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MARCELLUS
SHALE COALITION™

March 28, 2016

Mr. Richard N. Roman, PE
Director, Bureau of Maintenance and Operations
PA Department of Transportation
400 North Street, 6th Floor, Commonwealth Keystone Building
Harrisburg, PA 17120
Email : riroman@pa.gov

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IRRC

Re: Proposed Rulemaking Revision Chapter 189 [67 PA. CODE CH. 189] Hauling in Excess of Posted Weight Limit [46 Pa.B. 991]

Dear Mr. Roman:

The Marcellus Shale Coalition (MSC) was formed in 2008 and is comprised of approximately 220 natural gas producer, midstream and supply chain members who are fully committed to working with local, state and federal government officials, local communities, and other stakeholders to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering and transmission in the country, as well as the consultants, suppliers and contractors who work with the industry.

The MSC appreciates the opportunity to comment on the Pennsylvania Department of Transportation's (PENNDOT) proposed revisions to Chapter 189 (Hauling in Excess of Posted Weight Limit). Please see the attached spreadsheet for detailed comments prepared by the MSC.

Thank you for your consideration of our comments. The MSC looks forward to working with PENNDOT on this and other issues of mutual importance.

Sincerely,

Jim Welty
Vice President Government Affairs

Attachment

Chapter	Location	Title	Current	Revision/Comment	Justification
	Preamble	Sunset Date	The Department is not establishing sunset date	A sunset date needs to be maintained for "At-Risk Industry Sectors"	Act 13 Section 7 establishes the Department's authority to provide letters of local determination for at-risk industry sectors, and includes a sunset date of Dec 31, 2015. Act 89 extended the sunset date to December 31, 2018. Title 75 § 4902(a)(5) includes the December 31, 2018 sunset date. It is not the intent of these laws to enact this "at-risk industry sectors" for perpetuity.
189	.2	Definitions	At-Risk Industry Sector - ... and additional industry sectors that the Department determines, in consultation with the Department of Labor and Industry, to show evidence of economic decline.	Provide quantification and qualifications of "economic decline"	The Department discretion implied by this provision should be expressly defined and limited. As it stands, the Department can use their discretion to classify any company as "at-risk" (i.e. the hypothetical industry which made \$1 less profit from 1 quarter to the next), which is not equitable, nor the intention of Act 13, Act 89 and Title 75 § 4902
189	.2	Definitions	No definition provided for "Conventional oil and gas development"	Add definition for "Conventional oil and gas development"	The definition of "Develop" refers to "processes associated with conventional and unconventional oil and gas development." To clarify what that means, a definition has been included in the proposal for "Unconventional oil and gas development" but not for "Conventional oil and gas development." For consistency and completeness, a definition for "Conventional oil and gas development" should be added, to read: (i) The activities associated with conventional oil or gas well construction including site preparation and reclamation, drilling, completion and pipeline construction on oil and gas gathering pipelines, not including transmission and distribution pipelines. (ii) The term shall be read consistently with "conventional formation" and "conventional well" as defined in 25 Pa. Code 78.1 (relating to definitions). (iii) The terms "gathering," "transmission" and "distribution pipelines" shall be read consistently with the definitions of those terms in the Federal pipeline safety regulations of the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration in 49 CFR 192.3 (relating to definitions).
189	.2	Definitions	Develop	Change to "Develop or Development"	Clarification, since the term "development" is also used throughout the regulatory text to mean the same thing.
189	.2	Definitions	Excess Maintenance - [caused by use of over posted weight vehicles]	Do not delete. Replace with caused by user vehicles.	The clause "caused by use of over posted weight vehicles" should not be removed, but should be revised to read "caused by user vehicles" for consistency with the new term "user vehicles." Title 75 § 4902(c)(1) states that "the commonwealth... may issue permits for movement of vehicles of size and weight in excess of restrictions... and may require such agreement or security as they deem necessary to cover the cost of repairs and restoration necessitated by the permitted movement". The intention of the permit, bond and agreement is to make users pay for damage necessitated by their use, or in other words, "caused by use of over posted weight vehicles." This is a key clause in the definition of Excess Maintenance and one that is referred to commonly in practice. Users should not be required to pay for excess maintenance caused by others unless specifically allowed by statute (i.e. at-risk industry users). There is no specific statutory authorization for requiring permitted users to pay for damage caused by local users or other unusual circumstances unrelated to their hauling. In addition, the deletion allows for the interpretation that vehicles that do not exceed posted weight restrictions can be liable for excess maintenance.

