Part 131 - ACCOMMODATION OF UTILITIES WITHIN STATE HIGHWAY RIGHT-OF-WAY

Statutory Authority: Highway Law. . . . . §10, 30, 52, 103, 230, 249, 250;
Transportation Law. . . . . §14, 14b;
General Obligations Law. . . . §11-102

Section

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Part 131
ACCOMMODATION OF UTILITIES WITHIN STATE HIGHWAY RIGHT-OF-WAY

131.1 Scope of rules and regulations. The rules and regulations of this part apply to utility facilities located within state highway rights-of-way and those utility facilities that affect the use and operation of state highway facilities. In addition, this Part is applicable to other highways in which Federal laws or regulations require such compliance.

131.2 Authority to occupy state highway rights-of-way. Utility facilities occupy State highway rights-of-way as provided by law, or pursuant to permission of the Department. Utility occupation, whether by legislated right or by permission is subordinate and subject to the use of the rights-of-way by the Department for highway or other uses authorized by law. It is in the public interest for utility facilities to be accommodated within the highway rights-of-way when such use and occupancy does not interfere with the free and safe flow of traffic, otherwise impair the highway or conflict with the use of the rights-of-way by the Department, including, but not limited to walkways, bikeways, and scenic areas. Utility occupation is subject to all applicable laws, regulations of other agencies with jurisdiction thereover, regulations of this Department in this Part 131 and other Parts of its regulations, and conditions imposed by the Department. This Part is applicable to all utility installations, modifications, relocations, maintenance, operations and repairs within State highway rights-of-way.

131.3 A review of statutory authority of certain utilities to use state highway rights-of-way. Utilities organized pursuant to the Transportation Corporations Law (TCL), as described in section 3, subdivisions 1, 2, or 6 of the TCL, utilities subject to Article 28 of the Executive Law and such utility corporations that are authorized pursuant to sections 4 or 5 of the TCL that furnish the same services, have certain rights based in statute to occupy certain types of state highway rights-of-way, subject to conditions prescribed by the Department, and subject to the right of the Department to use its rights-of-way for all purposes authorized to it by law. In addition to the above, utilities such as gas and electric corporations, Article 2, TCL; telegraph and telephone corporations, Article 3, TCL; and cable vision corporations, Article 28 of the Executive Law, have the legislated grant to occupy certain types of state highway rights-of-way without the payment of a use and occupancy fee. In addition to the above first sentence, utilities such as pipe line corporations, Article 7, TCL (a limited legislated grant to occupy certain types of state highway

rights-of-way); water-works corporations, Article 4, TCL, district steam corporations, Article 9, TCL, sewage-works corporations, Article 10, TCL; and utility corporations that are authorized pursuant to sections 4 or 5 of the TCL that furnish the same services; that are not municipal corporations nor owned by a municipal corporation may occupy certain types of state highway rights-of-way with the payment of any use and occupancy fee imposed by the Department. Utilities owned by municipal corporations, including public authorities, while enjoying no legislated grant to occupy the rights-of-way, have traditionally been authorized the right to occupy certain types of State highway rights-of-way, subject to conditions prescribed by the Department, and to the right of the Department to use its rights-of-way for all lawful purposes. Thus, such utilities in New York State, either operating under a franchise granted by law or pursuant to law, or a political sub-division of the State, use and occupy the State highway rights-of-way in furtherance of their legal obligations under the Public Service Law, Article 28 of the Executive Law, or other statute to provide service to the public. Utility facilities not serving the public, but devoted to private purposes, have no legislated right to occupy the state highway rights-of-way, however the Department is authorized to permit private utilities to occupy the state highway rights-of-way and may issue a use and occupancy permit as provided in this Part.

131.4 Public Service Law - Article 7 Installations. Utilities occupying or making modifications to State owned highways in connection with construction of transmission lines pursuant to certificate of the Public Service Commission issued under Article 7 of the Public Service Law are advised the such certificate does not create a property right in the State highway necessary to enter upon such highway and modify the property. Consequently utilities must, prior to their presence on Department property, submit for review, plans of proposed construction on such lands owned by the Department.

131.5 Definitions.

(a) "AASHTO" means the American Association of State Highway and Transportation Officials, located at 444 North Capitol St. N.W., Suite 225, Washington, DC 20001. AASHTO continually undertakes studies relating to highway design, use and safety and develops nationally recognized standards relied upon by FHWA and by all state highway agencies including the Department. While this Part 131 does not mandate compliance with any particular AASHTO publication or standard, (except where required by FHWA regulation) utilities are encouraged to avail themselves of information published by AASHTO as an aid in developing plans for work within the right-of-way.

(b) "Base course" means a layer(s) of specified or selected material that lies below the hard top surface of the roadway.

(c) "Carrier" means the pipe directly enclosing a transmitted commodity.

(d) "Casing" means the pipe through which the carrier pipe is placed.

(e) "Clear Zone" means the area adjacent and parallel to a section of traveled way that shall be free of nontraversable hazards and fixed objects as determined by the Department.

