

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
Pennsylvania Turnpike Commission	:	Docket No. CWA-03-2021-0027DN
700 S. Eisenhower Blvd.	:	
Middletown, PA 17057	:	
	:	
	:	
Respondent	:	
	:	

ADMINISTRATIVE ORDER ON CONSENT

PRELIMINARY STATEMENT AND JURISDICTION

1. The United States Environmental Protection Agency, Region III (EPA) has made the following findings of fact and issues this Administrative Order on Consent (Order) pursuant to the authority vested in the Administrator of EPA under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Enforcement & Compliance Assurance Division, Region III.
2. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, in relevant part, that: “Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 301, 302, 306, 307, 308, 318, or 405 of (the Act), or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this title by him or by a State ..., he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.”
3. EPA has jurisdiction over the above-captioned matter, as described in Paragraphs 1 and 2, above.
4. EPA has consulted with the Commonwealth of Pennsylvania (Pennsylvania) Department of Environmental Protection (PADEP) regarding this action and EPA will provide a copy of this fully executed Order to PADEP’s Bureau of Clean Water.

GENERAL PROVISIONS

5. For the purpose of this proceeding only, the Pennsylvania Turnpike Commission (Respondent) admits each jurisdictional allegation set forth in this Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in the “Findings Of Fact And Conclusions Of Law” Section of this Order, below.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution or enforcement of this Order.
8. For purposes of this proceeding only, Respondent agrees to the terms and issuance of this Order and hereby expressly waives its right to contest the allegations set forth in this Order.
9. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding and associated with the implementation or enforcement of this Order, including any costs related to resolution of any dispute arising regarding this Order.
10. Issuance of this Order is intended to address the violations described herein. EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. § 1251, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction.
11. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
12. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), EPA retains its authority to take enforcement action within the Commonwealth of Pennsylvania for violations of National Pollutant Discharge Elimination System (NPDES) permits.
13. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
14. By his or her signature below, each person who signs this Order on behalf of Respondent, certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this Order and to execute and legally bind Respondent.
15. By signing this Order, Respondent acknowledges that this Order will be available to the public and represents that, to the best of Respondent’s knowledge and belief, this Order does not contain any confidential business information or personally identifiable information from Respondent.

16. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Order are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
17. This Order shall apply to and be binding upon the EPA, the Respondent and the officers, managers, directors, employees, contractors, successors, agents and assigns of the Respondent.
18. Respondent may assert a business confidentiality claim covering part or all of the information which this Order requires Respondent to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. EPA acknowledges that 40 C.F.R. Part 2, Subpart B, sets forth procedures for handling and dissemination of information subject to a claim of business confidentiality made in accordance with 40 C.F.R. Part 2, Subpart B. For any information for which Respondent does not assert a confidentiality claim, EPA may make such submitted information available to the public without further notice to Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

19. Section 502(5) of the Act, 33 U.S.C. §1362, provides: “The term ‘person’ means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”
20. Respondent is a instrumentality of the Commonwealth of Pennsylvania, a "State," and therefore is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
21. At all times relevant to this Order, Respondent was the owner and operator of each facility identified below.
22. Section 402(p) of the CWA, 33 U.S.C. §1342(p) and 40 C.F.R. §122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the CWA, 33 U.S.C. § 1342(a). Discharges of stormwater associated with construction activity (construction sites) are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
23. Each conveyance from each facility identified below is a “point source” as that term is defined in 40 C.F.R. § 122.2.
24. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States, except in compliance with a permit issued pursuant to the NPDES program under Section 402 of the Act, 33 U.S.C. § 1342.
25. 40 C.F.R. § 122.26(b)(13) defines “storm water” as “storm water runoff, snow melt runoff and surface runoff and drainage.”

26. 40 C.F.R. § 122.2 states, in relevant part: “Discharge of a pollutant means: a) any addition of any ‘pollutant’ or combination of pollutants to waters of the United States from any point source... This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works...” See also 33 U.S.C. § 1362(12).
27. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant from a point source to the waters of the United States. The discharges of any pollutant from a point source to the waters of the United States are subject to specific terms and conditions as prescribed in the permit.
28. Section 402(b) of the Act, 33 U.S.C. § 1342(b) provides that the Administrator may authorize a state to issue NPDES permits. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized Pennsylvania to issue NPDES permits in 1978. In 1991, EPA authorized Pennsylvania to issue General NPDES Permits.
29. At all times relevant to this Order, pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), Pennsylvania's Clean Streams Law, as amended, 35 P.S. Section 691.1 et seq., and Pennsylvania's National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance regulations, set forth at 25 Pa Code § 92a., the PADEP issued: a) the 2012 General NPDES Permit for Stormwater Discharges Associated with Construction Activities, (2012 PAG-02 Permit), which became effective on December 7, 2012 and was administratively extended on December 7, 2017 until its expiration on December 7, 2019 (the PAG-02 Permit) and b) various NPDES Individual Permits for Stormwater Discharges Associated with Construction Activities (PAI Permit or PAC Permit), for any construction facility which was not subject to the administratively extended 2012 PAG-02 Permit.
30. Regulations implementing Pennsylvania's NPDES permitting program can be found in 25 Pa. Code Chapters 92a and 102. 25 Pa. Code § 102.5(a) provides in relevant part:
- Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting or road maintenance activities, a person proposing an earth disturbance activity that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, or earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, shall obtain an individual NPDES Permit or coverage under general NPDES for Stormwater Discharges Associated with Construction Activities prior to commencing the earth disturbance activity.
31. At all times relevant to this Order, Respondent was required to obtain coverage under the PAG-02 or PAI Permit for any construction stormwater discharges from any highway construction facility that involved equal to, or greater than, 1 acre of earth disturbance, excluding road maintenance activities.
32. *Pennsylvania Turnpike MP 39.62 – 44.04 Facility (MP 39 Facility)*
- At all times relevant to this Order:
- a. Respondent has owned and/or operated a highway construction facility located between milepost 39 and 44 of the Pennsylvania Turnpike in Gibsonia, Allegheny County, Pennsylvania, which is referred to below as the “MP 39 Facility.”

- b. Stormwater discharges from the MP 39 Facility were subject to the terms and conditions set forth in PAG-02 Permit # 000215125, with coverage effective as of March 2, 2016.
- c. The MP 39 Facility discharges stormwater to Pine Creek and Deer Creek, each of which is a water of the United States.

33. *Pennsylvania Turnpike Replacement of Bridge NB-345A Facility (Replacement Bridge NB-345A Facility)*

At all times relevant to this Order:

- a. Respondent has owned and/or operated a highway construction facility located on or near milepost A-56.04 of the Pennsylvania Turnpike, in Upper and Lower Macungie Townships, Lehigh County, Pennsylvania, which is referred to below as the “Replacement Bridge NB-345A Facility.”
- b. Stormwater discharges from the Replacement Bridge NB-345A Facility were subject to the terms and conditions set forth in PAI Permit # PAI023914011, which became effective on August 19, 2014 and expired on August 18, 2019.
- c. The Replacement Bridge NB-345A Facility discharges stormwater to Cedar Creek, which is a water of the United States.