Chapter	Location	Title	Current	Revision/Comment	Justification
189.2		Definitions	Extract	Change to "Extract or Extraction"	Clarification, since the term "extraction" is also used throughout the regulatory text to mean the same thing.
189.2		Definitions	Heavy User - The user responsible for generating user vehicles equal to or exceeding 700 loads in an 12-month period on a particular posted highway.	Revise to - "on a particular portion of posted highway" Add - The posting authority may increase the load minimum-use threshold based upon structural capacity of the highway.	There are weight restricted roadways that have adequate structural strength to accommodate more than 350 loads per travel lane per year. This is allowed in Title 75 § 4902(c)(2)(iii). The department may alter the 700 loads per year minimum-use threshold if it determines the structural capacity of the State highways can accept a higher or lower amount of over-posted weight traffic
189.2		Definitions	Industry Sector - A sector included in the North American Industry Classification System.	Revise to " A sector or sub-sector" In addition, revisions are required to M-4902APP	The sector level is very broad and does not reveal significant differences at the sub-sector level. The current version of <i>M-4902APP Application to Add or Remove Highway</i> includes a designation of "Industry Code" that should be removed or modified to be consistent with this definition. Additionally, the Industry Codes as they are currently presented on the application are irrelevant to Chapter 189 and 190.
189.2		Definitions	Letter of local determination - A determination made by the Department identifying particular vehicles, routes or uses as local in nature.	Revise to: A determination made by the posting authority identifying particular user vehicles as local in nature and therefore exempt from excess maintenance.	Provides additional clarity. Allows for posting authorities to enact ordinances that utilize this definition. Additionally, "particular vehicles, routes" cannot be deemed "local". (It is noted however that the current definition in Chapter 189 is consistent with Act 13 and Title 75 § 4902).
189.2		Definitions - Local Traffic (iv)	Local Traffic (iv) - User vehicles of local governmental agency or Department contractors engaged in or providing material for construction or maintenance located on or reachable only through posted highways.	Revise to "User vehicles of local government agency or contractors working on behalf of the Department who are engaged in providing material for construction or maintenance of posted highways, and or highways reachable only through posted highways."	Clarification of the work that qualifies as local.
189.2		Definitions	Reachable only through posted highways - One or more posted highways needed to travel to a location from the nearest nonposted highway or from the location to the nearest nonposted highway by the most direct route possible. The most direct route may not include posted highways which can be avoided by travel on nonposted highways. If available, a reasonable alternate nonposted highway must be taken.	Revise to: <i>Reachable only through posted highways - A location that cannot be accessed, or no reasonable alternate route can be provided, if posted highways are avoided. The route selected to provide access to this location shall not make use of posted highways that can be reasonably avoided by travel on nonposted highways. The reasonable alternate route(s) along nonposted highways may be less direct than the posted highways.</i>	Revise to be consistent with Title 75 § 4902 (c)(1).
189.2		Definitions	Unconventional oil and gas development - (i) The activities associated with unconventional oil or gas well construction including site preparation and reclamation, drilling, completion and pipeline construction on oil and gas gathering pipelines, not including transmission and distribution pipelines.	Add: "These activities do not include routine maintenance nor operational activities of constructed assets."	To clarify the definition.

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189	3(b)	User Vehicles	User Vehicles determined likely to damage highway.	Add: Upon receipt of a notice from bonded users indicating that local traffic may have caused excess maintenance, the posting authority shall conduct an interim inspection and distribute a report to all bonded users. The interim inspection shall result in a written report detailing the results of the inspection, and the report shall be distributed to bonded user(s). If there has been a change in roadway condition due to local traffic, the report shall include a determination of the excess maintenance for which the bonded user(s) shall not be liable and any further administrative requirements of the local traffic. If the authority has determined that local traffic has caused or is likely to cause damage, the authority shall act in accordance with section 189.3(b).	It is requested that there be a mechanism by which other Users can notify the department of local user vehicles causing damage, triggering (1) posting authority investigation to determine local user damage and to act according to 189.3(b) or (2) the posting authority to record damage caused by Local Users which the Department has decided not to restrictee, and confirm that the recorded damage is not the responsibility of other bonded Users.
189	3(c)	Self Certification	An authorized permit from the posting authority is not required unless local traffic status has been previously revoked in writing, a local determination permit may be issued for the user's benefit.	Delete. Replace with "An authorized local determination permit from the posting authority is required."	Currently, self certified Users do not have documentation with the Department. Therefore the Department has no record of self certified Users on the highways and will not be able to audit the User if necessary.
189	4(a)	Use Under Permit	General Rule.An original or copy of the issued permit must be carried in the user vehicle at all times.	Delete in its entirety.	This is simply not practical, and is an undue hardship, for bonded users that are contracted with multiple contractors and sub-contractors. The requirements for documentation is sufficiently defined for bonded and local determination permit categories in 189.3(c), 189.4(a) and 189.4(b)(1)(vi). This should be left up to the User to manage their own permit.
189	4(b)(1)(ii)	At Risk	At-risk . The Department may use an at-risk permit category when the user belongs to an at-risk industry sector and is hauling on a posted highway currently bonded by an unconventional oil and gas development company.	Delete "and is hauling on a posted highway currently bonded by an unconventional oil and gas development company."	75 § 4902(a)(4) does not require that exemptions for at-risk industry sectors be limited to highways bonded by unconventional oil and gas development companies, and doing so unfairly and inappropriately singles out the unconventional oil and gas industry.
189	4(b)(1)(vi)	Use of Copy	Use of Copy. The Department may issue a paper or electronic original permit to a user. A user may copy a permit issued for local determination highway for vehicles owned or operated by the user but may not copy and share a permit issued for a local determination highway with any other user or their contractors and subcontractors.	Delete "for vehicles owned or operated by the user but may not copy and share a permit issued for a local determination highway with any other user or their contractors or subcontractors."	This clause is impractical. Many industries do not own or operate heavy vehicles on their own behalf. These services are contracted to perform various working operations. It is irrelevant who uses the local determination permit as long as the holder of the permit authorizes such use.

