) of the regulations provides that, except in the case of a first offense, a violation of the Section 445.9(c) prohibition requires that the sign permit be revoked and the sign owner remove the sign. If the sign permit is revoked under this section, a permit will not be issued to the sign owner for a sign within 500 feet of the original sign; nor will a permit be issued to any other person for a sign within 500 feet of the original sign for a period of one year from removal of the original sign.

In the event of a first offense, PennDOT may (but is not required to) accept payment in lieu of revocation of the permit and removal of the sign. If the in lieu of option is elected, the payment shall be $100.00 or double the value of the vegetation. When a payment is accepted in lieu of removal, the sign owner must post a bond, in a form acceptable to PennDOT, to guarantee removal of the sign in the event of a subsequent offense.

The District must coordinate with the Central Office Right-of-Way Administration Unit to determine how to proceed once an offense is discovered. This coordination will include deciding whether the in lieu of option should be exercised, how the value of the vegetation will be determined, and the acceptability of the bond proposed by a permittee. The Central Office Right-of-Way Administration Unit will coordinate with the Office of Chief Counsel as necessary. Valuation should be determined consistent with the procedures for valuation on managing vegetation along limited access right-of-way in Chapter 13.5 of the Maintenance Manual.

The violation must be documented by witness statement(s), photographs, etc., and a Notice of Intent to Revoke Permit, Form RW-750V, sent to the sign owner with a copy to the land owner. If, in the case of a first offense, PennDOT is willing to accept payment, all documentation must be maintained by the District in the sign permit file and documented in HBMS so that removal of the sign may be pursued in the event of a second offense.

The Central Office Right-of-Way Administration Unit will maintain a log of violations. PennDOT policy is not to offer the in lieu of option to sign owners that have violated Section 445.9(c) in the past.

Violations leading to revocation and removal can result when vegetation is destroyed, damaged, removed or disturbed in connection with erecting a sign after the permittee swore in its application that vegetation would not be destroyed, damaged, removed or disturbed, or if vegetation is destroyed, damaged, removed or disturbed in repairing or maintaining a sign.

D. Trimming and Cutting in Relation to Existing Signs

A device owner may apply for an M-700 permit to trim, prune, or remove vegetation under Act 79 in relation to existing lawfully erected signs screened by vegetation. Applications to trim or remove vegetation must be forwarded to the District Roadside Management Office. The District Roadside Specialist shall consult with the District OAD Manager to determine whether an Act 79 permit should be issued.

Act 79 does not apply to trimming and cutting vegetation for the erection of new signs or for the repair and maintenance of existing signs. Those activities are subject to the prohibition of Section 445.9 of the regulations. Over time, however, vegetation will grow to screen signs and the owner is permitted to remediate the screening to allow the sign to properly function. Applications to remediate vegetation under Act 79 are made on Form M-700.

Section 2 of Act 79 states the following definitions:

> **"Obstruction of view."** When the intent of the advertising is not discernible for a total of five seconds in the viewing zone.
>
> **"Screening" or "screened."** The obstruction of view of a device as viewed from the center of the lane of traffic of the highway and from a height of no more than 60 inches above the highway surface.
>
> **"Vegetation."** All woody and herbaceous plants growing within the legal right-of-way as described in section 410 of the act of June 1, 1945 (P. L. 1242, No. 428), known as the State Highway Law.
>
> **"Viewing zone."** That distance measured along the center of the lane of traffic of a highway which a vehicle will travel at the posted speed limit.
>
> The District Roadside Specialist and the District OAD Manager will inspect the device and the surrounding area to determine whether an Act 79 permit should be granted. The device owner/applicant should be informed of the date and time of the inspection so the device owner/applicant may be present at that time.

If an Act 79 permit is granted, the permittee shall be authorized to do one or any combination of the following:

1. Raise, lower or adjust the device to reduce the conflict with the vegetation so as to eliminate, as nearly as possible, the screening. (This option is not available, however, to non-conforming devices. Nor should a permit be issued if the adjustment violates an ordinance or other statute, regulation, or ordinance.)

2. Prune or trim the vegetation to reduce or eliminate the screening.

3. Prune, trim, relocate or remove individual plants in the vegetation to reduce or eliminate the screening.

Applications under Act 79 must be reviewed pursuant to the standards therein. The device owner/applicant may also be required to post security in the form of a blanket bond if a permit is issued.

It is imperative that M-700 applications be addressed promptly because they can be deemed approved if not. Section 4(c) of Act 79 provides for an automatic approval as follows: "If the application neither is approved nor disapproved within 30 days of the filing therefore, the application shall be deemed to be approved and the permit shall be deemed to have been granted immediately."

An M-700 permit should be denied to a permittee of an outdoor advertising device who represents in its application that vegetation will not need to be removed, but then applies to remove vegetation within a short period of time following erection of a sign. That was the determination in *West Penn Media Vegetation Control Permit, T.R. 79. Washington County* (016 A.D. 1985, decided June 9, 1986), where the Hearing Officer found that the Outdoor Advertising Control Act and the Highway Vegetation Control Act must be read and interpreted together. No specific time period between erection of an outdoor advertising devise and issuance of an M-700 permit can be established. The determination whether a sufficient time period has expired is a judgment call based on the length of time it takes for the type of vegetation in question to grow and the amount of time that has elapsed. The underlying concept is that the sign should not have been permitted in the first place if it was not visible from the highway without deconstruction, damage, removal or disturbance of vegetation in the highway right-of-way.

Vegetation control permits (M-688 and M-688L) will not be issued for trimming, thinning or removing vegetation to repair, maintain, or remove screening of an existing sign along a controlled highway. See Chapter 13.5 of Publication 23, *Maintenance Manual*. Only M-700 permits to remove screening may be issued in relation to existing signs along controlled highways.

CHAPTER 9

INTRODUCTION TO JUNKYARDS

9.01 LAW AND REGULATIONS

1. The control of Junkyards, Automotive Dismantlers, and Recyclers is governed by:

   a. Act No. 4, 1966 Special Session July 28, P.L. 91, effective January 1, 1967 as amended by Act No. 28, July 13, 1977, P.L. 77 (36 P.S. Section 2719.1 *et. seq.*); and

   b. Title 67, PA Code, Chapter 451, Control of Junkyard and Automotive Dismantlers and Recyclers. Reference hereafter to the regulations will be by citing the applicable section.