34. *Interstate 476 A31-A38 Facility (I-476 A31 Facility)*

At all times relevant to this Order:

- a. Respondent has owned and/or operated a highway construction facility located between mileposts A31.3 and A38.1 of the Interstate 476 Highway (also known as the Northeast Extension) and located in Lower Salford, Franconia, and Salford Townships of Montgomery County, Pennsylvania, which is referred to below as the “I-476 A31 Facility.”
- b. Stormwater discharged from the I-476 A31 Facility were subject to the terms and conditions set forth in PAI Permit # 014615001, which became effective on October 6, 2017 and expires on October 5, 2022, unless administratively extended.
- c. The I-476 A31 Facility discharged stormwater to the following bodies of water: Unnamed Tributaries to Skippack Creek, Main Branch to Indian Creek, Unnamed Tributaries to Indian Creek, and Unnamed Tributaries to East Branch of Perkiomen Creek. The stormwater discharges flow from the A31 Facility flow into the following waters of the United States: Skippack Creek, Indian Creek and Perkiomen Creek.

35. *Southern Beltway Transportation Project (Southern Beltway Project Facility)*

At all times relevant to this Order:

- a. Respondent has owned and/or operated a highway construction facility located in: i) Robinson, Mount Pleasant and Cecil Townships in Washington County, Pennsylvania and ii) South Fayette Township in Allegheny County, Pennsylvania, which is referred to below as the “Southern Beltway Project Facility.”
- b. Stormwater discharged from the portions of the Southern Beltway Project Facility (specifically sections 55A) that are relevant to this Order were subject to the terms and conditions of NPDES permit PAG-02 # 006313020-1, for which coverage became effective on September 1, 2016, and continued in effect on at least September 19, 2017.

- c. The Section 55A of Southern Beltway Project Facility discharges stormwater to, among other water bodies, an Unnamed Tributary to Little Racoon Run and an Unnamed Tributary to St. Patrick Run, which respectively flow into Little Racoon Run and St. Patrick Run, both which flow into Racoon Creek which flows into the Ohio River. These streams are waters of the United States.
36. PADEP has delegated authority to certain Pennsylvania County Conservation Districts (CCDs) to conduct inspections and implement portions of the state's construction stormwater program.
37. On multiple dates since at least September 19, 2017, the EPA or a CCD has performed inspections of the Facilities identified above. Following each identified inspection, the EPA or CCD issued an inspection report that identified violations of the PAG-02 Permit or a PAI Permit, as applicable, and the CWA.
38. Various CCDs have submitted inspection reports (CCD Inspection Reports) to EPA and certain of such CCD Inspection Reports are described below.
39. By letter dated April 16, 2020, EPA invited Respondent to confer in order to seek resolution of numerous violations of the Clean Water Act, as documented in the various CCD Inspection Reports and EPA's Inspection Reports.
40. Based upon a review of information available to EPA, Respondent failed to comply with terms and conditions of one or more its NPDES permits and Section 301 the CWA, 33 U.S.C. § 1311(a), at the Facilities listed above by: a) failing to install, properly install or maintain required stormwater controls in accordance with the permit requirements, and 40 C.F.R. § 450.21(a)(1) or b) failing to comply with stabilization requirements in accordance with NPDES Permit Requirement PAG-02, Part A.1.b. and 40 C.F.R. § 450.21(b).

Findings of Fact And Conclusions of Law Relating to Respondent's Failure to Install, Properly Install or Maintain Required Stormwater Controls or Stabilize Disturbed Soil Areas

41. The allegations of Paragraphs 1 through 40 of this Order are incorporated herein by reference.
42. At all times relevant to this Order, each PAG-02 Permit and PAI Permit described herein includes the following requirement at Part A (Effluent Limitations, Monitoring, And Reporting Requirements), 1. Effluent Limitations, b. Applicable Effluent Limitations (Part A.1.b.) (PAG-02, Part A.1.b.):

“Activities covered under this permit must comply with applicable effluent limitations established in 25 Pa. Code Chapters 91, 92a, 93, 96, 102, and 105 and any applicable federal law or regulation, including the effluent guidelines for construction at 40 CFR Part 450.”
43. 40 C.F.R. § 450.21 (Effluent limitations reflecting the best practicable technology currently available (BPT)) provides in relevant part: “Except as provided in 40 CFR 125.30 through 125.32, any point source subject to this subpart must achieve, at a minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the best practicable control technology currently available (BPT).”

- a. Erosion and sediment controls. Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed and maintained to:
 - (1) Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;
 - (2) Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
 - (3) Minimize the amount of soil exposed during construction activity;
 - (4) Minimize the disturbance of steep slopes;
 - (5) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
 - (6) Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible; ...
- b. Soil stabilization. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days....”

Failure to Install Erosion and Sediment Controls

44. Failure to Install Erosion and Sediment Controls: September 20, 2017 Inspection of MP 39 Facility, Allegheny County
 - a. On September 20, 2017, representatives of EPA and Allegheny County Conservation District (Allegheny CCD) conducted an inspection of the MP 39 Facility and, subsequently, completed an EPA Inspection Report dated November 2, 2017 (MP 36 Facility November 2017 EPA Inspection Report).
 - b. The MP 39 Facility November 2017 EPA Inspection Report documented that Respondent’s failure to install adequate erosion and sediment control resulted in the following: i) several unprotected active inlets which discharge to Deer Creek or Pine Creek and ii) several access or egress points provided direct access to the Pennsylvania Turnpike without the presence of any Rock Construction Entrance and sediment had been carried off the Site and deposited on the Pennsylvania Turnpike by construction vehicles.
 - c. On and before September 20, 2017, Respondent failed to install effective erosion controls and sediment controls to minimize the discharge of pollutants at MP 39 Facility, in accordance with Part A.1.b. of PAG-02 Permit # 00215125 and 40 C.F.R. § 450.21(a).
 - d. On and before September 20, 2017, Respondent failed to comply with Part A.1.b. of PAG-02 Permit # 00215125 and 40 C.F.R. § 450.21(a).

45. Failure to Install Erosion and Sediment Controls: September 19, 2017, Inspection of Section 55A1 Southern Beltway Project Facility, Washington County
- a. On September 19, 2017, representatives of the EPA and the Washington County Conservation District (Washington CCD) conducted an inspection of Section 55A1 of the Southern Beltway Project Facility and EPA completed a Compliance Inspection Report dated November 2, 2017 (Southern Beltway Project Facility EPA November 2017 Inspection Report).
 - b. The Southern Beltway Project Facility EPA November 2017 Inspection Report documented that, during such inspection, the EPA and Washington CCD Inspectors observed that several inlets were active but unprotected. These inlets were missing required inlet filter bags.
 - c. On and before September 19, 2017, Respondent failed to install effective erosion controls and sediment controls to minimize the discharge of pollutants at the Southern Beltway Project Facility, in accordance with Part A.1.b. of PAG-02 Permit # 006313020-1 and 40 C.F.R. §450.21(a).
 - d. On and before September 19, 2017, Respondent failed to comply with Part A.1.b. of PAG-02 Permit # 006313020-1 and 40 C.F.R. § 450.21(a).