(f) "Deflection area" or "deflection zone" is the distance guiderail will deflect as per design.

(g) "Department" means the New York State Department of Transportation.

(h) "Federal-aid highway projects" means State administered highway projects involving Federal-aid highway funds, or otherwise subject to Federal regulation.

(i) "FHWA" means the Federal Highway Administration.

(j) "Highway with full control of access" (sometimes referred to as a freeway) means a highway on which there is control of access giving preference to through traffic by providing access connection only with selected public roads, and prohibiting other crossings at grade or direct private connections.

(k) "Highway" means any public way for vehicular travel, including the entire area within the rights-of-way.

(l) "Municipal utility" or "state utility" means a utility facility that is owned by a municipality within New York State, or by the State, or by a public benefit corporation established by the New York State Legislature.

(m) "MUTCD" means the New York State Manual of Uniform Traffic Control Devices (15 NYCRR Chapter V).

(n) "Highway with partial control of access" means a highway on which there is control of access giving preference to through traffic to a degree that may permit access connections with selected public roads, or with some crossings at grade, or private driveways.

(o) "Nationally recognized standards" means standards accepted by a consensus of those substantially concerned with their scope and provisions. References to nationally recognized standards are not references to any single publication, but to standards nationally adhered to by those in the industry.

(p) "Pavement Structure" means the combination of subbase, base course and surface course(s) placed on a subgrade to support the traffic load and distribute it to the roadbed.

(q) "Private utility" means utility facilities not regulated by a United States or New York State government agency and, that are devoted to private use.

(r) "Public utility" means utility facilities that are regulated by a United State or New York State government agency.

(s) "Right-of-way" means real property or interest therein, used for the construction, operation, and maintenance of a highway.

(t) "Roadbed Limits" means points of intersection of the side slope and the bottom of the pavement structure where the slope is downward from the shoulder area, or the intersection of the side slope or embankment with the furthest edge of the shoulder where the slope is upward from the shoulder area, or the furthest edge of the shoulder where there is no slope.

(u) "Roadway" means the highway area between outer edges of shoulders.

(v) "Sight distance" means the length of roadway ahead visible to the driver.

(w) "Subbase" means the layer or layers of specified or selected material of designed thickness placed on a subgrade to support a base course.

(x) "Subgrade" - existing material to remain, or embankment material which is below the pavement structure.

(y) "Utility" means the entity owning and/or operating a utility facility.

(z) "Utility facilities" means the lines, facilities and systems for producing, transmitting, or distributing communications, signal, power, electricity, light, heat, gas, oil, crude products, liquid products, water, steam, wastes, storm water not connected with highway drainage, and other similar commodities, including fire and police signal systems and street lighting systems, which directly or indirectly serve the public or any part thereof. It is not material to this definition whether the utility facilities are subject to the Public Service Commission, the Cablevision Commission, or other similar New York State governmental agency, or whether or not they serve the public or are for private use, are interstate or intrastate, or whether they are owned and operated by a government agency or by a person or other entity, corporation or other entity.

(aa) "Utility service connection" means a service connection, from a utility distribution or feeder line or main to the premises served.

Section 131.6 Accommodation of utilities on highways with full control of access.

(a) The accommodation of utilities on highways with full control of access, where applicable, shall be subject to Title 23 of the Code of Federal Regulations, Part 645, in particular, 23 CFR Sections 645.209, and 645.211. This publication may be inspected at the Department's Main Office located in Building No. 5, Room 414, W. Averill Harriman State Office Building Campus, Albany, NY 12232 and obtained through the U. S. Government Printing Office, Washington, DC. Longitudinal utility use of highways with full control of access is also subject to Part 133 of these regulations. Any permit issued by the Department may contain additional provisions to insure that the utility facility or its installation does not interfere with the free and safe flow of traffic, otherwise impair the highway or conflict with its maintenance, or conflict with applicable laws or regulations.

(b) Utilities should when feasible install line crossings widely spaced to serve consumers in general areas along either or both sides of the highway to minimize the number of crossings.

(c) In appropriate situations and due to severe economic hardship and infeasibility of the application of this section, the Department in its discretion may apply any or all of the provisions in Section 131.8 to installations on highways with full control of access.

(d) The Department reserves the right to enter into an agreement for a joint use occupation of highway right-of-way which agreement may provide for compensation to the Department.

131.7 Accommodation of utilities on highways with partial control of access. Section 131.6 shall govern the accommodation of utilities on highways with partial control of access. However, where safety and operational considerations permit, and where serious engineering and/or financial considerations so warrant, the Department in its discretion may authorize the application of any or all of the provisions in Section 131.8. Any permit issued by the Department may contain additional provisions to insure that the utility facility or its installation does not interfere with the free and safe flow of traffic, otherwise impair the highway or conflict with its maintenance or conflict with applicable laws or regulations.