Chapter 451 may be found on the web at: www.pacode.com/secure/data/067/chapter451/chap451toc.html.

2. Act No. 4, effective January 1, 1967 was enacted and Chapter 451 promulgated in response to Federal law at U.S. Code Title 23, Section 136, Control of Junkyards, and Federal regulations at 23 CFR Chapter 1, Part 751, Junkyard Control and Acquisition.

Control of junkyards was part of the larger Highway Beautification Act of 1965. The Act's chief sponsor was Lady Bird Johnson, the wife of then-president Lyndon B. Johnson. The control of junkyards was part of a larger beautification effort along with outdoor advertising devices. As with outdoor advertising devices, the control of junkyards is necessary for the full receipt of Federal-aid highway funds. Thus, control of junkyards is as important as control of outdoor advertising devices.

23 U.S. Code Section 136(b) states, in part: "Federal aid highway funds apportioned … to any state which the Secretary determines has not made provision for effective control of … outdoor junkyards, which are within one thousand feet … of the right-of-way and visible from the main traveled way of the system … shall be reduced by amounts equal to 10 per centum of the amounts which otherwise would be apportioned to such state… until such time as such State shall provide for such effective control." The Federal transportation bill referred to as MAP-21 amends section 136(b) to include effective control of all junkyards along all highways on the so-called enhanced NHS. As noted in Section 9.05 below, this means certain highways were added to the list of controlled highways. MAP-21 also reduced the penalty for failing to provide effective control to 7% from 10%.

Demonstration by PennDOT of effective control is essentially the administration and enforcement of Act 160 and the regulations, and ensuring that, as defined in Section 136(c), "such junkyards shall be screened by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight."

9.02 PURPOSE

23 U.S. Code Section 136(a) states: "The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate system and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty."

36 P.S. Section 2719.1 states: "The General Assembly finds that it is in the public interest and for the public welfare to regulate the location and maintenance of junkyards and automotive dismantlers and recyclers adjacent to the highways of the Commonwealth in order to promote the safety, convenience and enjoyment of public travel, to preserve the scenic beauty of lands bordering on such highways and to protect the public investment in such highways."

9.03 AUTOMOTIVE DISMANTLER AND RECYCLER

This term is defined as "Any establishment or place of business which is maintained, used, or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles, or motor parts, or both." 67 Pa. Code Section 451.2; 36 P.S. Section 2719.2(4.1).

9.04 JUNKYARDS AND JUNK

The term junkyard is defined in the law as "any outdoor establishment or place of business which is maintained, used or operated for storing, keeping, buying, or selling junk, and the term shall include garbage dumps and sanitary fills." 36 P.S. Section 2719.2(4). It is defined in the regulations as "Any outdoor establishment, place of business, or activity which is maintained, used or operated for storing, keeping, buying, or selling junk; for the maintenance or operation of a garbage dump, sanitary landfill or scrap metal processor, or for the storage of ten or more junked vehicles." 67 Pa. Code Section 451.2.

The term junk is defined in the law as "scrap, copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, iron, steel, and other old or scrap ferrous or non-ferrous material, including wrecked, scrapped, ruined, dismantled, or junked motor vehicles, or parts thereof." 36 P.S. Section 2719.2(3). It is similarly defined in the regulations. 67 Pa. Code Section 451.2.

In addition to the definitions above, 23 U.S. Code Section 136 provides the following:

> "(e) The term 'automobile graveyard' shall mean any establishment or place of business which is maintained, used or operated for storing keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts," and
>
> "(f) The term 'junkyard' shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills."

9.05 HIGHWAYS SUBJECT TO CONTROL

The Department is required to control junk along highways. 36 P.S. Section 2719.4. As stated in 36 P.S. Section 2719.2, "Highway" shall mean a highway within this Commonwealth designated by the Secretary of Transportation, and approved by the United States Secretary of Transportation, as part of the Interstate System or primary system, pursuant to Title 23, United States Code, "Highways." With the implementation of the Federal transportation appropriation bill referred to as MAP-21, certain highways were added to the National Highway System (NHS), thus increasing the controlled miles for surveillance for each District.

The Federal Highway Administration has a map of all NHS highways on its website: http://www.fhwa.dot.gov/planning/national_highway_system/nhs_maps/pennsylvania/index.cfm. This map, along with the maps showing the Interstate and Federal-aid Primary System as of June 1, 1991, show all highways subject to control under the Junkyard Act.

The Highway Beautification Management System also contains a GIS based map showing all controlled routes.

9.06 ZONE OF CONTROL AND LOCAL CONTROL

As indicated in the regulations, zone of control means, "All areas which are adjacent to and within 1000 feet of the edge of the right-of-way of any interstate or Federal aid primary highway." 67 Pa. Code Section 451.2.

Note: The Department is not responsible for enforcement of municipal ordinances concerning junkyards. However, municipalities may enact stricter regulation of junkyards than provided in the Act as reflected in 36 P.S. Section 2719.10:

"Nothing in this act shall be deemed to preclude any political subdivision from enacting or enforcing a requirement

that junkyards and automotive dismantlers and recyclers be licensed, or from enacting or enforcing regulations applicable to junkyards and automotive dismantlers and recyclers more than one thousand feet from the nearest edge of a highway."

Should any applicant question the meaning of this provision, advise them that, while a State license may be granted, the facility may still be illegal under the existing laws of the local political subdivision. Refer to paragraph 10 of the Junkyard Application (RW-748A) which states: "The issuance of this license does not excuse compliance with any other state or local law, rule or regulation."

9.07 NONCONFORMING FACILITIES

Any junkyard or automotive dismantler and recycler legally in existence on or before January 1, 1967, and located within the zone of control, or any junkyard or automotive dismantler and recycler located in the zone of control adjacent to any interstate or Federal aid primary highway made part of such system after January 1, 1967, as defined at 67 Pa. Code Section 451.2.

