Original: 2434

PENNSYLVANIA FOREST PRODUCTS ASSOCIATION

PENNSYLVANIA FOREST PRODUCTS ASSOCIATION
545 West Chocolate Avenue, Hershey, PA 17033
Ph: 717-312-1244 800-232-4562
Fax: 717-312-1335
Email: hlma@hlma.org
Web: hlma.org

November 23, 2004

Mr. Daniel R Smyser, P.E.
Chief, Motor Carrier Division
Bureau of Maintenance and Operations
Pennsylvania Department of Transportation
PO Box 8210
Harrisburg, PA 17105

Re: Proposed Rulemaking 24-34: Access to and Occupancy of Highways by Driveways, Local Roads and Structures

Dear Mr. Smyser:

Thank you for meeting with us on November 5, 2004 to discuss the subject proposed rulemaking and its effects on Pennsylvania's forest products industry. The Pennsylvania Forest Products Association (PFPA) appreciates the department's ongoing willingness to work with our industry on application of its trucking-related regulations.

During our meeting, we were particularly pleased that you were able to confirm that the preponderance of our timber harvesting operations would continue to qualify for minimum use driveway permitting under the proposed regulation. We were also pleased that you made it clear that if we use existing permitted driveways that no additional permitting is required assuming no material alterations would occur, and that following our use of either existing and newly permitted driveways that materials used in the department's right-of-way for best management purposes would not have to be removed upon a project's completion.

We also appreciate the department's continued recognition of the temporary, short term and unique nature of our access requirements for timber harvesting. However, we are concerned by the department's proposed repeal of the existing regulations at Section 441.5 (e), Waiver of Design Requirements, in favor of a new Section 441.11, Modification of Conditions. As we discussed during our meeting, an agency's regulatory authorization to "waive" a requirement of rulemaking is substantially different than an authority to "modify" one. In our view, a waiver is the ability to not apply or set completely aside a requirement; a modification is the ability to alter or change, but not set aside, a regulatory provision. Historically, our industry has justifiably earned waivers of certain permit terms and conditions for very practical reasons. Under the proposed change in 441.11 we would no longer be able to have such waivers approved by the department. Thus, we cannot support the department's repeal of such a key provision in its existing regulations.

Under the department's proposed rulemaking at Section 441.5(i) timber harvesting activities are recognized properly as a "temporary access" permitting situation. We believe that such temporary access permitted activities should continue to be eligible to request waivers of applicable provisions of the regulations where such waivers are appropriate and fully justified. This authority for granting waivers for temporary access permits can be retained in the proposed rulemaking by incorporating the following additions into the new Section 441.11:

441.11. Modification or Waiver of Conditions.

* * * * *

(f) *Temporary access permits.* In the case of temporary access permits, when an applicant demonstrates, in writing, that any term or condition of this chapter cannot reasonably be met, the Department may waive compliance with such term or condition.

Our other outstanding concern relates to the indemnity and insurance requirements proposed under Section 441.6 (13) and (14). While the Department sets forth specific amounts of coverage for "other than minimum use driveways", no amounts are prescribed for minimum use driveway permitting situations. Rather, the amounts would be established at the discretion of the Department. We feel that specific limits of coverage should be established in the regulation to ensure certainty and uniform application across all Department districts. Recognizing the short-term and limited access nature of temporary access permitting for timber harvesting activities, these amounts should be established at reasonable levels.

We appreciate your consideration of our suggested changes to the proposed rulemaking and urge you to accept them as part of any final form regulation.

Sincerely yours,

Paul Lyskava
Executive Director

cc: Independent Regulatory Review Commission
Senate and House Transportation Committees

Original: 2434

(2)

PENNSYLVANIA BUILDERS ASSOCIATION

600 N. Twelfth Street • Lemoyne, Pennsylvania 17043
717-730-4380 • 800-692-7339 • 717-730-4396 (Fax) • Internet—www.pahomes.org

October 14, 2004

Secretary Allen D. Biehler, P.E.
Pennsylvania Department of Transportation
Commonwealth Keystone Building, 8th Floor
400 North Street
Harrisburg, PA 17120-0041

Secretary Biehler:

On Saturday October 2, 2004 the PA Department of Transportation ("PADOT") published notice regarding its amendments to Chapter 441 (Relating to Access to and Occupancy of Highways by Driveways and Local Roads) in the *Pennsylvania Reporter*. Comments on the proposed rulemaking, which is over one hundred and twenty pages long, are due on or before Monday, November 1, 2004.