131.8 Accommodation of utilities on highways with no control of access. Consistent with any franchised right or privilege granted by any statute, public, private, municipal and State utility facilities will be permitted to cross or occupy the rights-of-way of highways with no control of access in accordance with nationally recognized standards and the provisions of this part. In case of conflict, the provisions of this part shall govern. In situations where unusual conditions or considerations are present that jeopardize highway safety or highway operation or maintenance, the Department may impose additional construction or placement requirements reasonably necessary for such condition. In any case where a permit, fee, rental, or a use and occupancy agreement is required, such must be paid, or be in effect, prior to entry upon the rights-of-way.

(a) On highways where posted speeds are greater than 35 mph;

(1) All new or relocated above-ground utility elements shall be located as near as possible to the rights-of-way line, and not within the appropriate clear zone, deflection zone or area or the runout area of guiderail systems. The Department may consider exceptions where it is not reasonably possible to achieve the appropriate clear zone, upon showing that highway safety is not impaired, and the maintenance and operation of the highway are not adversely affected. The public or private utility, shall reimburse the Department for additional expenses attributable to any such exception, including, but not limited to any costs and expenses attributable to the installation of guiderail or upgrading a guiderail system.

(2) All new or relocated underground facilities shall be placed adjacent to the rights-of-way line whenever reasonably possible. Each type of facility shall be properly separated. Where it is not feasible to locate underground elements near the rights-of-way line, elements may be located in the area between the ditch or slope line and rights-of-way line, or between the outer edge of shoulder or curb and rights-of-way line. However, such must always be outside the drainage system, unless the facility is crossing the right-of-way, and/or, unless unusual physical conditions are present, and the Department grants an exception.

(b) On highways with posted speeds of 35 mph or less:

(1) All new or relocated installations of above ground utility elements shall be located in accordance with the following, in order of preference, but not within the clear zone:

(i) At the rights-of-way line;
(ii) Between the outer edge of the sidewalk and the rights-of-way line;
(iii) A minimum of one foot six inches behind the face of curb or edge of shoulder (where appropriate). Placement within usable sidewalk width is to be avoided. In no case shall this placement reduce the open width of a sidewalk to less than 36 inches.
(iv) If such one foot six inch minimum offset cannot be physically attained, a lesser appropriate distance behind the face of curb may be considered and/or authorized by the Department and, where applicable, the Federal Highway Administration.

(2) All new or relocated longitudinal installations of underground elements shall be located in accordance with the following in order of preference:

(i) Between the outer edge of sidewalk and the rights-of-way line;

(ii) Underneath the sidewalk;

(iii) Between the curb and sidewalk;

(iv) Underneath the roadway pavement of a parking lane;

(v) Underneath the roadway pavement, only if other locations are neither feasible nor practicable, and only if the Department after examination finds that the safety and integrity of the highway traffic operations and highway maintenance will not be jeopardized by the installation and subsequent maintenance of the utility.

131.9 Depth of bury and vertical and lateral clearance.

(a) Depth of bury. The desirable minimum cover for underground facilities within the roadway is 60 inches below top of pavement. Outside the roadway and within the rights-of-way, the desirable minimum cover is 36 inches below finished grade. Installations at lesser depths require approval, based upon a determination that such installation is consistent with safe highway use and operation. Any utility facilities placed at less than the above or approved minimum cover, shall not be eligible for compensation or reimbursement for damage that the State, its employees or agents, may cause thereto. In addition to the standards provided below, the Department may impose additional requirements in accordance with nationally recognized standards.

(b) Vertical and lateral clearances:

(1) Minimum clearances for structures for aerial power and communication lines are as follows:

(i) Minimum vertical clearance above all roadways must be 18 feet for
(a) wires carrying less than 750 volts,
(b) guys, message wires, and communication cables,
(c) supply cables encased in a continuous metal sheath, and
(d) insulated supply cables fastened to an effectively grounded messenger cable.

(ii) Minimum vertical clearances for wires carrying more than 750 volts;
(a) 750 to 15,000 volts - 20 feet
(b) 15,000 to 50,000 volts - 22 feet
(c) Over 50,000 volts - 22 feet plus 4/10 inch for each 1,000 volt increase.

131.10 Lighting. Lighting facilities and appurtenances when installed within the rights-of-way shall be in accordance with the following:

(a) On highways with no control of access, non-breakaway lighting supports shall be located as prescribed in Section 131.8. Such supports will be considered
fixed objects when determining an appropriate clear zone.

(b) Breakaway light supports may be located within the appropriate clear zone, deflection zone or area, and the runout area of guiderail systems, with Department consent and approval.

(c) Underground conduit and other related appurtenances for highway lighting shall be located both vertically and horizontally in a manner appropriate for the highway. In general, longitudinal installations directly between lighting supports are permissible, and exceptions to depth of bury prescribed by Section 131.9 may be approved.