Failure to Maintain Erosion and Sediment Controls

46. Failure to Maintain Erosion and Sediment Controls: September 20, 2017 Inspection of MP 39 Facility, Allegheny County
- a. On September 20, 2017, representatives of EPA and Allegheny CCD conducted an inspection of the MP 39 Facility and, subsequently, completed the MP 39 Facility November 2017 EPA Inspection Report.
 - b. The MP 39 Facility November 2017 EPA Inspection Report documented that Respondent's failure to maintain adequate erosion and sediment control resulted in the following: at several locations throughout the MP39 Facility, compost filter socks were overtaken by sediment, burst or ripped open, such that compost within the filter sock was exposed and such erosion and sediment control was rendered ineffective.
 - c. On and before September 20, 2017, Respondent failed to maintain effective erosion controls and sediment controls to minimize the discharge of pollutants at MP 39 Facility, in accordance with Part A.1.b. of PAG-02 Permit # 00215125 and 40 C.F.R. § 450.21(a).
 - d. On and before September 20, 2017, Respondent failed to comply with Part A.1.b. of PAG-02 Permit # 00215125 and 40 C.F.R. § 450.21(a).
47. Failure to Maintain Erosion and Sediment Controls: September 19, 2017, Inspection of Southern Beltway Project Facility, Washington County
- a. On September 19, 2017, representatives of the EPA and the Washington CCD conducted an inspection of Section 55A1 of the Southern Beltway Project Facility and EPA completed the Southern Beltway Project Facility EPA November 2017 Inspection Report.

- b. The Southern Beltway Project Facility EPA November 2017 Inspection Report documented that during such inspection, the EPA and Washington CCD Inspectors observed that, sediment had reached half the aboveground height of at least one compost filter sock and each such erosion and sediment control was rendered ineffective due to Respondent's failure to maintain such control.
 - c. On and before September 19, 2017, Respondent failed to maintain effective erosion controls and sediment controls to minimize the discharge of pollutants at the Southern Beltway Project Facility, in accordance with Part A.1.b. of PAG-02 Permit 006313020-1 and 40 C.F.R. § 450.21(a).
 - d. On and before July 10, 2019, Respondent failed to comply with Part A.1.b. of PAG-02 Permit # 006313020-1 and 40 C.F.R. § 450.21(a).
48. Failure to Maintain Erosion and Sediment Controls: April 16 – July 25, 2018, Inspections of the I-476 A31 Facility, Montgomery County
- a. On April 16, 2018, a representative of the Montgomery CCD conducted an inspection of the I-476 A31 Facility and completed an "Earth Disturbance Inspection Report" dated April 17, 2018 (I-476 A31 Facility April 2018 Inspection Report).
 - b. The I-476 A31 Facility April 2018 Inspection Report documented, among other observations, that during such inspection, the Montgomery CCD Inspector observed excessive sediment overtopping the sediment controls in place and leaving the site near South Dietz Mill Road and sediment laden water leaving the site and entering the roadway due to a compost sock near a construction entrance being bypassed.
 - c. On July 6, 2018, a representative of the Montgomery CCD conducted an inspection of the I-476 A31 Facility and completed an "Earth Disturbance Inspection Report" dated April 17, 2018 (I-476 A31 Facility July 12, 2018 Inspection Report).
 - d. The I-476 A31 Facility July 12, 2018 Inspection Report documented, among other observations, that during such inspection, the Montgomery CCD Inspector observed: 1) water discharging under the outlet pipe on Sediment Basin R-5 near roadway (Creamery Road), 2) sediment was running over a compost sock near two roadways (Kulp Road and Schoolhouse Road) and 3) rock construction entrance was not adequately sized for the amount of traffic leaving the site onto Haltman Road.
 - e. On July 25, 2018, a representative of the Montgomery CCD conducted an inspection of the I-476 A31 Facility and completed an "Earth Disturbance Inspection Report" dated April 17, 2018 (I-476 A31 Facility July 25, 2018 Inspection Report).
 - f. The I-476 A31 Facility July 25, 2018 Inspection Report documented, among other observations, that during such inspection, the Montgomery CCD Inspector observed: 1) rock construction entrances near Harleysville Pike needed maintenance, 2) inlets along Schoolhouse Road were clogged with sediment and other debris, 3) sediment had been discharged onto Schoolhouse Road, 4) rock construction entrance near Cassel Road had not been maintained and 5) a compost sock near the rock construction entrance along Cassel Road was damaged.

- g. On and before July 25, 2018, Respondent failed to maintain erosion controls and sediment controls to minimize the discharge of pollutants at the I-476 A31 Facility, in accordance with Part A.1.b. of PAI Permit # 014615001 and 40 C.F.R. § 450.21(a).
- h. On and before July 25, 2018, Respondent failed to comply with Part A.1.b. of PAI Permit # 014615001 and 40 C.F.R. § 450.21(a).

Failure to Stabilize Disturbed Soil

49. Failure to Stabilize Disturbed Soil: September 2016 through November 2017 Inspections of Replacement Bridge NB-345A Facility, Lehigh County

- a. On September 7, 2016, a representative of the Lehigh County Conservation District (Lehigh CCD) conducted an inspection of the Replacement Bridge NB-345A Facility and completed an “Earth Disturbance Inspection Report” dated September 8, 2016 (Replacement Bridge NB-345A Facility September 2016 Inspection Report).
- b. The Replacement Bridge NB-345A Facility September 2016 Inspection Report documented, among other observations, the following relevant observations: “It was observed that earth moving activities have ceased on site and that stabilization is ongoing. The following violations were observed: ... Failure to provide permanent stabilization of the earth disturbance site for example: 1. Areas along the guardrail at ramps B and AB were not stabilized... In order to terminate the NPDES permit all areas within the NPDES/LOD boundaries must meet the minimum stabilization requirements in order to terminate the NPDES permit. 2. Several areas throughout the project site did not meet the minimum stabilization requirements (e.g. bare spots at or near the infield at ramp A, area where the staging area was located above rain garden #1, etc.)”
- c. Prior to September 7, 2016, earth disturbing construction activities had ceased at the Replacement Bridge NB-345A Facility.
- d. On April 13, 2017, a representative of the Lehigh CCD conducted an inspection of the Replacement Bridge NB-345A Facility and completed an “Earth Disturbance Inspection Report” dated April 18, 2017 (Replacement Bridge NB-345A Facility April 2017 Inspection Report).
- e. The Replacement Bridge NB-345A Facility April 2017 Inspection Report documented, among other observations, the following relevant observations: “The following violations were observed: ... Failure to provide permanent stabilization of the earth disturbance site, for example: 1. Swale 2A was not stabilized erosion gullies were observed in several areas in the channel. 2. The steep slope along the ramp AB was not stabilized. 3. The area where the laydown area was located along the southbound lane was not fully stabilized. 4. The area along ramp A that is now currently being used as a staging area was not stabilized. 5. Several areas throughout the project site (e.g. grass infield areas, embankments, swales, etc.) did not meet the minimum stabilization requirements.”
- f. On November 28, 2017, a representative of the Lehigh CCD conducted an inspection of the Replacement Bridge NB-345A Facility and completed an “Earth Disturbance Inspection Report” dated November 30, 2017 (Replacement Bridge NB-345A Facility November 2017 Inspection Report).