Simply put, if the junkyard was legally established before the Act became effective on January 1, 1967 it is non-conforming. Although nonconforming, it is licensable. Similarly, if the junkyard was legally established prior to the highway becoming part of the interstate or Federal aid primary system, it is nonconforming and licensable. See Sections 9.09 and 9.10 regarding screening and expansion.

The Department was obligated to screen nonconforming junkyards if physically and economically feasible. That screening could be located on the right-of-way or on areas acquired for such purposes outside the existing right-of-way. 36 P.S. Section 2719.6.

9.08 LICENSING

As defined at 36 P.S. Section 2719.3 "No person shall establish, maintain, use or operate a junkyard or automotive dismantler and recycler, any portion of which is within one thousand feet of the nearest edge of the right-of-way of a highway, without having obtained a valid license therefore from the secretary." The exceptions to this requirement are outlined at Section 2719.4:

> "No license shall be granted for the establishment, maintenance, use or operation of a junkyard or automotive dismantler and recycler within 1000 feet of the nearest edge of the right-of-way of any highway except the following:
>
> (A) Junkyards and automotive dismantlers and recyclers which were lawfully in existence prior to January 1, 1967.
>
> (B) Junkyards and automotive dismantlers and recyclers which, because of screening by natural objects, plantings, fences or other means found appropriate by the secretary, are not visible from the main traveled way of the highway.
>
> (C) Junkyards and automotive dismantlers and recyclers located within areas zoned for industrial use under the authority of law.
>
> (D) Junkyards and automotive dismantlers and recyclers located within unzoned areas which the Secretary shall find are used for industrial activities."

See Section 9.09 below on zoned and unzoned industrial areas.

Each license must be obtained through the appropriate Engineering District. This license shall be valid for one year beginning on January first and ending on December thirty-first, and the fee shall be one hundred dollars ($100) annually. See Section 10.01 for additional information.

Applications are to be made on form RW-748A, which must be fully completed and submitted in triplicate. See Section 10.01.

RW-748A was amended to conform with the Commonwealth Court's decision in *Washington Township v. Department of Transportation*, 421 A.2d 859 (Pa. Cmwlth. 1980) *aff'd* at 493 Pa. 246, 425 A.2d 1107 (Pa. 1981). There, the Court determined the Department has no discretion in the issuance of a license if the criteria set forth in the Junkyard Act, 36 P.S. Section 2719.1 *et seq.,* are met (421 A.2d at 860). That is, the Act does not allow the Department to investigate any prerequisites to the operation of a junkyard other than those under its own purview and enforcement powers. It is up to the municipality to enforce its own zoning ordinances, just as it is up to other State or local agencies to oversee compliance with their regulations.

In view of the court decision, the requirement that the applicant verify that "the business, facility or activity proposed or established under this application is not in violation of any state or local law or regulation," which had appeared on earlier copies of the application, was removed. However, the applicant for a junkyard license is alerted in paragraph 10 of the revised application (RW-748A) that "The issuance of this license does not excuse compliance with any other state or local law, rule or regulation." Therefore, ensure that only form RW-748A (11/06) or later is used.

9.09 ZONED AND UNZONED INDUSTRIAL AREAS

As mentioned in Section 9.08, junkyard and automotive dismantlers and recyclers may be licensed in two areas: zoned industrial areas and unzoned industrial areas. The regulation defines a zoned industrial area as "any area zoned industrial by the appropriate zoning authority." 67 Pa. Code § 451.2 (Definitions). Municipal zoning maps and ordinances should be obtained to determine whether the proposed location is a zoned industrial area.

An unzoned industrial area is defined by the regulation as "the land occupied by the regularly used building, parking lot, storage, or processing area of an industrial activity and that land within 1000 feet thereof which is:

(i) located on the same side of the highway as the principal part of the activity;

(ii) not predominately used for residential or commercial purposes; and

(iii) not zoned by any State or local law, regulation, or ordinance."

67 Pa. Code § 451.2 (Definitions). The regulation also defines industrial activity, which is "any activity permitted only in an industrial zone, or in a less restrictive zone, except that none of the following shall be considered industrial activities:

(i) Outdoor advertising structures.

(ii) Agricultural, forestry, ranching, grazing, farming and related activities, including but not limited to, wayside selling.

(iii) Activities normally and regularly in operation less than 3 months of the year.

(iv) Transient or temporary activities.

(v) Activities not visible from the traffic lanes of the main traveled way.

(vi) Activities conducted in a building principally used as a residence.

(vii) Railroad track, including sidings and passenger depots.

(vii) Junkyards or automotive dismantlers and recyclers."

9.10 SCREENING

Except for nonconforming facilities as discussed in Section 9.07 above, all screening shall be done by the junkyard or automotive dismantler and recycler, subject to Department approval.

As defined in 67 Pa. Code Section 451.2, screening is:

"The use of any natural objects, plantings, embankments, fencing, walls or structures, or a combination of any of these, which will effectively hide any deposit of junk so as not to be visible from the highway, at all times of the year, by the occupant of a motor vehicle viewing from a height of 4 ½ feet above the pavement."

23 C.F.R. Section 751.13, in discussing Control Measures, states:

"(b) Screening may be accomplished by use of natural objects, landscaping plantings, fences, and other appropriate means, including relocating inventory on site to utilize an existing natural screen or a screenable portion of the site.

(c) Where screening is used, it must, upon completion of the screening project, effectively screen the junkyard from the main traveled way of the highway on a year-round basis, and be compatible with the surroundings…"

Some further guidance may be found in the FHWA Federal-Aid Policy Guide (TR35) found at: http://www.fhwa.dot.gov/real_estate/oac/policy_and_guidance/non-regulatory_supplements/0751su2.cfm, which discusses "Alternative types of screening:

1. Use of Plant Material. Planting of trees, shrubs, etc. of a sufficient size and density to provide year-round effective screening. Plants should be selected to complement the existing highway and adjacent land use environmental conditions.

2. Earth Grading. Construction of earth mounds, graded, shaped and planted to a natural appearance, to block visibility.

3. Architectural Barrier. Utilization of fences, walls, or other structural elements.

4. Relocation on Site. The relocation of scrap inventory on site to utilize an existing natural screen or screenable portion of the site.