Many members of the Pennsylvania Builders Association wish to review and comment upon the contents of this highly technical regulatory effort. Accordingly, I am respectfully requesting that the comment period be extended beyond the current thirty (30) days. An additional forty-five (45) days would enable all of the members of the broad community of business, municipal and industrial concerns likely to be impacted by these provisions to complete the extensive review that will be required.

Please feel free to contact me directly with your response at the address listed above.

Sincerely,

Louis J. Biacchi
Director of Governmental Relations

Cc: Senator Roger A. Madigan, Majority Chair Transportation Committee
Representative Richard A. Geist, Majority Chair Transportation Committee
Senator J. Barry Stout, Minority Chair
Representative Keith R. McCall, Minority Chair
Scott R. Schalles, Regulatory Analyst, IRRC
Robert M. Peda, PADOT
Daniel Smyser, P.E. PADOT

MEMORANDUM

TO: Mr. Robert Peda, Director
Bureau of Maintenance and Operations, Department of Transportation

CC: Mr. Scott Schalles, Regulatory Analyst, IRRC
Representative Rick Geist
Representative Keith McCall
Senator Roger Madigan
Senator Barry Stout
Chapter 441 Task Force

DATE: November 1, 2004

RE: **Comments in review of Proposed Changes to Chapter 441 Regulation #18-378 (#2434) from the PA Department of Transportation**

FROM: Lou Biacchi, Director
Governmental Affairs Division

This memorandum has been provided to summarize the comments of the Pennsylvania Builders Association in review of the proposed Regulation #18-378 (#2434) from the PA Department of Transportation's "Access to and Occupancy of Highways by Driveways, Local Roads and Structures," known as Chapter 441.

Comments

1. The title of the Chapter includes "driveways, local roads, and structures" and yet it appears that Local Roads are governed by Pub. 70M which contain different criteria, in particular with regard to Sight Distance requirements. The Sight Distance requirements should consistently apply the Formula Sight Distance (FSD) outlined in the new Chapter 441.

2. The requirements that a release or indemnification be signed in favor of the Department regarding "affected" property owners puts an unfair burden on the applicant.

3. The means to address design waivers have been removed from the publication. In combination with the strict Level of Service criteria in the Traffic Impact Study procedures, this provides too much latitude for the Department to deny or restrict accesses.

4. The language in Section 441.6 (1) (ix) appears to give too much discretion to the Department to change an already permitted access only by citing a "change in traffic conditions."

5. The language in Section 441.3 (a) implies that any existing access not previously permitted under these regulations must be permitted prior to any maintenance, repair or use. This is inappropriate.

6. The sight distance requirements appear to allow the Department to dictate changing of a proposed driveway location even if the proposed location meets all criteria.

7. A governmental body can cause an application to be returned to applicant by simply writing to PennDOT requesting a review. There should be some limits put on this.

8. 441.1. Definitions. *Traffic Impact Study* "determines the improvements to the existing transportation system required to accommodate that traffic". Why does one developer have to pay for and construct improvements to mitigate existing and someone else's impacts? There needs to be some method of fair share contribution toward these improvements instead of full fare.

9. 441.3. Permit application procedure. (b) *Authorization of local government to issue permits.* Allowing local government to issue permits could result in many different interpretations. Also, there is no mention of an appeal process whereby a consultant can request that the Department or some other agency could step-in to mediate a disagreement. Furthermore, would this allow the municipality to determine the study area of the traffic impact study, and consequently require improvements at off-site intersections since they would be acting on the Department's behalf? Currently municipalities are not allowed to require off-site improvements according to the Municipalities Planning Code (MPC) (Article V-A – Municipal Capital Improvements).