- g. The Replacement Bridge NB-345A Facility November 2017 Inspection Report documented, among other observations, the following relevant observations: “The following violations were observed: A)102.22 Failure to provide permanent stabilization of the earth disturbance site, for example: 1) a portion of the disturbed area north of ramp AB was not permanently stabilized and 2) a portion of the area below the discharge of rain garden #2 was not permanently stabilized.”
- h. On and before November 28, 2017, Respondent failed to stabilize disturbed areas of soil in a timely manner at the Replacement Bridge NB-345A Facility, in accordance with Part A.1.b. of PAI Permit # 014615001 and 40 C.F.R. § 450.21(b).
- i. On and before November 28, 2017, Respondent failed to comply with Part A.1.b. of PAI Permit # 014615001 and 40 C.F.R. § 450.21(b).

ORDER FOR COMPLIANCE

50. Pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), Respondent is hereby, ORDERED to complete the compliance tasks and reporting requirements set forth below within the time frames set forth below.
- a. Respondent shall develop and implement a Compliance Management Plan (“CMP”) as specified in Attachment 1.
 - b. Respondent shall implement the CMP at each construction site which meets the following criteria: a) the property is owned and/or operated by Respondent and Respondent conducts or oversees construction activities on such property (Construction Site), and b) Respondent is required to obtain an NPDES permit pursuant to Section 402 of the Act, 33 U.S. C. § 1342, for stormwater discharges resulting from the construction activities at such site. Each such Construction Site is an “Applicable Site” for purposes of this Order.
 - c. Respondent shall take all actions necessary to comply with the requirements of any applicable NPDES permit for discharges associated with construction activities at each Applicable Site.
51. When the Respondent knows of an event that might delay completion, by Respondent or any contractor working for Respondent, of any requirement set forth in Attachment 1 of this Order, Respondent shall notify EPA via email within 14 calendar days after Respondent or Respondent’s Contractor first learned of such event (Notification of Delay). Each such Notification of Delay shall indicate whether Respondent claims that an extension of time is appropriate due to a force majeure event and the basis for any such claim that a force majeure event occurred. For each requirement of this Order for which an extension of time is being requested, each such Notification of Delay shall describe in detail: a) the anticipated length of each delay, b) the precise cause or causes of each delay, c) the measures taken or to be taken to prevent or minimize each delay, d) the timetable by which such measures will be implemented and e) the affected portions of the CMP subject to the extension request. Respondent shall adopt all reasonable measures to avoid or minimize any delays. Respondent’s submission of a Notification of Delay, by itself, shall not excuse any failure to comply with the terms of this Order.

52. If EPA agrees that an extension of time for any requirement set forth in Attachment 1 is appropriate due to a force majeure event, EPA will notify Respondent via email of its approval in whole or in part of Respondents' request for any extension of time. In the event that EPA grants, in writing, an extension of time for any requirement set forth in Attachments 1, such approval of an extension of time shall be deemed a modification of this Order. EPA will notify the Respondent promptly whether or not the extension is granted.
53. For purposes of this Order, a "force majeure event" is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors, that delays or prevents the performance of any requirement set forth in Attachment 1, despite Respondent's best efforts to fulfill such requirement. For purposes of this Order, any increase in costs or expenses associated with the implementation of this Order, or a change in the Respondent's economic circumstances will not constitute a force majeure event.

PROCEDURES FOR SUBMISSIONS

54. All documents required to be submitted by this Order and any Request for Termination shall be accompanied by a certification signed by Respondent that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed _____

Title _____

55. Unless otherwise directed in writing, Respondent shall submit any submission or written communication relating to this Order either send via email and if email is not practical, please contact EPA by email or phone to make other arrangements...". , including any accompanying data, to:

Email: Schadel.chuck@epa.gov

Mail: Chuck Schadel

NPDES Enforcement Officer

Enforcement and Compliance Assurance Division

U.S. EPA Region III (3ED32)

1650 Arch Street, Philadelphia, PA 19103-2029

Any information submitted electronically shall be submitted in a widely recognized electronic format.

CERTIFICATION OF COMPLIANCE AND REQUEST FOR TERMINATION OF ORDER

56. This Order shall terminate after Respondent has completed all the compliance task required by the CMP and has submitted to EPA the final annual update for the construction season of 2024 required by CMP.

OTHER APPLICABLE LAWS

57. This Order does not constitute a waiver or modification of the terms or conditions of any permit issued by EPA or Pennsylvania.

58. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligation to comply with any applicable federal, state, or local law or regulation. Nothing in this Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit.

59. This Order does not constitute a waiver, suspension or modification of the requirements of the Act, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.

EFFECTIVE DATE

60. The Effective Date of this ORDER is the day on which Respondent receives a copy of this Order executed by EPA.

ENTIRE AGREEMENT

61. This Order constitutes the entire agreement and understanding between the Parties regarding the findings of fact and law and all requirements set forth in this Order and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties, relating directly to this Order, other than those expressed in this Order.

AGREED TO BY RESPONDENT:

ATTEST:

Pennsylvania Turnpike Commission


Ann Louise Edwards 04.07.21

Anne Louis Edwards **DATE**
Assistant Secretary-Treasurer

Yassmin Gramian 4/7/21
Commissioner Yassmin Gramian, P.E., **DATE**
Chair

Approved as to form and legality:

Jeanmarie McLaughlin 4/7/2021
Jeanmarie McLaughlin **DATE**
Assistant Counsel

 Digitally signed by David E. Stover
DN: cn=David E. Stover, o=PA Office of
Attorney General, ou,
email=dstover@attorneygeneral.gov, c=US
Date: 2021.05.04 15:15:25 -0400
5/4/2021
Deputy Attorney General **DATE**
Office of Attorney General

SO ORDERED:

DATE: _____

Karen Melvin
Director, Enforcement and Compliance Assurance
Division U.S. EPA Region III

Attachment 1
Compliance Management Plan

The purpose of the Construction Management Plan (“CMP”) is to ensure that construction activities at each Applicable Site meets the requirements of any applicable National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of stormwater associated with construction activities. The PTC shall develop a CMP in accordance with the following requirements and implement such CMP at each Applicable Site:

1. Designation of Compliance Management Plan Administrator. The Chief Engineer for the PTC shall serve as the Compliance Management Plan Administrator (“CMP Administrator”). The CMP Administrator shall be responsible for compliance with the requirements set forth in this Attachment, including, but not limited to:
 - a. Development and implementation of a PTC Stormwater Inspection Training Program in accordance with paragraph 2.
 - b. Development and implementation of a PTC Stormwater Audit Program in accordance with paragraph 3.
 - c. Development, implementation and maintenance of a comprehensive electronic tracking system for stormwater compliance data in accordance with paragraph 4.
 - d. Development and maintenance of a Public Web Page in accordance with paragraph 5.
 - e. Submittals of annual updates to EPA in accordance with paragraph 6.
 - f. Implementation of an electronic self-inspection report form (electronic form) to record observations made during visual site inspections as required by the applicable NPDES permit for discharges of stormwater associated with construction at each Applicable Site. Within six (6) months of the Effective Date of this Order, the PTC shall utilize the PADEP Visual Site Inspection Report form to document site inspections at each Applicable Site. Beginning with the construction season of 2022, Respondent will conduct the site inspections utilizing a mobile application.
 - g. Implementation of the Commission Specifications (CS) for contractors as provided in CS Sections 107, 108, 845 and 861 (included in Appendix C) for ensuring compliance with stormwater control and control of erosion and sedimentation at each Applicable Site. The CMP Administrator will ensure that, at each Applicable Site, each PTC construction site contractor take appropriate action to correct non-compliance with any portion of CS Sections 107, 108, 845 or 861, as set forth in Appendix C and/or unacceptable performance. The CMP Administrator will notify EPA within 10 business days if any provision of CS Sections 107, 108, 845 and 861 which relate to stormwater control and erosion and sedimentation control are modified or deleted.
2. Stormwater Inspection Training. The PTC shall implement a Stormwater Inspection Training program to provide detailed instruction on compliance with Erosion and Sedimentation Control plans (E&S Plans) and NPDES permits, and the methodology for inspecting construction projects for compliance. The PTC shall implement Stormwater Inspection Training program as follows:

- a. Any current construction PTC staff or consultant acting as the PTC representatives responsible for inspecting stormwater controls or E&S controls must receive the Stormwater Inspection Training within one (1) year of the Effective Date of this Order.
 - b. PTC shall require its construction contractors to complete the current online contractor training requirement related to E&S and Stormwater Inspections (as described in Appendix B – Contractor Training Agenda), prior to conducting earthwork for the PTC, for the term of this Order. The PTC may revise or update the format and videos used for contractor training described in Appendix B as long as any updated training covers all the content specified in Appendix B.
 - c. All newly-hired PTC staff or consultant acting as the PTC representatives assigned to specific tasks related to stormwater controls or E&S inspections at any Applicable Site must complete the above described training within the first 12 months of the start of their employment with the PTC.
3. Stormwater Self-Audit Program. The PTC shall implement a Stormwater Self-Audit Program at each Applicable Site. At each Applicable Site, the PTC will use the data obtained from this program to monitor the compliance status, to monitor the basis for taking necessary corrective action or against any contractor working for the PTC at each such site, and to determine the effectiveness of self-inspections by site personnel. The Stormwater Self-Audit Program shall contain the following elements:
- a. Stormwater Self-Audits. Stormwater Self-Audits shall be performed by appropriately trained PTC staff or consultants, who are not the persons assigned to regularly perform the visual site inspections required by any applicable NPDES permit for such site. Stormwater Self Audits shall be unannounced and performed as follows:
 - i. Beginning with the construction season of 2022, the PTC shall implement procedures for conducting the Stormwater Self-Audits. The procedure shall specify the form or format which PTC will use to document the observations and information gathered during each Stormwater Self-Audit. The PTC shall include the documentation format in the procedure submitted to EPA.
 - ii. The PTC shall use a mobile application to record observations and information gathered in the field during the Stormwater Self -Audits. The PTC shall implement use of the electronic application no later than at the start of the construction season of 2022 (i.e. the period of construction activity from the spring to the fall).
 - iii. The PTC shall conduct at least one Stormwater Self-Audit at each Applicable Site during each construction season beginning with the construction season of 2022 and will continue to conduct such self-audits until the end of the construction season of 2024. The PTC shall document the observations made during each Stormwater Self-Audit using the electronic application.

- iv. Stormwater Self-Audits will take place at each Applicable Site only after earth disturbing construction activity has occurred at such site for at least two months.
 - v. For each Applicable Site, the PTC shall keep a list of the deficiencies identified by the self-audit and track when the deficiencies are corrected. This information will be included with the annual update.
- b. Stormwater Self-Audit Procedures. The procedures for Stormwater Self-Audits shall address each of the following elements:
- i. Whether E&S controls are installed in accordance with the approved E&S plan for the project.
 - ii. Whether all construction activity is within the Limit of Disturbance boundary identified in any applicable NPDES stormwater permit.
 - iii. Whether the as-designed construction sequence in any plan incorporated into any applicable NPDES permit is being followed, unless otherwise approved by the Regulatory Agencies. For purposes of this Attachment, a Regulatory agency shall include: the U.S. EPA, PADEP or the County Conservation District delegated authority to inspect such Applicable Site.
 - iv. Whether inactive areas are temporarily stabilized in accordance with the requirements of any applicable NPDES permit.
 - v. Whether E&S controls remain installed and maintained until permanent stabilization is achieved or their removal is approved by a Regulatory Agency.
 - vi. Review of visual site inspection reports to ensure that each such report is completed as required and accurately describes field conditions. The review shall include a comprehensive review of weekly site inspection reports as well as those conducted following precipitation events from the current construction season, as well as from the previous construction season which were not reviewed during a previous Stormwater Self-Audit.
 - vii. Review of Regulatory Agency inspection reports and compliance action. The review shall include such reports completed, and such compliance actions initiated, during the current construction season, as well as from the previous construction season which were not reviewed during a previous Stormwater Self-Audit.
 - viii. Review of and documentation of all corrective actions taken at such Applicable Site in response to self-inspection reports, Regulatory Agency inspection reports, and Regulatory Agency compliance action relating to such Applicable Site. The review and documentation shall include all actions taken during current construction season, as well as during the previous construction season which were not reviewed during a previous self-audit.

- c. Stormwater Self-Audit Report and Related Documentation
 - i. The form or format documenting each Stormwater Self Audit (Stormwater Self-Audit Report) shall address each of the elements listed in paragraph 3.b, including the corrective actions taken as such Applicable Site in response to the self-inspections, and the deficiencies not corrected in a timely manner.
 - ii. The findings of each Stormwater Self-Audit shall be compiled into a Stormwater Self-Audit Report and each report shall be submitted to the responsible PTC Construction Engineering Manager and the CMP Administrator.
 - iii. Recordkeeping: The PTC shall keep the records of all the Self-Audits conducted pursuant to the CMP through the term of the Order. The PTC shall make the Self-Audit records available to EPA upon request.
- 4. Stormwater Compliance Data Tracking
 - a. Within six (6) months of the Effective Date of this Order, the PTC shall implement and maintain an electronic tracking system for storing data as described below. The PTC shall maintain the Stormwater Compliance Data for at least the term of this Order.
 - b. Within six (6) months of the Effective Date of this Order, the Stormwater Compliance Data shall include, at a minimum, the following data elements:
 - i. A listing of each Applicable Site, including an identification code for each such site, the county and milepost and other information indicating the location of each such site and NPDES number;
 - ii. Dates for the following events for each Applicable Site:
 1. Submission of the notice of intent or application for an individual NPDES permit;
 2. Approval of NPDES permit coverage under a general permit or effective date of individual permit;
 3. Start of earth disturbance activity;
 4. Permit extension, revision or reissuance;
 5. Submission of the notice of termination;
 6. Approval of the notice of termination;
 - iii. The date and a brief description of any compliance action initiated against the PTC by the Regulatory Agencies (e.g., Notice of Noncompliance, Notice of Violation, Compliance Order, etc.)
 - iv. An identification of the instances where a contractor has been issued a stop work or removed from an Applicable Site, due to nonconformance with E&S plans or NPDES permit requirements.