5. Combination. The utilization of any of the above types or combinations to achieve effective screening."

The Department has determined the following items fall within the definition of screening: permanently installed trailers, tennis court type fabric visual barriers, outdoor advertising devices (where legal). Advice and photographic examples, printed at a time when highway departments were actively screening sites, may be found in the USDOT publication "Junkyards, the Highway, and Visual Quality," dated April, 1979, stock number 050-003-00350-6.

As noted above, screening must be of a height, size and density to effectively screen, or hide from view, the junk or inventory on a year-round basis. Obviously, trees or plantings which lose their leaves in the fall will not provide year-round screening. If plant material is the applicant's choice for screening a junkyard or automotive dismantler and recycler business, then the applicant should consult professional landscapers or arborists for advice on proper plantings. See Section 10.01.2 on Applications.

As discussed in 67 Pa. Code 451.2, screening should conceal the junkyard contents from visibility by the occupant of a vehicle at a height of 4 ½ feet above the roadway surface. The Department's interpretation of this rule applies to a moving vehicle in the main-traveled way, proceeding at the posted speed, and not to a parked or stationary vehicle on the berm or shoulder of the highway.

As a precautionary note, nothing may be used to screen a facility which could be considered a hazard or endangerment to the environment. See 67 Pa. Code Section 451.4(b). If any doubt exists, the District Vegetation Control Officer, a representative of Pennsylvania's Department of Environmental Protection, or the municipality should be consulted.

9.11 SCREENING MAINTENANCE

As outlined in 67 Pa. Code Section 451.5:

"(a) Owner's maintenance responsibilities. It shall be the responsibility of the junkyard or automotive

dismantler and recycler to maintain the screening established by it, doing such painting and repairs as to keep any fences, walls, or other structural material in good appearance. Plant material shall be watered, pruned, cultivated and mulched, treated for insect and disease control, and given any required maintenance to keep all plants in a healthy condition. Dead plants shall be removed immediately and shall be replaced during the next spring or fall planting season. Replacement plants shall be at least as large as the initial plants and of the same species and quality, unless approval for substitution is received from the Department.

(b) Department's maintenance responsibilities. It will be the responsibility of the Department to maintain, in a manner suitable to the Department, screening installed by the Department, unless responsibility for maintenance has been assumed or agreed to by the licensee.

(c) Effect of failure to maintain screening. Failure to maintain screening shall result in the revocation of the junkyard or automotive dismantler and recycler license. The Department is authorized to take any necessary legal action to cause the junkyard or automotive dismantler and recycler to provide such maintenance of screening as is required to accomplish the aims of the act.

(d) Failure to maintain screening. Upon failure of a licensee to maintain screening as provided in subsection (c) of this section the Department will notify the licensee that failure to commence remedial action within 30 days will constitute cause for revocation of the license."

Proper screening of all junkyards must be maintained on a continuous, year-round basis. This can only be verified through regular surveillance of all junkyard or automotive dismantler and recycler sites. See Section 10.04.

As noted in both (c) and (d) above, failure of the owner/operator to maintain screening will result in the revocation of the facility's license. This procedure begins with the issuance of form RW-783I, Notice of Intent to Revoke License, and an explanation of the reason(s) for revocation explained. See RW-783I and Sections 10.06 and 10.07.

9.12 SCREENING INFEASIBLE

"Screening Infeasible" is addressed at 67 Pa. Code Section 451.8(c): "Where screening is not feasible, existing junk must be physically removed from view by, and at the expense of, the owner, if placed after January 1, 1967. If the existing junkyard or automobile dismantler and recycler is nonconforming, the junk will be removed by the Department, if and when Federal and State funding are available."

See 67 Pa. Code Section 451.6(b) (relating to expansion of establishment) regarding junk located in an expanded area, and Section 9.13 below.

If screening is not feasible, the conditions that are the cause and the general situation should be carefully documented with dated photographs that clearly identify the problem and situation.

9.13 EXPANSION

In the case of conforming junkyards, "Where approved screening has been constructed or where it exists naturally, no additional deposit of junk, visible from the highway is permitted unless additional screening, approved by the Department, is installed prior to the deposit. All additional screening shall be installed at the expense of the owner." See 67 Pa. Code Section 451.6(a).

In the case of nonconforming junkyards, "Where any junkyard or automotive dismantler and recycler is nonconforming and no screening exists, the area occupied by junk may not be expanded vertically or horizontally in such a manner that the additional junk will be visible from the highway, unless the expanded area is screened by the owner in a manner approved by the Department." See 67 Pa. Code Section 451.6(b). See also 67 Pa. Code Section 451.8(c) indicating that screening cannot be avoided for an expansion because of infeasibility.

If a licensed conforming facility or a nonconforming facility with no screening wishes to expand beyond their existing limits, as defined and established initially by their license, and such expansion would be visible from the controlling highway, it must appropriately screen the expansion in a manner or way that will comply with the Act. See 67 Pa. Code Section 451.6(a) and (b). It should first submit a plan to the Department for approval, before any

expansion is begun.

Further, pursuant to 36 P.S. § 2719.6 "no junk or any other motor vehicle incapable of meeting State inspection requirements shall be placed between the highway and the screening," nor be allowed to encroach upon the right-of-way. Guidance on addressing this and other encroachments is available in Section 11.4 of the Maintenance Manual.

Regardless of whether the facility is conforming or nonconforming, no expansion outside the limits of the license and within the zone of control is allowed until the licensee submits a request to expand, and shows the type, size, materials and location of the screening proposed to hide the expansion from view of the controlled highway, using form RW-748A, checking the box marked "Other."

Unauthorized expansion is unfortunately encountered and is revealed through regular surveillance and comparison of file photographs of the site. It is important to maintain updated files with photographs that document any expansion. Oral testimony alone may not be sufficient evidence of expansion before the administrative docket or other tribunal. When found, an RW-783I, Notice of Intent to Revoke License, must be issued. See RW-783I and Sections 10.06 and 10.07.