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189	.4(b)(2)	Annual and seasonal bonded	Annual and seasonal bonded.	Delete "annual" and "seasonal" in their entirety from Chapter 189, and replace with one "bonded" permit category.	Simplicity. The performance requirements of a bonded user are the same for all bonded users, regardless of the portion of the calendar year, duration, freeze-thaw, or other authorizations granted during other dates and are subject to the same restrictions.
189	.4(e)(2)	Multiple Users	Determination by posting authority - ..., the posting authority may determine their relative shares,...	Change may back to shall	There needs to be an entity that has authority to establish cost sharing if disagreements amongst users cannot be resolved. The posting authority needs to be that entity.
189	.4(f)	Determination of highway condition	Determination of highway condition - ... shall consist of the following:...	Replace with: ... shall consist of a visual inspection in accordance with PennDOT Publication 336 and documented in writing and supplemented with video and photos, and the following: Revise to: ... to determine overall condition and if the user or users are responsible for any excess maintenance. Add: The survey will be performed when the type or volume of the hauling operation poses an increased risk of roadway damage or threat to public safety.	This is Department standard practice, but should be specifically incorporated into the regulation so that it applies to all posting authorities.
189	.4(f)(3)	Determination of highway condition	Roadway condition surveys - The posting authority may conduct frequent but less detailed roadway condition surveys to determine overall condition and identify any areas in need of repair.		Consistency with Publication 23 Chapter 15 and clarity. Repair is not a defined term. The frequency of condition surveys needs to be better defined or limited to only when the type or volume of the hauling operation poses an increased risk of roadway damage or threat to public safety, because it is a financial obligation of the bonded user.
189	.4(f)(4)	Determination of highway condition	Notification of inspections and reinspections. All bonded users on a posted highway... will be notified of all inspections and reinspections on the highway or portion, and may participate in the inspections and reinspections.	Add: The posting authority shall forward a copy of the initial, interim and final inspection report(s) to the user(s)	This is a standard Department practice per Publication 23 Chapter 15.
189	.4(g)	Determination of highway condition	Administrative fee.	Add: There is no fee allowed or costs incurred to users authorized under section 189.3 and section 189.4(a)(1).	Clarify that local determination users are not financially liable.
189	.5	Investigations and Audits	Audits shall be limited.... Investigations may be used for any permit category.	Please define the difference between audit and investigation. Why are audits limited to local, but investigations may be used for any category?	The terms audit and investigation are very broad. The scope of this section should be limited "to determine if there has been a violation of this section, pertinent regulation or agreement" as described in Title 75 § 4902(i).
189	.5	Investigations and Audits	"Investigations may be used for any permit category"	Delete.	Why are investigations necessary under the bonded category? The user is financially liable and approved to exceed the posted weight limits.
189	.6	Suspending, revoking or denying agreements or permits		Revise to: The posting authority has the right per Title 75 § 4902(j) to suspend, revoke or deny a permit and agreement if it is determined that there has been a violation of § 4902, pertinent regulation or agreement. The posting authority shall provide advanced notification and justification to the user prior to revocation of a permit. A permit may be suspended without prior notice if a user has failed to promptly perform excess maintenance which has created safety concerns to the traveling public.	This section is already sufficiently describe in Title 75 § 4902, and should only be amended here. The terms unsafe and impassable are too vague, and may apply without being caused by the non-performance of excess maintenance.