131.11 Existing utility facilities. The Department has the right to construct, reconstruct, repair, operate and maintain State highways and other transportation facilities as provided by law, without interference from utility facilities. Utilities shall permanently or temporarily remove, relocate, repair, modify, shield or otherwise protect their facilities, upon notice from the Department, so as to avoid interference with the rights and obligations of the Department. The Department, whether or not in conjunction with a highway construction or maintenance project, may require the relocation of utility facilities which may interfere with the free and safe flow of traffic or which are located within the clear zone or deflection zone. Utilities shall be required to provide such information and make such certifications as the Department shall require, in connection with existing facilities and the impact of the highway project on such facilities. In instances in which the Department is concerned about potential impacts of Department or contractor activity on utility facilities a certification from a licensed professional engineer on behalf of the utility, attesting to the fact that the proposed Department or contractor activity is compatible with the integrity and safety of the utility facility may be required.

131.12 Exceptions. It may not be feasible in all cases to comply with all the requirements of Sections 131.6 through 131.11. Alternative proposals with justification may be submitted to the Department for review. The Department may permit such deviation upon determination that it will not adversely affect the traveling public, maintenance or safe operation of the highway, or is in conflict with applicable law or regulation.

131.13 Abandoned Facilities. The utility shall remain responsible for all abandoned utility facilities. The Department on reasonable notice may require the removal of abandoned utility facilities and restoration of the right-of-way, when necessary to avoid interference with the operation, maintenance or reconstruction of the highway. If the utility shall fail to remove the abandoned facility within a reasonable time after such notice, the Department may cause the removal of the facility. Any expenses incurred by the Department arising from abandoned utility facilities shall be reimbursed by the utility or its successor.

131.14 Federal aid highway projects. Utilities are advised that FHWA regulations, consents and/or approvals may be applicable on Federal-aid highways and projects.

131.15 Scenic Enhancement.

(a) The Department may preclude or require the relocation or undergrounding of new or existing utility facilities based upon environmental, scenic appearance or historical concerns;

> (i) in order to ensure compliance with any federal or state statute, regulation, Executive order or similar mandate, or
>
> (ii) when the Department, in its sole discretion, determines that preclusion, undergrounding, or relocation is required as a condition to the Department obtaining or utilizing any Federal or State funds, or
>
> (iii) when the Department, it its sole discretion, determines that preclusion, undergrounding or relocation is required to comply with, or participate in, any program or action under Federal or State Law.

(b) Various federal and state laws, regulations, Executive Orders or other mandates contain provisions recognizing and extending protections to scenic and historical places. Included among such provisions which may relate to highway rights-of-way are the landscape and scenic enhancement provisions in Section 319 of Title 23 of the U.S. Code; "transportation enhancement activities" as defined in Section 101 of Title 23 of the U.S. Code; Parts 645 and 752 of Title 23 of the Code of Federal Regulations; Sections 20 through 22 and Article X 11-C of the Highway Law; Article 27 of the State Executive Law, Parts 570 through 586 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York and Executive Order 150 relating to the Adirondack Park; Section 106 of the National Historic Preservation Act of 1966; Section 14.09 of the State Parks, Recreation and Historic Preservation Law; Sections 65, 66 91 and 94 of the Public Service Law; and related regulations in Parts 98, 99 and 608 of Title 16 of the Official Compilation of Codes, Rules and Regulations of the State of New York; Title 27 of Article 15 of

the State Environmental Conservation Law, (Wild, Scenic and Recreation Rivers System); Article 49 of the State Environmental Conservation Law, (Protection of Natural and Man-Made Beauty); Article 24 of the State Environmental Conservation Law (Freshwater Wetlands); Article 42 of the State Executive Law (Waterfront Revitalization and Coastal Resources): and Federal Executive Order No. 11990 (Protection of Wetlands). The above is not a complete recitation of all applicable provisions.

131.16 Permits and Agreements. The following permits and agreements are issued by the Department for all utilities, including utilities owned by municipalities.

(a) Highway Work Permit. All individual elements of a utility facility which are to be constructed, removed, relocated, replaced, reconstructed, maintained or adjusted, whether in conjunction with or independent of a transportation project, either within or via access from the highway rights-of-way, require submission of a "Highway Work Permit Application for Utility Work" and the issuance of a "Highway Work Permit" prior to commencement of any work. In New York City, a City highway work permit is also required.

(b) Utility Work Agreement. If the utility work is to be included as a part of a State contract, or is to be undertaken by the utility or contractor to the utility in conjunction with a State project, a "Utility Work Agreement" is also required. This Agreement is required whether or not the work is reimbursable. The Utility Work Agreement must be executed prior to the letting of the State's construction contract and any required deposits must be made to the State Comptroller in accordance with the Highway Law.

This Agreement provides for accommodating the specified utility facility within the highway rights-of-way, sets forth who is financially responsible for the utility adjustment, and makes possible federal participation where applicable. The completed form is to contain Special Notes - "Coordination with Utility Schedule", and Time Schedules for Relocating Utility Facilities affected by State Transportation projects. It is important that reasonable schedules and deadlines be established for the performance of utility relocation work, pursuant to the requirements of Section 11-102 of the General Obligations Law.