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CHAPTER 10

JUNKYARD PROCEDURES

10.01 APPLICATION AND LICENSE ISSUANCE

As generally provided for in 67 Pa. Code Section 451.8(a), application for a junkyard or automotive dismantler and recycler license shall be made at the District Engineering Office which has jurisdiction over the junkyard or automotive dismantler and recycler.

1. Application shall be submitted to the District Engineering Office in triplicate upon form RW-748A, accompanied by the required fee of one hundred dollars ($100). See also Section 9.08.

2. Upon notification from the Department that the proposed activity needs to be screened, the applicant shall develop or have developed an acceptable screening plan:

   a. The plan shall be submitted in triplicate on 22" X 36" sheets.

   b. Utilizing a scale of 1" = 50', the plans shall show two foot contours and all details relative to the proposed screening, including, but not limited to, the location of junk and proposed junk limits, both horizontal and vertical, the location and proposed location of natural screening, buildings, vegetation, earthen features and the like, proposed screening techniques, materials, names, sizes, etc.

   c. All proposed construction details shall be accurately plotted on the plans and cross sections. A minimum of three representative cross sections shall be plotted through the junkyard area, from the main traveled way to the 1000-foot control boundary.

   d. After review of the proposed screening plan by the Department, the applicant shall be advised of acceptability, or of any modifications required. A field view or meeting with the applicant may be necessary to ensure that a complete understanding of the regulations has been accomplished.

   e. The applicant shall complete the screening approved by the Department within six months from the date of approval.

   f. Upon notification from the applicant that the screening is completed, the Department will inspect and photograph the screening, structures and the site, and verify the effectiveness and compliance or noncompliance of the screening with the plan, regulations, and the Act. Photographic records are essential for a possible denial hearing (see Section 10.02) or for comparison during future surveillance and periodic inspections.

3. After inspection and acceptance by the Department, a license will be issued (RW-748L), for the balance of the calendar year. See 67 Pa. Code Section 451.8, "Issuance and Renewal of License."

4. Unsupported Requests for Dismantlers Licenses

Beginning in 2005, the Central Office Right-of-Way Administration Unit and many Districts began receiving requests for a so-called "dismantler's license." These requests were based upon individuals and firms attempting to buy wrecked, abandoned or junked vehicles in Pennsylvania and surrounding states, and being advised by auctioneers or officials of those states that a "dismantler's license" was required.

Upon investigation, it was found that virtually all of the parties requesting a license did not meet the definitions of an "automotive dismantler and recycler" nor a "junkyard." See 36 P.S. Section 2719.2 and 67 Pa. Code Section 451.2. Also, in almost all cases, the applicant's location was neither visible from nor adjacent to a controlled highway, also defined at 36 P.S. Section 2719.2.

Further, the controls applied to the issuance of the junkyard or automotive dismantler and recycler license can best be described as licensing the site, as opposed to the issuance of a business license.

Usually, an explanation of the foregoing and reference to Act 160 and the regulations, available at: www.pacode.com/secure/data/067/chapter451/chap451toc.html is sufficient for the prospective applicant, or their legislator's office, if involved. Parties should also be referred to the Pennsylvania Department of State website for further information. However, if the party is adamant, have them complete and submit a RW-748A application.

The RW-748A is available to the public at:

http://www.penndot.gov/ProjectAndPrograms/ProjectRequirementsResources/Right-ofWayandUtilities/Pages/Outdoor-Advertising-and-Junkyard-Control.aspx#.Vk8_qKMo69I

or the District can provide a copy to them, and any additional explanation of the rules and requirements.

Any completed applications received by the District that are questionable should be forwarded to the Central Office Right-of-Way Administration Unit for further review and assistance.

10.02 LICENSE DENIAL

Denial of license is addressed at 67 Pa. Code Section 451.8(b), and states: "Where a junkyard or automotive dismantler and recycler license is requested, and screening is not physically or environmentally feasible as determined by the Department, or if for any other reason the license is denied, one-half of the fee will be returned to the applicant, and one-half will be retained by the Department to cover the cost of reviewing the application."

Prior to the issuance of any denial, the District should contact and consult with the Chief, Utilities and Right-of-Way Section and the Office of Chief Counsel. They will review the situation and provide guidance as to the structure of the written denial, using form RW-783D.

When an application for a Junkyard or Automotive Dismantler and Recycler license has been denied or a license revoked, the decision may be appealed by the applicant by asking for an Administrative Hearing. See Title 67 PA Code, Chapter 491, Administrative Practice and Procedures.

Multiple photographs of the site, including junk, screening (or lack thereof), buildings, etc., should be taken. If the applicant appeals the Department's denial, these photographs will serve as valuable evidence to uphold the Department's decision at a hearing or trial.

10.03 DISPLAY OF LICENSE

"The licensee shall display the license conspicuously at the site at all times," as required in 67 Pa. Code Section 451.9, and refers to the paper license form (RW-748L). The license must be mounted or displayed in a location that is readily visible to the general public and to Department inspection personnel.

10.04 SURVEILLANCE – PERIODIC INSPECTION

Surveillance of junkyard or automotive dismantlers and recyclers is required at least biennially, and should be scheduled in conjunction with the surveillance of outdoor advertising devices along the same controlled highways. Of particular concern is the expansion of junk beyond the existing screening, and the placement of junk and/or vehicles incapable of meeting State inspection requirements between the existing screened areas and the highway right-of-way.

All junkyard or automotive dismantler and recycler surveillance must be documented in the Highway Beautification Management System (HBMS).

During these inspections, surveillance photos should be taken and dated as a matter of record, showing views from the controlled highway and general views of screening, structures, and overall site conditions. These photos will aid in future inspections, and help disclose the existence of violations as outlined in 10.05 below. If purported junk is visible, these items also must be photographed, as the photographs will serve as evidence if a revocation hearing is required. All photographs and other pertinent information should be uploaded to the surveillance record in HBMS.

Department employees are authorized to enter on to the premises of any junkyard or automotive dismantler and recycler to conduct surveillance and insure that such facilities are in compliance with the Act. 67 Pa. Code Section 451.7. See Section 10.05.

