

**Associated Pennsylvania Constructors
Pennsylvania Department of Transportation
Risk Allocation Committee**

**April 12, 2016
Meeting Minutes**

Attendees:

APC

Leonard Bellanca
Murray Blaker
Geoff Clarke
William Cummings
Jim Davis
Mike Flack
Al Hoffman, Co-Chair
Craig Hoogstraten
Robert Latham
Joseph Martosella, Jr.
Joseph Martosella, III
Jeremy Molenaar
Mark Polizzi
Frank Piedimonte
Ken Sable
Fred Thompson

Andrew Seravalli
Kent Wible
Matthew Yacabenas

PennDOT

Ed Fuhrer
Kelly Barber
Melissa Batula
George Dunheimar
Michele Harter
Christine Reilly, Co-Chair

Turnpike Commission

Mike Shaak
Bonnie Shepler

FHWA

Call to Order and Introductions: The Risk Allocation Committee met on April 12, 2016. Self-introductions were made.

Approval of Minutes: No corrections or changes were noted for the minutes of the January 5, 2016 Risk Allocation meeting.

Environmental Permits: Thompson reported that he met with DEP in February to review DEP's important revisions to the NPDES Co-Permittee Agreement. This form is a step forward because it provides a means to identify whether the co-Permittee has full responsibility for the E & S plans for the entire project or is limited to specific portions of the project. Most important for Industry, the new form lists three general liability exclusions applicable to the co-Permittee, stating:

- The (new) co-permittee is not liable for E&S or PCSM designs or the performance of PCSM facilities when constructed according to approved designs
- The (new) co-permittee is not liable for any long term operation and maintenance of PCSM facilities associated with permanent storm water facilities
- Additional qualifications or exclusions warranted by the project.

A meeting to clean up any differences in wording will be held with DEP on April 15. Thompson's goal is to have all issues resolved so that a strike-off letter can be issued to direct use of the new Agreement form including timely release of the co-Permittee when appropriate. It is expected that DEP's supervisor for NPDES activities will work with the County Conservation Districts to implement use of the new forms.

Hazardous Excavation and Regulated Fill: Fuhrer reported that he had completed a rewrite of Section 104 which is agreeable to APC and the Department. The rewrite has been circulated for comments as a Step 2 Clearance Transmittal.

100 year Pipe: APC has reviewed a draft of the proposed rewrite of the 100 year pipe specification which was prepared by the Department after a series of meetings between various pipe manufacturers, the construction industry and the Department, which included a field demonstration whose purpose was to identify and illustrate certain joint problems. APC intends to forward a letter to the Department stating several strong objections to the proposed re-written specification, primarily the impossibility of consistently meeting the Department's expectation for joint tolerance, the implications of joint leaks, and the severity of penalties to be imposed for defective pipe which has been remediated. Chris Reilly will review APC's comments and pursue how to resolve the issues within the Department.

Hauling over Local Roads: Subsequent to the January Risk Allocation meeting, Hoogstraten, Hoffman and Bellanca met with Mike Shaak and the Turnpike staff to discuss how an unbiddable specification used on some Turnpike projects under which local government agencies were designated final judge of the extent of a contractor's obligation to repair local roads as a result of the contractor hauling operations over those roads. After discussion of the issues and difficulties, the Turnpike decided to discontinue the use of the specification, except for two Southern Beltway projects expected to be bid in the near future.

Beveled Edge: The Department is continuing its efforts to find a resolution to the problem of milling machine interference with adjacent traffic on two lane roads during the time period required to mill a 12:1 "safety edge" cross slope on longitudinal pavement joints.

Asphalt Pavement Warranties: The Department anticipates bidding no more than five asphalt warranted paving projects this season, all in District 4-0. Two of those projects have been bid and are awaiting award.

Force Account: Hoffman said the Department and APC reached agreement today on all unresolved labor and markup procedures. Ed Fuhrer said that he expected it would take the Department's programmers most of the Fall to complete the programming for the automated processing of total force account.

ADA Ramps: The Department has formed a group of Central Office and District personnel, and requested participation by APC, to reconsider the basis of payment for ADA curb ramps. APC has stated that the Industry prefers to bid these ramps with payment based on the quantities of work performed (as was agreed to approximately five years ago) primarily because curb ramps are nearly always design-build items, and therefore quantities cannot reasonably be determined prior to bid. The Department's concern is that undesirable quantity overruns often result from contractor prepared curb ramp design build plans prepared by the contractor.

GPS Equipment Age Limit: A rewritten specification will appear in Pub. 408 beginning April 2016 to address issues of age and accuracy of GPS equipment used to control construction equipment. Clarke commented that the acceptability of GPS equipment should be performance rather than age based. Mezey commented it continues to be difficult to obtain the electronic files generated by designers in the course of design preparation for the purpose of creating GPS models.

Excessive AOB and Incidental Work: APC members continued discussion of problems that arise when disparate “incidental” work is added to a conventional bid item. Whenever there is a significant change in the quantity for the bid item, the proportion of incidental work can change significantly, which then results in an item whose cost may not accurately reflect the cost for the work being performed, thus creating a situation where the established price must be re-negotiated. An example is when payment for temporary pavement markings is incidental to paving bid items, the quantity of temporary pavement markings typically will not vary proportionately with paving quantity.

Contractor Performed Snow Plowing: At a previous meeting, APC said that there were recent instances when Contractor performed snow plowing requirements extended well beyond work areas, and even sometimes beyond the limit of work. Contractors are concerned with the resulting increase in liability exposure, and are further concerned that whether or not there could be an issue with coverage by their insurance carriers for incidents outside the Limits of Work. The Department said that the instance cited was a single District matter, and agreed that requirements for Contractor snow plowing should be limited to necessary areas within project limits.

Pole Shop Drawings: There is significant continuing confusion regarding procedures for approval of shop drawings for various pole items, extending from light poles to sign structures. Delays often occur in the delivery of these long lead time items because of seemingly varying requirements that are not known until the required delivery is imminent. The Department agreed to prepare a flow chart to clarify responsibility between the Districts and the Central Office, and to establish the meaning and procedures for submittals returned marked “Returned for Correction”, “Approved as Noted” and “Approved”.

Access to Projects: An APC member discussed a recent situation in which his firm was required to grant access to the site of its project to employees of approximately ten consulting and/or testing firms to perform investigations for the Department preparatory to the design of an overlapping future project. The contract documents had not given the Contractor notice of any requirement to grant such access or assume liability for the imposed personnel, and the Contractor’s position was that such usage by representatives of the Department was well beyond the intent of the Pub.408 requirement for “cooperation with adjacent contractors” and insisted that the employer of each employer so involved provided a Hold Harmless agreement covering its employees work on the project.

Utility Delays: APC noted that issues with Utility Delays are becoming more widespread throughout the state, apparently as a result of a general decrease in the availability of utility crews. The Department responded that a PNG Team is being formed by District 11 to pursue possible solutions.

TQI Initiative: Mike Shaak distributed a draft specification for a Contractor Quality Control Program to cover asphalt paving items. He requested interested members to review the draft specification and plan to meet for its resolution prior to the next RAC meeting, with the intent of assembling again to review prior to the next RAC meeting.

Next Meeting: The next meeting of the Risk Allocation Committee will be held on July 12, 2016 at 9:30 am in the APC board room.