- c. In addition to the elements listed in paragraph 4.b, no later than June 1, 2022, the Stormwater Compliance Data shall include the following data for each Applicable Site:
 - i. The following data gathered from a review of visual site inspection reports for each site, performed every six months: the number and dates of any missed required site inspections, and an indication of whether the reports reviewed are complete and accurately captured the conditions at the site. Within five (5) business days subsequent to any inspection report 6-month review, PTC will send written notifications to the appropriate site manager identifying any required site inspections that were missed.
 - ii. A listing of the dates of any Regulatory Agency inspection, a summary of any deficiencies identified during such inspection and a short description and status of any associated corrective action. Each deficiency will be assigned a unique identifier for purposes of tracking the associated corrective action completion date.
5. Stormwater Public Information Web Page
- a. Within six (6) months of the Effective Date of this Order, the PTC shall develop and maintain a Stormwater Public Information Web Page publicly accessible through the PTC internet website, which contains the information described below. The PTC shall review and, as necessary update, all information on such web page at least every six (6) months. The PTC shall ensure that such information remains available to the public on such web page at least two years after termination of this Order.
 - b. Within six (6) months of the Effective Date of this Order, the Web Page shall include the following information:
 - i. List of construction projects including an identification code for the project and the location of the project by county and milepost,
 - ii. Dates for the following, per project:
 - 1. Submission of the notice of intent or application for an individual NPDES permit.
 - 2. Approval of NPDES permit coverage or effective date of individual permit.
 - 3. Start of earth disturbance activity.
 - 4. NPDES permit extension, revision or reissuance.
 - 5. Submission of the notice of termination.
 - 6. Approval of the notice of termination.
 - iii. Compliance actions against the PTC by Regulatory Agencies (e.g., NOVs, Compliance Orders, etc.).

- c. No later than June 1st, 2022, in addition to the information listed in paragraph 6.b, the Web Page shall include for each Applicable Site, a listing of deficiencies identified by Regulatory Agency inspections and a summary of any corrective action completed to address any such deficiency.
6. Annual Updates
- a. Initial Update: Seven (7) months after the Effective Date of this Order, the CMP Administrator will submit an initial Annual Update to EPA summarizing the actions taken to comply with the requirements of paragraphs 1.f (electronic site inspection form, including a copy of the form), 3.a.i (self-audit procedure and documentation, including a description of the procedures and copy of the documentation), 4 (compliance data tracking, including representative sample pages of the spreadsheet or database), and 7 (public web page, including the link to the web page) of this Attachment.
 - b. The CMP Administrator shall submit an Annual Update to EPA due on February 1st of each year in which the Order is in effect, beginning in 2022. The final Annual Update is due 2025. The PTC shall provide the annual updates in a table or spreadsheet format. Each Annual Update shall include the following information for the previous calendar year:
 - i. A list of each Applicable Site, including the assigned number for each applicable NPDES stormwater permits;
 - ii. A list of Notices of Intent (NOIs), NPDES permit applications, and Notices of Termination (NOTs) submitted during the reporting period.;
 - iii. For each Applicable Site and effective NPDES Permit, the number of visual site inspections conducted and the dates and number of visual site inspections missed;
 - iv. For each Applicable Site, the dates of Stormwater Self-Audits conducted, the list of deficiencies identified by the Self-Audit(s) and when each deficiency was corrected;
 - v. For each Applicable Site and effective NPDES Permit, the number of inspections conducted by any Regulatory Agency during the reporting period and a copy of each report documenting each such inspection;
 - vi. For each Applicable Site and effective NPDES Permit, the number of inspection reports completed by any Regulatory Agency where any deficiency or noncompliance has been noted;
 - vii. Copies of any notices, or electronic links thereto, issuing or commencing enforcement actions by any Regulatory Agency against the PTC, including Notices of Noncompliance, Notices of Violation, Penalty Actions, and Compliance Orders; and
 - viii. Number of individuals who receive the training each year, specifying the number of PTC staff, contractors and any other attendees.

Appendix A

Summary of the schedule for the development and implementation of the CMP

This appendix summarizes the timeline for development, implementation and completion of the CMP. The below summary shall not supersede or affect any requirement set forth in Attachment 1 of this Order.

<u>Electronic Self-Inspection Form</u>	Within six (6) months of the Effective Date of this Order, the PTC shall utilize the PADEP Visual Site Inspection Report form to document site inspections at each Applicable Site. Beginning with the construction season of 2022, the site inspections will be conducted utilizing the mobile application.
<u>Stormwater Inspection Training</u>	Current PTC construction staff and consultants acting as PTC representatives trained within one (1) year of the Effective Date of this Order. New PTC construction staff and representatives trained within one (1) year of start date of employment. Contractors trained prior to conducting earthwork for PTC.
<u>Stormwater Self-Audit Program</u>	Implement procedures and audit documentation within 6 months of the effective date of the Order. Implement a mobile application for recording audit information in the field. The mobile application will be ready to use by the start of the construction season of 2022. Begin self-audits at the start of the construction season of 2022, as specified no less than two months after the start of earth disturbance. PTC will audit all of its active construction sites during the 2022, 2023 and 2024 construction seasons.
<u>Stormwater Compliance Data Tracking</u>	Within 6 months of the effective date of the Order, with the elements listed in paragraph 4.b. Add elements in 4.c by the start of the construction season of 2022.
<u>Initial Update</u>	Seven (7) months within the effective date of the Order.
<u>Annual Updates</u>	February 1st of each year. Last report due 2025.
<u>Public Information Web Page</u>	Within 6 months of the effective date of the Order, reporting the elements listed in paragraph 5.b. Add elements listed in paragraph 5.c by the start of the construction season of 2022.

Agenda Item Request Form

(Form v1.0 2020)



Pennsylvania Turnpike Commission

PO Box 67676
Harrisburg PA 17106-7676
717.939.9551

To
The Pennsylvania Turnpike Commission

Agenda Request Status
Closed - Approved

APPROVED BY
PENNSYLVANIA TURNPIKE COMMISSION
Ann Marie Edwards
Assistant Secretary and Treasurer

Save

Print

Date
01/21/2021

Does this request involve Technology?

Form Completed?

Requested by Name (Last, First) *
SZEKERES, MARYANN

Requested For Name (Last, First) *
Graham, Gary

For Secretary Treasurer Use Only:

Agenda Item Number
F-2f

Requested by Email Address
mszekere@paturnpike.com

Requested for Emailaddress
ggraham@paturnpike.com

Commission Meeting Date
02/01/2021

Requesting Department *
Engineering

Commission Approval Date
02/01/2021

Type of Agenda Item *
Standard

Memo Type *
N/A

Memo Complete

Yes

No

Memo ID #

Subject: *
U.S. Environmental Protection Agency (EPA) Agreement of Consent

Strategic Plan Objective: *
5a-Deliver the Capital Plan and Annual Work Plan to maintain and improve assets consistent with the Long Range Plan.

Funding Source: *	Project/WBS Element#	Cost Center	GL Account
n/a			

Additional Funding Information

Additional Cost Center and GL Account Numbers

Recommendations:

On April 16, 2020 the United States Environmental Protection Agency, Region III ("EPA"), sent the Commission a letter related to alleged violations of the Federal Clean Water Act (33 U.S.C. §§1251 et seq.) found on various Commission construction projects.

Upon receipt, the Commission requested an opportunity to confer and discuss the alleged violations with EPA, which meeting occurred on June 23, 2020. The EPA did not agree to dismiss any of the alleged violations. Since that time, the Engineering Department has been in discussions with the EPA regarding the development of a Compliance Management Plan ("CMP"), which is required to resolve the alleged violations contained in the April 16, 2020 letter. No fine has been assessed.