10. 441.3 (s) *Traffic Impact Study.* (3) In the opinion of the Department, the development is expected to have a significant impact on highway safety or traffic flow even though it does not meet (1) or (2) of this section. There needs to a definitive limit as to when a traffic study is required or not required.

- How are the impacts from the future traffic conditions without development to be mitigated and how does this get included into the process. It is not fair to the developer to have to pay for and construct improvements for this traffic. The necessary improvements for the future traffic conditions without development should be included as a predevelopment condition and the developer then mitigate or contribute a fair share towards anything beyond these conditions.

- (i) For the locations where the levels of service of the design year without the development is LOS F, the remedies shall provide an estimated delay which will be no worse than the delay for the design year *without* the development.

- One (1) additional trip will cause an increase in delay when the LOS is F. It is not fair to the developer to require mitigation when his development increases the volume by only one vehicle.

- How can the legislature adopt regulations requiring developers to construct off-site improvements when they passed legislation (Act 209 of 1990 Article V-A Municipal Capital Improvement) that stopped local governments form doing the exact same thing? The section reads "No municipality shall have the power to require as a condition for approval of a land development or subdivision application the construction, dedication or payment of any offsite improvements or capital expenditures of any nature whatsoever or impose any contribution in lieu thereof, exaction fee, or any connection, tapping or similar fee except as may be specifically authorized under this act".

- There is no provision for the Department to waive the requirement for a TIS.

- PennDOT continues to assess developer responsibility for mitigation based on traffic conditions 10 years after the initial opening of a development. This is OK for a large, phased development that may take 10 years to complete, however, is it fair for small developments that open and are completed within a year or two of receiving municipal approvals? If an applicant is to be held to the requirement that future LOS with the development can be no worse than the LOS without the development, shouldn't this apply to the year that a development is anticipated to be completed? A "design year" analysis should be required only if it is needed for the design of certain mitigation measures, such as the construction of left turn lanes.

- The study year, not the design year should be used to determine the impact of a development. The study year is the year that a development is anticipated to be completed. For very large, phased developments, additional analyses may be required in order to develop an improvement plan commensurate with the phasing of the development.

- This regulation allows no increase in delay at intersections experiencing LOS F in base conditions. In effect, even intersections that experience relatively small increases in traffic will also experience increases in delay. Therefore, almost every intersection with a LOS F before development will automatically require physical improvements. This is different from the LOS requirement where there is range of delay for each LOS.

- It is also assumed that the term location would apply to a study intersection, and that it is the overall delay for an intersection that cannot be increased? This not clear and is interpreted differently by various Districts.

11. The legislation creates additional economic hardship on permittee by retaining application fee even when permit is not approved.

12. The legislation creates additional economic hardship on permittee by requiring photo documentation of preconstruction condition.

13. 441.3 g 6 Requirement to include proof of ownership by copy of deed and deed book reference is too onerous. A notarized signature of a fee simple owner or equitable owner would suffice.

14. 441.3 g 6 B – In many instances, an application may include "future" modification to properties that are not under applicants control, but which the department or municipality may want to include in the design. Requirements for signatures and/or releases is too onerous and may be impossible to obtain.

15. 441.3.m 3 – Need to further define what "additional security in a form and amount acceptable to the Department." This is too vague and leaves too much discretion to Department staff leading to arbitrary requirements.

16. 441.3 o 5 – Comments from other governmental bodies should have time limits established. Application should not be returned to applicant should governmental body request a review. Department should require governmental body to review and respond in certain time frame. Current language leaves open Department's definition of "review by governmental body."

17. 441.3.p – There is no need for 60 day prior notification to Pennsylvania Historical and Museum Commission. Copy of letter sent should be sufficient. This 60 days only serves to extend application time which has economic hardship to applicant.

18. 441.3.t – Proof of publication of a notice concerning of a proposed development is onerous and not relevant to these regulations.

19. 441.3.u – Need to add "to the best of their knowledge" to requirement for applicants to certify that all of the information is true and correct.