10.05 LICENSE VIOLATIONS

As provided for in 67 Pa. Code Section 451.7:

> "Department employees are authorized to enter onto the premises of any junkyard or automotive dismantler and recycler to ensure that all provisions of the Act, regulations, and licensing requirements are being complied with. If the inspection discloses that violations exist, a 30 day notice will be sent to the licensee by certified mail, stating the nature of the violation, ordering corrective actions to be taken within 30 days from the date of the notice, and informing the licensee that these regulations will be enforced if corrective action is not completed."

1. A notice (RW-783I) that the licensee's license is subject to revocation will be sent to the licensee (and to the landowner, if different than the licensee) by certified mail, return receipt requested.

2. The nature of the violation(s) will be clearly and concisely detailed, and the corresponding references to Act 160 and the regulations will be quoted.

3. The corrective action(s) required will be outlined in detail, and the licensee advised that the corrections must be completed within 30 days.

4. The licensee will be informed of the penalties to be enforced if the required corrective actions are not completed within 30 days.

5. The District OAD Manager will update the junkyard status to Intent to Revoke Sent (RW-783I) in HBMS.

As outlined at 67 Pa. Code Section 451.10, "The Department's written notice of a violation of the act, or of this chapter, will document corrective action required within a 30 day period. Failure to comply with this written notice will result in enforcement under section 11 of the Act (36 P.S. Section 2719.11)."

Under 36 P.S. Section 2719.11, the following penalties are called for:

> "(a) Any person responsible for the establishment, maintenance, use or operation of a junkyard, or automotive dismantler and recycler in violation of this act, or of the rules and regulations of the Secretary, and any person knowingly suffering such junkyard, or automotive dismantler and recycler to be established or maintained on his property, shall, upon summary conviction thereof, be sentenced to pay a fine of not less than one hundred dollars ($100), nor more than three hundred dollars ($300), to be paid into the Highway Beautification Fund, and, in default of payment thereof, shall undergo imprisonment for thirty days.
>
> (b) Whenever the Secretary has given written notice that a junkyard, or automotive dismantler and recycler is maintained or used in violation of this act, each day of such maintenance or use beginning with the thirty-first day following receipt of such notice shall constitute a separate offense."

10.06 LICENSE REVOCATION

The revocation of a Junkyard or Automotive Dismantler and Recycler license is called for under the following portions of Act 160 and the regulations:

> 36 P.S. 2719.3 "No person shall establish, maintain use or operate a junkyard…without having obtained a valid license therefore from the secretary. Each license shall be valid for one year ending December thirty-first."

67 Pa. Code Section 451.3(b) "The license will be effective from January 1 to December 31 of the license year. Failure to renew the license within 60 days after notice of expiration will cause the junkyard or automotive dismantler and recycler to be classified as abandoned and require its removal at the expense of the owner."

67 Pa. Code Section 451.8(4) "Failure to make application for renewal for the subsequent calendar year will constitute an abandonment as defined by this chapter and will subject a junkyard or automotive dismantler and recycler and any of its successors or assignees to the applicable penalties or to revocation of its right to continue the junkyard or automotive dismantler and recycler activity."

67 Pa. Code Section 451.5(d) *"Failure to Maintain Screening.* Upon failure of a licensee to maintain screening as provided in subsection (c) of this section the Department will notify the licensee that failure to commence remedial action within 30 days will constitute cause for revocation of the license."

36 P.S. 2719.9 "The secretary may apply to any court of competent jurisdiction for an injunction to enjoin any junkyard or automotive dismantler and recycler not conforming to the requirements of this act."

1. A notice (RW-783I) indicating that the licensee's license is subject to revocation will be sent to the licensee (and to the landowner, if different than the licensee) by certified mail, return receipt requested.

2. The nature of the violation(s) will be clearly and concisely detailed, and the corresponding references to Act 160 and the regulations will be quoted.

3. The corrective action(s) required will be outlined in detail, and the licensee advised that the corrections must be completed within 30 days. In some cases, depending on the violation, no corrective action will be allowed, and the revocation will proceed.

4. The licensee will be informed of the penalties to be enforced if the required corrective actions are not completed within 30 days.

5. The District OAD Manager will update the junkyard status to Intent to Revoke Sent (RW-783I) in HBMS.

6. Failure to respond to or to make arrangements to correct the violations within 30 days will result in the issuance of the RW-783R, Revocation Notice of Junkyard or Automotive Dismantler and Recycler License.

7. Prior to the issuance of the RW-783R Revocation Notice, the District must consult with the Chief, Utilities and Right-of-Way Section, who will in turn consult with the Office of Chief Counsel. They will review the situation and provide guidance as to the structure of the written revocation.

8. The District OAD Manager will update the junkyard status to Revocation Notice Sent (RW-783R) in HBMS.

When a Junkyard or Automotive Dismantler and Recycler license has been revoked, the decision may be appealed by the licensee by asking for an Administrative Hearing. See Title 67 PA Code, Chapter 491, Administrative Practice and Procedures. If the licensee asks for an Administrative Hearing, the District OAD Manager will update the junkyard status to Revoked (Under Appeal) in HBMS.

When an Administrative Hearing is requested, the revocation of the license is stayed, pending the outcome of the hearing.

10.07 UNLICENSED JUNKYARDS

Any unlicensed junkyard is illegal whether it came into existence prior or subsequent to the effective date of the Act. In order for an unlicensed junkyard to continue operation it must obtain a license. To inform the operator and/or landowner of their obligation, the following steps should be taken:

1. A notice that the activity on the premises has been classified as a junkyard and/or automotive dismantler and recycler will be sent to the operator (and to the landowner, if different than the operator) by certified mail,

return receipt requested. Along with the notice, three (3) copies of the application should be included. If the activity came into existence after the effective date of the Act, RW-782 (New Junkyard Subsequent to Act No. 4) should be used.

2. The corrective action(s) required in the application for and issuance of a license or removal of the activity beyond the zone of control.

3. The operator/owner will be informed that the matter will be forwarded to the Office of Chief Counsel if the required corrective actions are not completed within 30 days.