The Engineering and Legal Departments have reviewed the proposed CMP as well as the proposed Agreement of Consent and believe it is in the Commission's best interest to accept EPA's proposed settlement. Accordingly, the Engineering Department requests that the Commission approve the proposed settlement by authorizing the appropriate Commission officials to execute the Agreement of Consent, as reviewed and approved by the Legal Department. Further, to authorize the Engineering Department to implement the CMP as required by the Agreement of Consent. The CMP will be funded through the Capital Plan.

Agenda Request Attachments

Approvers:

Approver 1 Name (Last, First)

Heigel, Bradley

Approver 1 Email

bjheigel@paturnpike.com

Approval 1 Date

01/22/2021

Save

Approver 2 Name (Last, First)

Approver 2 Email

Approval 2 Date

Approver 3 Name (Last, First)

Approver 3 Email

Approval 3 Date

Approver 4 Name (Last, First)

Approver 4 Email

Approval 4 Date

Approver 5 Name (Last, First)

Approver 5 Email

Approval 5 Date

Approver 6 Name (Last, First)

Approver 6 Email

Approval 6 Date

Approver 7 Name (Last, First)

Approver 7 Email

Approval 7 Date

CEO Concur

Mark P. Compton

CEO Approval Date

01/22/2021

Appendix B – Contractor Training Agenda
2020 PA Turnpike MS4 Contractor Training

MS4 and Construction Site Runoff Control

<https://vimeo.com/378853616/3b76384c1b>

- Compliance with NPDES Permits
- EPA Construction Site Audits
- Key Improvement Areas
- E&S Plan Changes
- Maintaining E&S Controls
- Construction Operations Manual

Good Housekeeping

<https://vimeo.com/378856551/c212f076c7>

- MS4 – Good Housekeeping falls within MCM6
- Prevent Migration of Pollutants
- PTC Expectations
- Staging and Laydown Areas
- Commission Specifications
- E&S Regulations
- Consequences of Poor Housekeeping
- Advance Planning of the Site for Good Housekeeping
- Management of Materials
- Staging area Types
- Waste Removal and Roadside Dumping
- Maintenance and Inspection

Illicit Discharge Detection and Elimination Awareness Training for Contractors

<https://vimeo.com/372658547/80f6d9947e>

- What is an illicit Discharge? Why is it important?
- How to identify an Illicit Discharge by:
 - Flow
 - Odor
 - Clarity / Turbidity
 - Color
 - Solids/Floatables
 - Vegetation
 - Stains/Deposits
- Examples of what is and is not an Illicit Discharge
- Farming Activities
- Reporting of potential Illicit Discharges

SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01 LAWS TO BE OBSERVED - At all times, observe and comply with the following, and post as required: all Federal, State, and local laws, ordinances, and regulations that have appropriate jurisdiction over the project and affect the conduct of the work or that apply to employees on the project; and all orders or decrees that have been or may be enacted by any legal bodies or tribunals having authority or jurisdiction over the work, material, employees, or contract. Protect and indemnify the Commission and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, including violations by Contractor employees.

107.02 PERMITS, LICENSES, AND TAX RESPONSIBILITY –

(a) Permits and Licenses. Purchase and submit copies of permits and licenses. At the job site, post notices necessary for the proper and lawful performance of the work according to such permits and licenses. Do not start work until signing and submitting all documentation required to become a transferee/co-permittee for all applicable permits required for the project.

(b) Tax Responsibility. Ascertain the possible existence, scope and coverage of any local subdivision tax, sometimes called an occupation tax, wage tax, income tax, franchise tax, or excise tax on the construction operations within the limit of the political subdivision imposing such tax. Also indemnify and save harmless the Commission and its agents from liability for the collection and payment of any taxes assessed and levied by the constituted authority, including upon Contractor agents, employees, and/or representatives in connection with the performance of work on the project.

(c) Vehicle Registration. Attention is directed to 75 P.S. 1302(a) and 1303(a), (b), which requires vehicles to be registered in Pennsylvania when used on a project which is being built under traffic or where the vehicles are operated on a public highway opened to traffic.

107.03 PATENTED DEVICES, MATERIAL, AND PROCESSES - If any design, device, material, or process covered by letters of patent or copyright is used, provide for use by suitable legal agreement with the patentee or owner. Indemnify and save harmless the Commission from any claims for infringement, by reason of the use of any patented design, device, material, process, or any trademark or copyright, and indemnify the Commission for any costs, expenses, and damages which it may be obliged to pay by reason of any infringement, at any time during the performance or after the completion of the work. These provisions also apply to the surety.

107.04 RESTORATION OF SURFACE OPENED BY PERMIT - Do not allow any opening to be made within the right of way unless a valid permit is presented authorizing the opening. For such an opening, made before the date upon which the work provided for in the contract is finally accepted, repair at the time and in the manner directed in writing by the Representative.

107.05 FEDERAL-AID PROVISIONS - If the Federal Government pays any portion of the project costs, observe the Federal laws pertaining to the project, as well as the rules and regulations made according to such laws. Work will be subject to the inspection of the appropriate Federal agency.

Such inspection will not make the Federal Government a party to the contract and will not interfere with the rights of either party to the contract.

107.06 SANITARY PROVISIONS - Incidental to contract items. Provide and maintain, in a neat and clean condition, sanitary facilities for the exclusive use of personnel on the project. Dispose of all wastes, both sewage and wastewater, in a manner approved by the DEP. As required, obtain permits from local municipalities to install temporary toilet facilities.

107.08 OCCUPATIONAL SAFETY AND HEALTH - Comply at all times with applicable Federal, State, and local laws and regulations, provisions, and policies governing safety and health, including the Federal Construction Safety Act (Public Law 91-54), 29 CFR Chapter XVII, Part 1926 Occupational Safety and Health Regulations for Construction, and the Occupation Safety and Health Act (Public Law 91-596), 29 CFR Chapter XVII, Part 1910 Occupational Safety and Health Standards for General Industry, and subsequent publications updating these regulations.

Take any other needed action or proceed as directed, to protect the life, health, and general occupational welfare of personnel employed on the project. Provide confined space training on the proper use of the testing equipment and all safety procedures to ensure a safe operation to Contractor personnel and Commission Representatives required to access the area for inspection purposes and provide all safety and testing equipment required by 29 CFR 1910.146, to both Commission Representatives and Contractor personnel to ensure the safety of all workers and inspectors during construction operations and inspection operations of any confined spaces. Also, provide proof of training, such as a course sign-in sheet or certificate of training. Provide appropriate rescue services, personnel, and equipment as per 29 CFR 1910.146(k).

Provide appropriate exposure controls, personnel, and equipment as per 29 CFR 1926.1153 for respirable crystalline silica (RCS). For operations which require Contractor personnel for RCS mitigation to employ respiratory protection or perform work within an enclosed cab, direct inspection by the Representative will be withheld from the operation. Perform the work in such operations to allow for inspections at hold points, as determined by the Representative.

If, in the Representative's opinion, employees are exposed to extraordinary conditions which could or do constitute a hazard, modify such equipment, devices, and job procedures to insure protection against the hazard or to reduce the risk to the employees engaged in project work.