20. 441.3.v – An "other aggrieved person" should be more clearly defined. Also, strict time frames should be outlined for the appeal process.

21. 441.3.w – This section should be eliminated. Debarment is tantamount to a blacklist. There is too much room for abuse or favoritism by Department staff.

22. 441.3b.8 – Applicant should be able to provide engineering proof that post-development drainage conditions are consistent with a watershed storm water management plan of an affected municipality. There should be no requirement of an "approve letter" from the municipality.

23. 441.5.e.2 – Display of placard is unreasonable. Department knows for what work it has issued permits. Placards are difficult to maintain against weather and vandalism.

24. 441.5.f.3 – Performance Bond should be specifically permitted as another format of security that is acceptable to the Department. Applicant should not be limited to just a letter of credit. Financial security term should run with permit issuance term and not be set arbitrarily at 2 years.

25. 441.5.g.3 – Clarification should be made that security only needs to be extended when a permit extension moves the permit expiration date beyond the current security expiration date. Currently permits are granted in 6 months increments and security is required for 2 years.

26. 441.6.1.v – Only permittee should be liable to the Department. Property owners should not be made liable when they are not permittee since only the permittee is in control of the work.

27. 441.6.1.vi – Property owners should be a party in interest in any action against the Department as long as the Department is requiring them to be liable, see 441.6.v.

28. 441.6.3.iv – Department should be required to provide 30 days written notice (certified, return receipt requested) to permittee that Department has determined that work is not in conformance with Department standards and must be corrected.

29. 441.6.4.v – This requirement is too onerous. The public should have access to permitted access as soon as it is substantially complete, not only after final wearing course and official acceptance of completion by department. There may be years between these two events.

30. 441.6.4.viii – Invoices should be sent certified mail, return receipt requested. Department should not be permitted to place a lien on property without full due process of a hearing to determine legitimacy of unpaid invoice.

31. 441.6.11 – If Department has required applicant to pay for full time inspector as per 441.4.d.2, then this inspector's acknowledgment of the work being complete and satisfactory should constitute acceptance of the work by the Department.

32. 441.6.13.i – Applicant should not be required to indemnify the Commonwealth and Department from claims resulting from design flaws required, approved and inspected by the Department.

33. 441.10.a.4.c.ii – Written notice should be certified mail, return receipt requested.

34. 441.10.a.4.c.iii – Written notice should be certified mail, return receipt requested.

Pennsylvania Builders Association once again objects to the 30 day comment period as stated in my letter of October 14, 2004 to Secretary Allen Biehler (see attached).

Original : 2434

(3)

URBAN ENGINEERS OF ERIE, INC.

1319 Sassafras Street
Erie, PA 16501-1720
(814) 453-5702 ■ Fax (814) 453-2020

October 27, 2004

Robert M. Peda, Director
Bureau of Maintenance and Operations
Department of Transportation
Commonwealth Keystone Building
400 North Street - P.O. Box 2047
Harrisburg, PA 17120-0041

Re: Public Comments
Proposed Rulemaking
67 PA. CODE CH. 441

Dear Mr. Peda:

As a consultant to developers, municipalities and PENNDOT in the preparation or review of Highway Occupancy Permit (HOP) application packages, *Urban Engineers of Erie, Inc. (Urban)* offers the following comments regarding the proposed changes to 67 PA. CODE CH. 441 as published in the PA Bulletin, Doc. No. 04-1816:

1. 441.3(a) & (c): proposed wording appears to indicate that maintenance to an existing access would not be allowed if a valid permit has not already been issued for the access. Will long-existing accesses that have no recorded permit be required to obtain a valid permit before conducting maintenance, or will they be "grand-fathered" and considered to not require a recorded valid permit?

2. 441.3(b): the associated driveway agreement form should include a paragraph or section that allows the Department to list SR's/segments that would be specifically excluded from municipal oversight. Our concern is that there are major roadways (e.g. high ADT, uncontrolled access arterials) that are not included in the general exceptions of Section #3 of the agreement where it would be in the traveling public's best interest for design and permit decisions to continue to be made by the Department.

