



Senate Transportation Committee

Senator Judy Ward
Chairman

Senate Box 203030 • Harrisburg, PA 17120-3030 • (717) 787-5490 • senatorjudyward.com

February 3, 2025

Victoria P. Edwards, Esq.
Regulatory Counsel, Office of Chief Counsel
PA Department of Transportation
400 North Street, 9th Floor
Harrisburg, PA 17120-8212

Dear Ms. Edwards:

As Chair of the Senate Transportation Committee, I write to provide comments regarding the Department of Transportation's ("PennDOT") proposed regulation, *Access to and Occupancy of Highways by Driveways and Local Roads (18-481)*.

I applaud PennDOT's dynamic team for implementing the e-Permitting System ("EPS") in 2011 for a Highway Occupancy Permit ("HOP"), which eliminated paper forms, cut agency "red tape" and improved overall management and issuance of an estimated 3,000 HOPs annually.

PennDOT's HOP program is designed for any person who requires permitted access to the State's right-of-way. The proposed regulation memorializes the 14-year-old EPS, addresses court challenges and sets new policy direction from delegated authority under Section 420 (b), act of June 1, 1945 (P.L. 1242, No. 428), known as the State Highway Law:

"The secretary may issue permits for the opening of streets and driveways onto State highways and for the opening of the surface and occupancy of State highways on ***terms and conditions established in department regulations*** [emphasis added]".

Three alarming policy changes to 67 Pa. Code, Chapter 441 require further review: (1) According to PennDOT, "current regulations require permittees to indemnify PennDOT in certain circumstances." How can PennDOT impose "automatic indemnification" on ***every*** circumstance, particularly when this is not mandatory in every State, such as Maryland and Delaware? Further, will PennDOT impose blanket indemnity rules on every applicant, regardless of HOP class? (2) How will PennDOT determine the removal of an unpermitted access? Will PennDOT proactively track and eliminate all "unsafe" unpermitted accessways with or without the landowner's consent – and at the landowner's expense? Finally, (3) Can PennDOT elaborate on the impacts of "allowing non-fee owners to apply for a permit and be preliminary approved benefit developers who enter into sales agreements that are contingent on permit approvals"?

Victoria Edwards, Esq.
February 3, 2025
Page 2

Pointedly, how does this impact landowners who essentially hold the property rights, and what occurs when there is a dispute between the landowner and the non-fee owner?

In addition, PennDOT needs to carefully consider the following concerns: (1) PennDOT will incorporate a new “sight distance standard”, which will increase costs on applicants, such as senior citizens, small businesses, farmers, etc. In no circumstance can PennDOT add-on highway clearances or mandate guiderail fixes, for example, which reflect the State’s official duties covering the construction, maintenance and safety of our highway network, (2) The Keystone State continues to face a truck parking shortage, considering the federal government regulates hours of service and the Commonwealth agencies halt commercial motor vehicle operations during inclement weather. If PennDOT is evaluating “medium volume or high volume driveways” for “warehouse clubs and supercenters”, can PennDOT require on-site trucking parking spaces as a permitted condition? Finally, (3) Why is PennDOT not collecting the size of the business applying for the permit, including information on small businesses?

In closing, the proposed regulation aims to accomplish a myriad of improvements, including the adoption of EPS in PennDOT’s regulatory framework. PennDOT last communicated with the “regulated community and partners” in January 2019. Did all stakeholders receive notification regarding the submission of these proposed regulations? Further, the agency’s submission of these proposed regulations during *sine die* of the General Assembly is concerning. EPS was established in 2011 and PennDOT last communicated to the regulatory community six years ago. Why did PennDOT submit a comprehensive, “non-emergency” regulatory proposal to the Independent Regulatory Review Commission on December 11, 2024, when the General Assembly was being reorganized for a new Session?

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Judy Ward". The signature is written in a cursive, flowing style.

Senator Judy Ward (R-30), Chair
Senate Transportation Committee

cc: Honorable Kim Ward, Senate of Pennsylvania
Honorable Joe Pittman, Senate of Pennsylvania
Honorable Marty Flynn, Senate of Pennsylvania
Honorable Ed Neilson, House of Representatives
Honorable Kerry Benninghoff, House of Representatives