(c) Agreement of Reimbursement. Work reimbursable by law requires an Agreement of Reimbursement. Agreements of Reimbursement include Municipal Agreements, Interstate Agreements, Right-of-Way Agreements of Adjustment, and other agreements provided by law.

(d) Use and Occupancy Agreement. The Use and Occupancy Agreement provides the conditions for the occupation of the right-of-way and is required for all utilities, except municipally owned utilities.

(e) General Operating Agreement. A document providing for long term cooperation and coordination, and for advance payments to utilities for reimbursable work.

(f) Annual Work Permit. "Annual Work Permits" are available on a Region-wide basis for the maintenance of a utility's facilities. Examples of work which can be performed under this permit include pruning of trees, emergency repairs, routine maintenance and service connections. Examples of work not authorized by this permit, and requiring a Highway Work Permit include replacement of poles, or other utility facilities which are obsolete or near life expectancy.

(g) Pipeline Installation. The Highway Work Permit application for pipeline installations shall additionally specify the class of transmittant, the maximum working test or design pressures, the design standards for the carrier, as well as other project specific information. Any change in class of transmittants or the pressures of transmittants requires prior notice to and approval by the Department.

(h) Specific requirements. Highway Work Permits and Use and Occupancy Permits are subject to applicable provisions in Parts 126 through 131, and the Department and the Utility will discuss and attempt to mutually agree upon permit conditions, permit requirements and method of construction.

(i) Owners of Adjoining Property - Nothing contained herein, nor any permit issued pursuant to these regulations shall be deemed to authorize any interference with the property rights of abutting landowners, including, but not limited to rights with respect to trees and other vegetation, and with entry upon private property. Permittees shall be required to obtain such permission or authorization as may be required by law, prior to undertaking any activity which would require permission or authorizations from the owners of properties outside the rights-of-way.

(j) Site care and restoration. Permittees must conduct operations within the right-of-way in a manner so as to minimize damage to the natural condition of the landscape. Clearing operations shall be minimized in scope and conducted with care. All plant material shall be pruned consistent with current arborticultural practices. Deposit of an undertaking or bond or certified check to guarantee site restoration, in an amount determined by the Department, may be required. A restoration plan, commensurate with the scale of work shall accompany the permit application. If the Department is required to perform site restoration work, its cost will be deducted from the deposit.

(k) Conduct of work and final approval. The Department reserves the right to timely inspect work during construction to insure conformance with the terms of the permit and this Part. Upon completion of the work and notification by the permittee, the Department shall have the right to make a final inspection. If the work has been satisfactorily performed, the permit will be closed and any excess funds on deposit will be returned. For major installations and adjustments and for all underground installations and adjustments, as-built plans must be submitted. The Department may require certification by a licensed New York State Professional Engineer that the installation conforms with the terms of the permit. Permittee will be advised of deficiencies for immediate correction. Unfinished or unsatisfactory work which permittee refuses to correct will be completed by the Department, or by permittee's bonding company. Costs of such work and inspection are the responsibility of permittee. If the work of the permittee was not performed in accordance with the as-built plans or deficiencies in such work were made or damage caused to persons or entities other than the permittee by the performance of such work, and such is not readily apparent in connection with any such inspection, the permittee shall continue to be liable for the costs of such unfinished, unsatisfactory work or damage caused by such work of the permittee.

(l) The erection of a utility facility within the highway right-of-way not in accordance with a permit issued pursuant to the Part, or the failure to remove, relocate, modify, shield or adjust a utility facility within the highway right-of-way upon the direction of the Department shall constitute a violation of section 52 of the Highway Law, and shall subject the utility to such fines as provided therein.

131.17 Construction Procedures. Construction procedures shall be subject to all applicable Federal and State statutes, codes, and regulations, in particular 23 CFR Part 645, and must be consistent with nationally recognized standards.

(a) General. General locations must be approved by the Department, and all work is subject to inspection at any time. All disturbed areas shall be restored as per the approved restoration plan (i.e., landscape restored; shoulders and ditches restored to proper line, grade and cross-slope; driveways restored with material in kind). All surplus earth and all debris shall be removed from the highway right-of-way. Damage to or disturbance of the highway pavement structure, drainage facilities, slopes, vegetation (planted and natural vegetation), or other appurtenances installed by the Department, caused at some future time by the placement of utilities, shall be promptly corrected by the utility.

(b) Maintenance of traffic.

(1) Traffic flow is to be maintained at all times during the progress of work. Adequate signs, barricades, flagpersons, lights and other control devices shall be provided and shall be in accordance with the MUTCD. The Department may require the permittee to provide an approved detour for traffic, maintain and remove same, and restore the site.

(2) Suitable barriers or barricades, to protect traffic and pedestrians, shall be erected and maintained around trenches, and supplemented with adequate warning lights as prescribed in the MUTCD.

(3) Pavement cuts shall not be left unfilled overnight, except in extraordinary cases. When practicable, prior approval will be obtained; otherwise the Department will be notified immediately. In all cases, adequate precautions to protect traffic and pedestrians must be taken.