3. 441.3a(c) (2)(ii): "relative balance" is a not a typical phrase in relating traffic volumes to capacity. *Urban* suggests replacing the phrase with "relative relationship."

4. 441.4(c)(5): by deletion of the phrase related to charitable organizations, is it explicitly intended that charitable organizations will no longer be exempt and will be required to pay application and inspection fees?

5. 441.4(j) (1) & (2): the requirement of paragraph (1) to submit video images seems to expand on the types of equipment that consultants or permittees would need to purchase and maintain, which may be a burden to smaller entities. Paragraph (2) regarding the

use of photographs should be provided as an alternative to the requirement of paragraph (1) with the phrase "may also" revised to be "may instead."

6. 441.6(1)(vii): does this proposed wording imply that the Department has the authority to require the permittee/property owner to make changes at the permittee/property owner's expense even when conditions change that are outside of the permittee/property owner's control?

7. 441.6(12): by the previous definition of "pavement" in 441.1 ("does not include shoulders"), the proposed wording that requires the property owner to maintain to the "pavement edge" seems to require that the property owner is responsible for maintenance of the shoulder adjacent to the travel lanes. If this is the intent of the wording please explain why, and if this is not the intent please clarify the appropriate sections accordingly. It is *Urban's* opinion that it would be in the traveling public's best interest for the shoulder to be maintained by the Department.

8. 441.8(d) (1): the syntax of the word "must" in the first sentence is awkward. Replacing the word "must" with the word "shall" may be appropriate.

9. 441.8(h) (2): proposed wording requires recording of sight distance on Form M-950S. It is not clear whether the form will be required to be submitted with the application package.

10. 441.9: proposed Figures 9-2 and 9-3 show the driveway radius tying into the edge of the shoulder (a change from the current Chapter 441 Figures for minimum and low volume driveways that show the radius tying into the outside edge of the travel lane). However, proposed Figure 9-4 does not show a similar example with a shoulder. A clarification is needed for medium and high volume driveways. *Urban's* experience is that medium and high volume drives are not uncommon on roadways with shoulders in northwest Pennsylvania; an explicit example of this condition would be useful.

Urban appreciates the opportunity to comment on the proposed changes to Chapter 441 and looks forward to the enhancements they will provide.

Very truly yours,

URBAN ENGINEERS OF ERIE, INC.

Charity E. Stover

Charity E. Stover, P.E.
Traffic Engineer

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Original: 2434

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Trans Associates

October 22, 2004

Mr. Daniel Smyser, P.E.
PennDOT Bureau of Maintenance and Operations
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17105-8210

Subject: Proposed Changes to Access Regulations (Chapter 441)

Dear Mr. Smyser:

The purpose of this letter is provide my full support of the subject regulation changes that were recently published in the Pennsylvania Bulletin. As you may be aware ACEC/PA worked cooperative with PennDOT over many years to develop these changes. Our goal was to streamline the highway occupancy regulations and make more uniform the engineering standards that are applied. I believe that these changes have achieved that goal.

Thank you for the numerous hours of work put forth by PennDOT to achieve this goal for the consulting engineers of the state, but more importantly, for the public users of the regulations.

I look forward to the implementation of the regulation changes

Sincerely,

Mark J. Magalotti, P.E.
Principal-in-Charge

MJM:nl

cc: J. VanNatta - ACEC/PA
File 04000-admin00/nllet6252

Original: 2434

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PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

December 2, 2004

Mr. Robert M. Peda, Director
Bureau of Maintenance and Operations
Commonwealth Keystone Building
400 North Street, PO Box 2047
Harrisburg, PA 17120-0041

Dear Mr. Peda:

We are writing to you on behalf of the 1,456 townships represented by the Association to comment on the Proposed Rulemaking that would amend Chapter 441 *(relating to access to and occupancy of highways by driveways and local roads)* #18-378 *(#2434)* that was published in the October 2, 2004, issue of the *Pennsylvania Bulletin*.