As outlined at 67 Pa. Code Section 451.10, "The Department's written notice of a violation of the act, or of this chapter, will document corrective action required within a 30 day period. Failure to comply with this written notice will result in enforcement under section 11 of the Act (36 P.S. Section 2719.11)."

10.08 ABANDONED JUNKYARDS

An abandoned junkyard is defined as "a junkyard or automotive dismantler and recycler, or both, which has not been used or operated for a period of 12 months, or that its license has not been renewed within 60 days of notice to renew." 67 Pa. Code Section 451.2 (Definitions). Treatment of abandoned junkyards is addressed in the following sections: 10.06 (License Revocation), 11.01 (License Renewal), and 11.05 (Payments not Received).

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CHAPTER 11

RENEWALS & TRANSFERS

11.01 LICENSE RENEWALS

As required by both the Act (36 P.S. Section 2719.3) and the regulations (67 Pa. Code Section 451.3):

> "(a) General Rule. No person shall establish, maintain, use, or operate a junkyard or automotive dismantler and recycler business, within the zone of control without a valid license as provided in this chapter.
>
> (b) Licensing Period. The license will be effective from January 1 to December 31 of the license year. Failure to renew the license within 60 days after notice of expiration will cause the junkyard or automotive dismantler and recycler to be classified as abandoned and require its removal at the expense of the owner."

Also see 67 Pa. Code Section 451.8 "Issuance and Renewal of License."

> "(a) *Issuance.* Requirements for issuance of license shall be as follows:
>
> (1) Application for a junkyard or automotive dismantler and recycler license, or for renewal of a license, shall be made at the District Engineering Office which has jurisdiction over the junkyard or automotive dismantler and recycler.
>
> …
>
> (c) (1) If all information provided in the original application for license form is unchanged, a renewal application need contain only the following information:
>
> (i) Name and address of applicant.
>
> (ii) Original license number.
>
> (2) Renewal applications shall be accompanied by the appropriate annual fee.
>
> (3) Renewal applications will be accepted from November 1 to December 15 of the year for which the current license was issued.
>
> (4) Failure to make application for renewal for the subsequent calendar year will constitute abandonment as defined by this chapter will subject a junkyard or automotive dismantler and recycler and any of its successors or assignees to the applicable penalties or to revocation of its right to continue the junkyard or automotive dismantler and recycler activity."

11.02 RENEWAL PROCEDURE

On November 1 of each year, as reflected in the law, the Highway Beautification Management System (HBMS) will automatically generate and email a renewal invoice to each Junkyard or Automotive Dismantler and Recycler whose license is in good standing. If an email address is not recorded in HMBS for the Junkyard or Automotive Dismantler and Recycler, HBMS will send the invoices to the Riverfront Office Center to be printed and delivered to the Central Office Right-of-Way Administration Unit. The Central Office Administration Unit will mail the hard copy of the renewal notice to the licensee.

1. Verification of District records must ensure that all license fees are current, that no violations or complaints are outstanding against the licensee, and that the annual surveillance of the facility has been completed and revealed no problems or new violations.

2. If verification of District records or the latest surveillance uncovers a problem, as generally provided for

in 67 Pa. Code Section 451.7:

a. A notice will be sent to the licensee and landowner (RW-783) by certified mail, indicating that the license cannot be renewed at this time.

b. The reasons for the intent not to renew will be explained.

c. The corrective actions required will be outlined in detail, and the licensee advised that they must be completed within 30 days.

d. The licensee will be informed of the penalties to be enforced if the required corrective actions are not completed within 30 days.

e. Upon District inspection revealing satisfactory completion of all corrective actions, the renewal process outlined below may continue.

3. When generating the renewal Invoice, HBMS will also transmit an XML message to SAP which creates an Accounts Receivable (AR) in the Commonwealth's accounting system.

4. SAP will generate a separate invoice (1800 document number) for each junkyard bill, which will also serve as the tracking number. Again, the transaction date will be set to November 1 of the current year.

5. Junkyard invoices will be created with payment terms AR62 so that dunning starts on the 63rd day after the baseline date.

6. A copy of the invoice will be maintained in the HBMS Invoice Portal.

11.03 PROCESSING RENEWAL FEES

1. The licensee will mail the $100 renewal fee with the invoice number noted on the check, to the following address:

Comptroller Operations
AR PennDOT – Non-APRAS
P.O. Box 15758
Harrisburg, PA 17105

2. The Comptroller Operations will post the payment in SAP and forward it to Treasury for deposit into the Highway Beautification Fund (9999999007). After the payment is posted, SAP will transmit an XML message to HBMS which will mark the renewal invoice as paid and the license will be renewed for another year.

3. When the invoice is marked as paid, HBMS will generate and email a new Junkyard License or Automotive Dismantler and Recycler License (RW-748L) to the Junkyard or Automotive Dismantler and Recycler. If an email address is not recorded in HMBS for the Junkyard or Automotive Dismantler and Recycler, the Central Office Right-of-Way Administration Unit will mail a hard copy of the new RW-748L. The new RW-748L will contain a keystone logo that indicates the year that the license is valid for, replacing the annual decals that were distributed in prior years.

4. After December 15, the District will review the HBMS Invoice Portal, at least on a weekly basis, to determine if the renewal fee for the licensee has been received and paid.

11.04 PAYMENTS NOT RECEIVED

1. Sixty-three days after November 1st, the PennDOT Bureau of Office Services, through SAP, will identify the junkyard invoices which have not been paid. During the first week of January, the SAP system will identify and list those junkyard invoices which have not been paid, and the firms whose licenses have expired.

2. SAP will generate dunning letter #1, "Notice of License Expiration – Request for Payment" for all unpaid

accounts.

3. The Bureau of Office Services will mail the notice to the licensee via certified mail, return receipt requested. A copy of the dunning letter will be forwarded to the applicable District for their information and file. The District may wish to contact the licensee at this time, to effect prompt payment.

4. Thirty days later, the SAP system will identify the junkyard licenses still not renewed, and generate dunning letter #2, "Notice of License Expiration – Abandonment of Activity" including a final request for payment.