(4) All work shall be performed in such a manner as to minimize hazards to the traveling public. Construction materials, equipment, etc. shall not be left on the shoulders or pavement after working hours, nor at any time be placed in a manner or location that will obstruct highway or railroad warning signs, highway safety, or the clear sight distance at intersections, including driveway entrances, without proper traffic control devices and measures.

(5) Where work has rendered a shoulder unusable, either "no shoulder" or "low shoulder" signs in the manner specified by the MUTCD shall be erected as appropriate. Soft shoulder signs shall be erected and maintained on all backfilled trenches within the shoulder area, until shoulder restoration is completed.

(6) During winter conditions, the shoulder shall be maintained free of obstructions which could interfere with snow removal and ice control.

(7) Permittee shall keep the roadway free of foreign objects such as mud, rocks, timber and other items. Spillage of material from any vehicle resulting from the permittee's operation shall be removed immediately.

(8) All traffic control devices shall be immediately removed or covered when not required by site conditions.

131.18 Electric Power and Communication Lines.

(a) Electrical power and communication lines shall meet nationally recognized standards pertaining to loading and strength criteria, and shall be consistent with section 131.9 of this Part.

(b) Poles or towers. Poles and towers shall be located as far away as practicable from flammable material or structures. The poles or towers supporting the crossing span and the adjoining span on each side, preferably, shall be in a straight line. There shall be no obstruction to driveways connecting highways, roads, paths or sidewalks. Poles shall be set in line and plumbed.

(c) Guys. The details of the anchorage shall be shown on the plan. Wooden poles supporting the crossing span shall be sideguyed in both directions, if practicable, and be headguyed away from the crossing span. The next adjoining poles shall also be guyed. Braces may be used instead of guys. Special precautions shall be taken on curves and where lines cross. There shall be no guying from trees without permission from the owner. Guys are considered fixed objects subject to clear zone restrictions.

131.19 Underground Work. Underground work shall be in accordance with the nationally recognized standards, and as prescribed below. Regional Offices may impose more stringent conditions in a permit based upon prevalent weather and traffic conditions.

(a) Installation.

(1) Pavement crossings for underground utilities shall be accomplished by jacking, driving, drilling, boring, or tunneling. "Open cut" installation will be approved by the Department only upon a clear demonstration of necessity or other conditions which warrant such a procedure. Subsurface rock formations, excessive presence of boulders, excessive and damaging skin friction during jacking operations or insufficient rights-of-way limits to allow jacking, driving or tunneling may constitute a necessity. Where an ongoing construction contract requires pavement removal and/or construction of new pavement, the Department may consider approving an "open cut."

(2) The edge of the excavation (nearest the pavement) used for driving or jacking shall not be less than 10 feet, measured laterally from the curb, or edge of shoulder at shoulder break, whichever provides more clearance. When the highway configuration or other circumstances preclude the minimum offset, the Department may consider approving an alternate configuration and offset.

(b) Crossover Carrier Pipes.

(1) Crossover carrier pipes shall be designed to withstand all applied and/or superimposed loadings resulting from the roadway section, traffic, potential pipe settlements, and installation procedures. Certain soil and/or site conditions may require encasement. Where a cathodic system is designed to be installed for the crossover carrier pipe, the design of any casing shall be so as not to diminish the desired level of protection.

(2) Crossover carrier pipe design shall be site specific, based on field investigation. The design shall address all potential applied loads, installation methods, and loads induced during installation. The preferred installation method when operating below the water table or in soft ground shall employ an earth pressure balance or comparable system in order to prevent flowing soil or ground loss and pavement distress.

(3) Design of a crossover carrier pipe section shall include consideration of, but not be limited to the following:

(i) Increased pipe wall thickness for the distance within the pavement plus possible additional distance to allow for future highway widening.
(ii) Adequate wrapping, coating or other treatment to protect against corrosion.
(iii) Protective jacket adequate to ensure the integrity of the anti-corrosion material under installation and service conditions.

(c) Longitudinal Carrier Pipes, including utility service connections, shall be installed outside the area of live load influence, unless there is no practical alternative.

(d) Temporary pavement repairs with cold patch or other acceptable bituminous patching shall be placed as soon as backfill is made. It shall be maintained flush with the pavement surface until the backfill has been properly compacted, and permanent restoration of the pavement surface completed.

(e) Existing underground facilities shall be maintained and protected by and at the expense of the permit applicant in compliance with Industrial Code Rule 53 (12 NYCRR Part 53).

(f) Sheeting. Where excavation is within the pavement area or when the depth of excavation is greater than the distance from the edge of pavement to the edge of trench, sheeting may be required.

(g) Backfill. Backfill material shall be of a quality and type acceptable to the Department and shall be compacted sufficiently to preclude future settlement of the excavated area. The backfill material shall be of a quality so as not to block or intercept the drainage of the subgrade. Excavations for service connections shall be backfilled within two days.