Both township roads and state highways comprise a vital transportation network for Commonwealth motorists. Accordingly, the Association believes that the Department of Transportation should be financially responsible for the maintenance of all state highways and rights-of-way, including costs for the placement and maintenance of drainage facilities and stormwater management on a state road or right-of-way.

We have major concerns with the Department's policies and practices concerning the proposed rulemaking. Maintenance of drainage structures on state highways has been a point of contention with our members for some time. Some districts currently require access permits to be issued in the name of the affected municipality, instead of the developer, because of the Department's concern that the developer may disappear and leave the structures unmaintained. Instead of accepting responsibility for these permitted structures in its right-of-way, the Department has, in policy and practice, attempted to hold municipalities responsible for these structures when the permittee can no longer be found or determined. We strenuously oppose this policy and practice. In reviewing these regulations and the authorizing legislation, we could not find any authority for the Department to require a municipality to be the permittee for an access permit for a developer's project, nor be held liable for its maintenance after the Department has authorized and approved the permit.

The Department must remember that municipalities do not have authority to stop development, only manage it. Increasing development causes increased costs to the municipality through costs of additional infrastructure and staffing. Municipalities must accept the dedication of a road if the municipality has an ordinance stating that it will accept dedication of the road if it is built to certain standards and the road is actually built to the adopted standards. If a proposed access permit will cause problems for the Department, the Department should deny the permit.

We are concerned with an overarching principle in the proposed rulemaking, as well as Department policy and practice, that would require a permittee to maintain a structure in perpetuity that was built in compliance with a permit. While we agree that any structure physically located on the permittee's, or subsequent owner's, property is the permanent

4855 Woodland Drive ▮ Enola, PA 17025-1291 ▮ Internet: www.psats.org
PSATS ▮ Pennsylvania Township News ▮ Telephone: (717) 763-0930 ▮ Fax: (717) 763-9732
Trustees Insurance Fund ▮ Unemployment Compensation Group Trust ▮ Telephone: (800) 382-1268 ▮ Fax: (717) 730-0209

responsibility of the permittee, we strongly disagree with the policy of requiring the permittee to maintain all improvements physically located on the state highway right-of-way forever if it is not located on the permittee or subsequent owner's property. The Department needs to take responsibility for the maintenance of improvements that they permit. We fully understand the need to permit access to state highways and require improvements to the state road, but the permittee should be required to complete the improvements to the Department's specifications, provide security for an established number of years, and then the Department should accept and maintain these improvements. And in no case should the Department attempt to hold a municipality responsible for drainage structures that are not part of the right-of-way of a municipal road, except in the case of a closed stormwater sewer system that is owned by the municipality.

Again, we must oppose any efforts by the Department to transfer any of its responsibilities for drainage facilities and stormwater management on state roads to municipalities as an unfunded mandate. We cannot find any authority or justification for such action in the Vehicle Code or state highway law. Local governments do not have the resources to install and maintain drainage structures over which they have no permitting authority and no control.

These regulations seem to apply to municipalities by referencing publications on the design of local roads, yet in other sections the regulations appear to apply only to the state, such as when "roadway" is defined as that portion of a "highway or local road..." Are municipalities required to follow these regulations for approval of driveways and other access permits to municipal roads?

Following are comments on specific sections of the proposed regulations:

- Section 441.1. Definition of local road. The term would now include an access for which the owner intends to transfer or dedicate ownership to a governmental body after completion of the permitted work. What is the significance of this addition? Also, even though a property owner may intend to transfer ownership to the governmental body, the governmental body is not necessarily obligated to accept the dedication, unless an ordinance is in place that states that the township will accept dedication if certain standards are met and the applicant actually meets those standards.

- Section 441.1. The definition of local road includes the terms public highway and state highway. The existing regulations define "highway" as a state highway. However, "public highway" is not defined. Since highway is defined as a state highway, the definitions would be more clear if another term were used.

- Section 441.3 (m). This subsection appears to treat municipalities the same as any other applicant. Why is a municipality not given exclusions from certain requirements, such as requirements to provide additional security or provisions for debarment in (w). The municipality is not going to disappear.