5. The Bureau of Office Services will mail these letters directly to each expired license holder by certified mail – return receipt requested, and again send a copy to each applicable District for information. The District may wish to make a stronger attempt at this time to secure payment from the licensee, as their license has now expired.

6. Thirty days later, the SAP system will generate a listing titled "License not Renewed – Activity Abandoned" for any remaining unpaid junkyard accounts. The Bureau of Office Services will forward this list to the Central Office Right-of-Way Administration Unit.

7. The Central Office Right-of-Way Administration unit will then divide the list by District, and each District will be notified of any junkyards in their jurisdiction on this list that are now considered to be abandoned.

Under 67 Pa. Code Section 451.8(c)(4), "Failure to make application for renewal for the subsequent calendar year will constitute an abandonment as defined by this chapter will subject a junkyard or automotive dismantler and recycler and any of its successors or assignees to the applicable penalties or to revocation of its right to continue the junkyard or automotive dismantler and recycler activity."

8. Immediately upon notification, the District will verify if the junkyard or automotive dismantler and recycler is still in existence.

9. If the activity is no longer in operation, the District will notify both the Bureau of Office Services and Central Office Right-of-Way Administration Unit, using a copy of the original invoice with a brief explanation "closed, no longer in operation" signed by the District Right-of-Way Administrator. At this time, the Junkyard status should be updated to Junkyard Closed in HBMS.

10. Should the activity still be in operation, the District will make an immediate personal attempt to secure the renewal payment. If this fails, the District will turn over their file, with all correspondence, to the Chief, Utilities and Right-of-Way Section. The Central Office Right-of-Way Administration Unit will review the case with the Real Property Division, Office of Chief Counsel. Should the reviewing attorney decide that legal action is appropriate, the Real Property Division will take that action, or assign the matter to Regional Office Counsel for action. An attempt should be made to notify the local municipality of the violation in order to facilitate coordination.

11. The Bureau of Office Services will advise the Central Office Right-of-Way Administration Unit on a monthly basis of any junkyard invoices still remaining unpaid, using a computer-generated spread sheet.

12. At any time during the junkyard renewal process, the invoice account may be closed if the junkyard owner, in response to billing, requests in writing cancellation of the license.

If received by the District, they shall notify the Central Office Right-of-Way Administration Unit immediately to close the account, and avoid additional non-renewal notices being sent. The Central Office Right-of-Way Administration Unit will notify the Bureau of Office Services to close the customer account and also possibly cancel any open invoices. The original written request to cancel the junkyard license must be retained in the District file, and the District must verify that the junkyard activity has ceased to exist.

11.05 TRANSFER OF LICENSE

Should the owner of a licensed junkyard or automotive dismantler and recycler wish to sell or transfer their business to another, the proposed new applicant shall submit a completed Junkyard Application (RW-748A) to the controlling District, indicating that:

1. This is a license transfer on line #3 of the application.
2. The existing license number.
3. Any changes desired or anticipated on the second page of the application.
4. The required $100 application fee.

Should any required information be missing, the District shall return the application and the applicant's check with a Junkyard Notice (RW-783) indicating "incomplete" on the line marked "Other." The deficiencies to be corrected on the application should be indicated in the body of the form under "Reasons."

Note that any junkyard or automotive dismantler and recycler that has failed to renew their license for the current or previous year(s) cannot be transferred. The facility is considered to have been abandoned under 67 Pa. Code Chapter 451.8(c)(4). See Section 11.05.7 above.

Upon receipt of a properly completed application, the District shall conduct a field inspection of the site, just as would be done upon receipt of any new application, as outlined in sections 9.08, 9.09, and 10.01.

If the site inspection is in order, and all regulations are being complied with, the District may grant the transfer, and issue a new, corrected copy of the license form (RW-748L).

If the site inspection reveals noncompliance with regulations, no action will be taken on the transfer. However, the current licensee and/or landowner will be given notice of "Intent to Revoke License," using form RW-783I, listing the violations of the Act and the regulations, and advising that corrective action is required within a 30 day period. A copy of the RW-783I shall also be mailed to the proposed transferee. See Sections 10.05 (License Violations) and 10.06 (License Revocations) of this manual.

APPENDIX A

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APPENDIX A Highway Beautification Manual Forms

Form Number	*Title*
RW-744	Application for On-Premise Outdoor Advertising Device Permit - Interstate Highway
RW-745	Application for Off-Premise Outdoor Advertising Device Permit
RW-745A	Sign Permit Approved Letter
RW-745AC	Sign Change Application Approved Letter
RW-745APP	Sign Permit Approved Pending Payment Letter
RW-745C	Notice of Completion
RW-745D	Sign Permit Denied Letter
RW-745DC	Sign Change Application Denied Letter
RW-745I	Instructions and Information for Completing the Application for Off-Premise Outdoor Advertising Device Permit
RW-745N	Transfer of Sign Permit Approved Letter
RW-745R	Revocation Notice Of Advertising Device Permit Letter
RW-746	Application for Directional or Public Service Outdoor Advertising Device Permit
RW-747	Junkyard Data Form
RW-748A	Application for a Junkyard or Automotive Dismantler and Recycler License
RW-748L	Junkyard license or Automotive Dismantler and Recycler License
RW-749	Information Change for Sign Owner
RW-750	Notice of Intent to Revoke Permit
RW-760	Sign Data Card
RW-770	Change of Classification Notice
RW-781	Illegal Sign on Right-of-Way Letter
RW-782	New Junkyard Subsequent to Act No. 4
RW-783	Notice Not to Renew Junkyard License
RW-783D	Denial of Junkyard License
RW-783I	Notice of Intent to Revoke Junkyard License
RW-783R	Junkyard License Revocation Notice
RW-784	Junkyard License Expiration Notification Letter
RW-785	Receipt of Junkyard Payment Notification Letter
RW-786	Illegal Sign Report
RW-788	Highway Beautification Surveillance Miles
RW-790	Request to Remove Illegal or Abandoned Sign
RW-790F	Final Notice to Remove Illegal or Abandoned Sign
RW-791	Cover Letter for D.A. Request to Prosecute
RW-796	Highway Beautification Illegal Sign Log

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