(1) Within Roadway. Within the roadbed limit of a cut section or within the embankment section, the excavation shall be backfilled using approved layer thicknesses of material acceptable to the Department, to the top of the subgrade. Material shall be compacted to an acceptable density with approved equipment.

(2) Outside Roadway. The backfill for excavated areas shall be compacted to an approved density with acceptable material and upper surface maintained level with the original surface. The surface shall be treated, if required, in order to leave the surface in essentially the same condition as it was prior to the excavation. All surplus material and trash shall be removed and disposed of in a lawful and proper manner. The work area shall not be left in an unsightly condition.

(3) Trenchless Installations. All detrimental voids created during the installation of a crossover pipe, regardless of method, shall be filled. Appropriate backfill type and method of placement shall be addressed in the design of the crossing.

(h) Pavement replacement.

(1) Temporary pavement restoration shall consist of a minimum compacted thickness of three inches of asphalt concrete, and approved base material of a depth to provide for permanent pavement. In situations where heavy traffic loads are anticipated or cases where the temporary pavement is required for a protracted period, more substantial pavement and backfill design may be required. The asphalt concrete shall be maintained flush with the existing pavement until permanent restoration of the pavement.

(2) Permanent pavement replacement will be specified in the permit.

(3) On reinforced concrete pavements, the appropriate class of concrete shall be used. Undermined and broken slabs shall be completely replaced. Approved joint dowels and sealer, transverse ties and reinforcing steel shall be used as required.

(4) Asphalt concrete pavement shall be replaced with adequately compacted base material, binder and top course material which is at least equal in quality, mix type and thickness to the pavement which was removed. Existing pavement should be saw cut to provide a clean butt joint between the old and new pavement. An emulsified asphalt tack coat shall be applied to all existing pavement edges prior to placing the new asphalt pavement courses.

(5) Shoulders shall be replaced with material of like quality, thickness and type as the existing shoulder.

(6) Manhole frames, grates and similar appurtenances placed within the roadway shall be approved by the Department and shall be set in a workman-like manner flush with the surface of the roadway.

(i) The Department will not undertake or accept financial responsibility for any remediation or similar activity with respect to the removal of hazardous wastes (6 NYCRR Part 373 and 374) and non-hazardous solid industrial wastes (6 NYCRR Part 360) which under law would not be required at the time but for the accommodation of utility facilities within the right-of-way. Such responsibility and costs shall be solely those of the utility.

131.20 Utility Facilities on Structures.

(a) General. Utility facilities may be placed on bridges upon written approval of the Department. The following provisions are applicable to new or replacement installations of usual size, pressure and voltage. The Department will establish requirements for situations beyond the norm and for those not specifically covered by this subsection.

(b) All utility facilities to be installed by State let contract or owner let contract, shall be fully detailed and shown in plan, section and elevation when required. Utilities shall not be placed on an existing structure if their weight would reduce the allowable vehicle loading below the legal limit except in certain instances when approved by the Department.

(c) Location of Utility Facilities on Bridges.

(1) Utility facilities shall not be placed at nor extend below the bottom of the superstructure.

(2) Utility facilities shall not be located where they may be subject to vehicular impacts nor shall they be attached to railing systems which may be subject to vehicular impacts.

(3) Utility facilities shall not be located where they will impair or interfere with roadway drainage.

(4) Utility facilities shall not be supported from the bottom of the concrete structural slab.

(5) Utility facilities should be located so they do not interfere with maintenance and inspection of the structure. Aesthetics is also a consideration. Preferred locations, in decreasing desirability, are:

(i) In bays between main longitudinal bridge members.
(ii) In concrete sidewalks - small diameter installations only.
(iii) In the voided section of closed box bridge members.
(iv) On a utility ledge on the fascia.
(v) Attached to the fascia, preferably on downstream side.

(d) Expansion Devices - All utility installations shall either:

(1) Have expansion capability located adjacent to the bridge expansion bearings so as to conform to the bridge movements. Additional expansion devices may be required at other locations if the operating temperature range of the utility or the coefficient of thermal expansion of the utility installation differs from the characteristics of the bridge; or

(2) be supported on a system of rollers that allow it to expand and contract independently of the bridge.

(e) Shut-Off Devices - All utility facilities carrying fluid or gaseous materials shall have a shut-off device at the supply side of the structure. If reverse flows are possible, a shut-off device is required on each end. Shut-off devices should be located as close to the structure as feasible, not over 1000 feet from the end. Exceptions may be granted for low-pressure lines upon a showing that such exception does not compromise public safety.

(f) Marking - Each utility carrier or casing shall be clearly and appropriately marked with the carrier contents. The marking may be painted on or a printed self-adhering tape may be used.

(g) Protective Structures - Fencing or other protective structures may be mandated.

(h) Water Lines. Water lines shall have welded or restrained joints or shall be cased for the length necessary to prevent water from falling on an underlying highway, railway, or other areas determined by the Department.

(i) Sewer Lines. Sewer lines shall have welded or restrained joints or shall be cased for the length necessary to prevent sewage from dropping on an underlying highway, railway, or other areas determined by the Department.