- Section 441.3(o). What does this subsection mean? "Application review by governmental bodies including municipalities and their political subdivisions...? A municipality is a political subdivision, it does not have political subdivisions. This subsection should read "including municipalities and their boards and commissions". Otherwise, this section is beneficial to municipalities because it clarifies the procedure for local review and ensures that local review will occur before the application is submitted to the Department.

- Section 441.3(w)(1)(i). This subsection seems to imply that a municipality must agree to accept the responsibility of any work as shown on the application. If the work is on a municipal road, we have no problem, but not on a state road. The state road is the Department's responsibility and an applicant should be fully responsible for the implementation of the permit and for its maintenance for a set period of time. Once the Department has approved an application and accepted the work, the responsibility should not be passed on to the municipality.

- Section 441.3a. This section requires the preparation of traffic impact studies. While municipalities would have the opportunity to comment on applications under Section 441.3(o), portions of the traffic impact study include land use ordinances and zoning ordinances, and the municipality should be given an opportunity to verify the information relevant to its ordinances.

- Section 441.3b(b)(8). We commend the Department for the requirement for a consistency letter from the affected municipality concerning compliance with an approved stormwater management plan and ordinances. We recommend that a similar provision be required for land use ordinances under Section 441.3a.

- Section 441.4. Are municipalities required to use the revised fee schedule when issuing access permits for municipal roads or only when issuing permits for state roads on behalf of the Department?

- Section 441.5. Delete the word "local" before municipality. This is duplicative.

- Section 441.6(2)(i)(C). What is the impact of inclusion of the Clean Streams Law under additional requirements? Will this requirement involve other permits that could impact a municipality's responsibilities or finances?

- Section 441.6(2)(i)(F). We commend the Department for proposing to delete the duplicative term "local" from this subparagraph.

- Section 441.6(12). What is the impact of the proposed language change for municipalities in this subsection? The prior language did not include local roads, only driveways. Will municipalities that own local roads intersecting with state

highways now be required to take on additional maintenance responsibilities, such as drainage structures under the state highway? If so, we oppose this provision as an unfunded and unauthorized mandate.

- Section 441.6(17)(iii). This subparagraph seems harsh. Language should be included to provide for exceptions to this prohibition in certain circumstances where compliance would be prohibitively expensive or impossible.

- Section 441.8(h)(i)(1). Local roads would now be included in this subparagraph. What happens if the Department alters a state highway and causes a drainage problem on a connecting municipal road or nearby property owners? Will the Department correct the problem it has caused? Or is the Department attempting to force municipalities to obtain a permit to correct the drainage problem caused by the Department and make repairs to the road at municipal expense?

- Section 441.8(k)(2)–(3). This subparagraph would require local roads that provide access to paved state highways to be paved from the pavement edge to at least 20 feet beyond the right-of-way and would require the joints to be sealed. The current regulations do not require local roads to comply with this provision and only require paving for driveways to be within the right-of-way. Is this new requirement going to apply to existing local roads that intersect with paved state highways? If so, what will the cost impact be for municipalities to comply with this new requirement?

Thank you for the opportunity to comment on this proposed rulemaking. We would like to work with the Department on these issues and to resolve the concerns of our members. If you would like to discuss this issue further, please contact me at the Association's office.

Sincerely,

Elam M. Herr
Assistant Executive Director

EMH:tmh

cc: Mr. Robert Nyce

Pennsylvania State Association of Township Supervisors
4855 Woodland Drive
Enola, PA 17025
(717) 763-0930
(717) 763-9732 (FAX)

Fax

To: Robert Nyce **From:** Elam Herr

Company: IRRC

Fax: 783-2664 **Pages:** 4+cover

Phone: **Date:** 12/2/04

Re: **CC:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **As Requested**

Public comments on #18-378 (#2434) - PENNDOT Regulations on Chapter 441. Hard copy to follow.

Submitted to PENNDOT via fax on 12/2/04. PENNDOT contact person stated that the Department would accept comments via fax.