(j) Natural Gas Lines. All plans involving natural gas lines must contain a certification by a licensed professional engineer that the work conforms to all applicable provisions of the Natural Gas Pipeline Safety Act (49 U.S.C. 1672 et. seq.) and the regulations in 49 CFR Part 192, and State Public Service Commission requirements in 16 NYCRR Part 255. Where not superseded by the above federal and state provisions;

(1) All installations on structures shall be designed as if subject to the most populous "class location" requirements in 16 NYCRR Part 255.

(2) Unless otherwise approved, all welds on carrier lines shall be nondestructively tested.

(3) All lines on structures shall be electrically insulated from the structure or shall be electrically isolated from the buried portion of the line.

(4) Unless otherwise approved, lines installed in an enclosed portion of a structure, or encased in concrete, shall be sleeved in a continuous manner, with adequate venting. This provision does not apply to sections of lines where they pass through abutments or retaining walls.

(k) Communication Lines. Communication lines shall be placed in ducts having sufficient bending strength to span between points of support.

131.21 Miscellaneous Provisions.

(a) Notifications required of Permittees under Highway Work Permits:

(1) Permittee shall notify the applicable Regional Office of the Department (unless otherwise specified on permit) prior to commencing work (except emergency work by Utility owners which should be reported the next working day). Work shall start within 30 days from the date of permit.

(2) Permittee must notify all gas distributors in the area 72 hours prior to any blasting.

(3) In accordance with 12 NYCRR Part 53 permittee must notify Utility owners with facilities in work area prior to starting work. Permission must be obtained before doing work affecting a Utility's facilities.

(b) All costs beyond the limits of the protective liability insurance, surety agreement, and other deposits or undertakings are the responsibility of the permittee, and the Department shall be held free of all direct and indirect costs incurred by reason of the issuance of the permit. The Department reserves the right to bill the permittee for actual expenses incurred for supervision and inspection of the permittee's project.

(c) Compliance. The Department reserves the right to modify and to revoke or annul a permit at any time, upon a determination within its sole discretion, and without a hearing, that continued operation under the permit will cause or continue a threat to the public or to the operation of the highway. The penalty provisions of Section 52 of Highway Law shall apply to all violations of this Part.

(d) Whenever the Department undertakes a highway project in which existing guiderail sections are to be replaced, or new guiderail sections are to be installed, the Department shall require that existing utility poles located within the deflection zone or area of such replacement guiderail sections or proposed new guiderail sections be relocated outside of such deflection zones, at the sole expense of the Utility. The deflection zone or area will be defined by the Department in accordance with current highway and guiderail design standards. The Department will consider alternative proposals from utilities, including but not limited to, the installation of different types of guiderail, upon a showing of serious economic or engineering hardship, and a showing that the alternative will not impair in any respect the highway safety, and an agreement by the Utility to reimburse the Department for any additional highway project costs.

(e) High Voltage Proximity Act. Upon request by the Department or its contractor, the Utility shall mark, relocate, deenergize or insulate electrical transmission lines as necessary to provide protection for all Department employees, and employees of the Department's contractors and subcontractors working within the Department's highway rights-of-way in accordance with º202-h of the Labor Law. Protection provided at the request of the Department, with respect to utility facilities located within the highway right-of-way shall be the sole financial responsibility of the utility. In addition, upon request, the Utility at its sole expense shall provide necessary information concerning its high voltage facilities to the Department and its contractors and subcontractors. Protection provided for the benefit or at the request of a contractor or subcontractor of the Department, or of a permittee, shall not be the financial responsibility of the utility.

(f) Utilities are responsible for compliance with Americans with Disabilities Act (42 U.S.C. Chapt. 126) with respect to work affecting sidewalks, and shall indemnify and hold harmless the State, Department, and their officers and employees for damages resulting from the failure of the utility or its contractors to so comply.

(g) Blasting. The Department may require a meeting relative to the method, manner and procedure of blasting operations with the permittee and representatives of all interested agencies prior to commencement of blasting operations.

(h) If at any time a suspected hazard associated with a utility facility on state highway right-of-way is brought to the attention of the utility, the utility shall inspect the facility, take appropriate action, and certify to the Department that appropriate action was taken in accordance with all applicable laws, regulations and safety codes.

(i) All work performed by a utility on state highway right-of-way shall be conducted in accordance with all applicable safety regulations.

131.22 Insurance, Undertakings and Deposits. Permittees are subject to applicable provisions of Part 127. Utilities are not eligible for participation in the Department's blanket policy. Protective public liability insurance must be provided as required by Section 127.1, unless, with respect to municipalities and public service corporations, an undertaking is furnished in a form and amount acceptable to the Department. Failure to maintain such insurance or undertaking, or insurance required by the Workman's Compensation Law immediately causes invalidation of a permit.

Other than specifically provided for by law, the Department shall owe no duty or obligation to any utility with respect to utility facilities within the Department's rights-of-way.

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