Prior to or at the preconstruction conference, submit a written Project Safety Program. Include at a minimum, the following procedures and information:

- A procedure to document lost time.
- Detailed confined space mitigation procedures and safety procedures as required by 29 CFR 1910.146 including procedures for conducting air monitor calibrations as required by the equipment manufacturer's instructions and a written Confined Space Entry Permit system.
- Provide air monitoring equipment calibration documentation, for spaces that have actual or potential atmospheric hazards.
- Written verification of rescue services availability and qualifications for permit-required confined spaces.
- Written verification of annual training for internal/contractor employed rescue team if these services are provided by the contractor for permit-required confined spaces. Provide a list of employees that attended the training and the dates they attended.
- A written exposure control plan for RCS, as per 29 CFR 1926.1153(g) to also include:
 - A description of the tasks on the project that involve exposure to RCS.
 - A description of the engineering controls, work practices, and respiratory protection required to limit worker exposure to RCS for each task.
 - A description of the housekeeping measures used to limit worker exposure to RCS.
 - A description of the procedures used to restrict access to work areas when necessary, to minimize the number of workers exposed to RCS and their level of exposure.
- Provide a procedure for assuring compliance by subcontractors and suppliers working within the project's limit of work.

All costs associated with the preparation and implementation and updates of Project Safety Program and complying with the requirements are incidental.

Give special emphasis to providing safeguards for any specially or unusually hazardous operations and health hazards. Include initial indoctrination and continuing instructions for all employees to enable them to perform work in a safe manner. Include in the instruction project safety practices, manner of reporting accidents, availability of medical facilities, and explanation of individual responsibility for accident-free operations.

Require all persons to wear high-visibility safety apparel meeting the Performance Class 2 or 3 requirements of the current ANSI/ISEA 107 publication when working within the Commission's right-of-way or while in work zones adjacent to traffic.

All areas of a project will be hard hat areas. Require all persons within the project limits to wear protective headgear, including persons in cement concrete and asphalt concrete plants operated exclusively for a project, even though the plant(s) may be remotely located.

Contractor must address all vehicles ingressing & egressing work zones in their site-specific safety plan. In addition, require all operators of motorized vehicles and equipment within the project take proper safety precautions before moving. At a minimum, the following precautions shall be performed:

- Operators shall complete a 360 walk-around prior to moving any motorized equipment or vehicle unless a spotter is specifically assigned to that equipment to ensure the operator is aware of obstructions.
- All persons shall sound the horn prior to backing up any vehicle or equipment that is not equipped with a backup alarm.
- Require pull-through parking or back-in parking throughout the work zone. Pull-in parking is only to be utilized if constrained by the site conditions.
- Prioritize the use of designated parking areas over parking within the work zone.

Where practical, ensure pedestrians face approaching vehicles and equipment while walking within the work zone and along access roads.

For multi-season projects with a contract amount \geq \$5,000,000, provide and maintain one scoreboard safety sign 4 feet wide by 3 feet high to identify the number of days worked on the project without a lost time accident. Imprint on the sign, the name of the Contractor and an appropriate safety message. Prominently display the following on the sign in 4-inch letters:

- a. Contractor's name and address.
- b. "(***) Days Worked Since Last Lost-Time Injury"

NOTE: "(***)" – indicates space for three removable numbers. Number displayed to include subcontractors.

Place the sign in a prominent location at the project site. Update the sign at least bi-weekly.

Immediately take corrective action, upon notification by the Representative of any noncompliance with the provisions of this section. Upon receipt of this notice, failure or refusal to promptly comply will cause a written order to be issued, stopping all or part of the work until the corrective action has been taken. Claim for an extension of time, costs, or damages because of the time lost due to any such stop orders will not be considered.

107.09 RAILWAY-HIGHWAY PROVISIONS - Conform to regulations stipulated in the Pennsylvania Public Utility Commission's order when work is indicated to be performed within, or adjacent to, the right of way or trackage belonging to, or upon which a common carrier operates. Observe strict adherence to all requirements pertaining to the work, safety, and movement of trains; to public and personal liability insurance; and to any other related matters.

If it is necessary to use crossings other than those indicated, make arrangements for the use of the crossings.

107.10 BRIDGES OVER NAVIGABLE WATERS - Conduct work on navigable waters according to the requirements of permits issued by the U.S. Army Corps of Engineers or U.S. Coast Guard, whichever is applicable.

107.12 CARE OF PUBLIC AND PRIVATE PROPERTY - Do not damage overhead and underground facilities and structures or property within or adjacent to the project. Use special care in the performance of the work in order to avoid interference or damage to operating utilities or plants; however, where there is any possibility of interference or damage, make satisfactory arrangements with responsible corporate officers of the utilities or plant, covering the necessary precautions to be used during the performance of the work. Make these arrangements, subject to review, before work is started.

Protect all land monuments and property markers which are to be affected by the construction until they have been correctly referenced by the Commission. Beyond the construction area, reset monuments and markers which are disturbed by contract operations, either during the construction of the project or otherwise, when and as directed.

Promptly make restitution for or satisfactorily repair or restore damaged public or private property except in instances in which underground facilities are damaged because of a failure on the part of the owner of such facilities to accurately locate or mark the facilities.

Protect trees to be left standing. If these existing trees to be left standing are damaged, satisfactorily repair or replace them, at no expense to the Commission, or compensate the Commission for the damage by an equitable monetary amount as determined by, or agreed with, the Commission.

107.13 PUBLIC USE LANDS - In performing work within or adjacent to public use lands, namely National or State Forests, State Gamelands, Wildlife or Waterfowl Refuges, recreation areas, parklands, and historic sites, comply with all applicable rules and regulations of the authority having jurisdiction.

Cooperate with the National or State Forest Officer or Supervisor and authorized subordinates in observing sanitary laws and in exercising every reasonable precaution to prevent and suppress forest fires and vandalism.

Do everything reasonable to prevent and suppress forest fires. Notify a forest supervisor, as soon as possible, of the location and extent of any fire observed. Before starting indicated work affecting stream channels, verify that the Commission has the approval of the DEP and/or the DCNR.

107.14 INDEMNITY - The Contractor will assume the entire responsibility and liability for any damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of the Contractor or otherwise, and to all property caused by, resulting from, arising out of, or occurring in connection with the execution of the work of the Contractor, and if any claims for such damage or injury, (including death resulting therefrom) be made or asserted, whether or not such claims are based upon the alleged active or passive negligence or participation in the wrong of the Commission, its Commissioners, and/or employees (herein collectively the "Commission") or upon any alleged breach of any statutory duty or obligation on the part of the Commission; the Contractor agrees to indemnify and hold harmless the Commission, from and against any and all such claims, loss, costs, expense, liability, damage or injury, including legal fees, interest, penalties, and disbursements that the Commission may directly or indirectly sustain, suffer or incur as a result thereof and the Contractor will assume, on behalf of the Commission, the defense of any action at law or in equity which may be brought against the Commission arising by reason of such claims and will further pay on behalf of the Commission upon demand, the amount of any judgment that may be entered against the Commission, individually, jointly, or severally in any such action.

In the event that any such claim, loss, cost, expense, liability, damage or injury arises or is made, asserted, or threatened against the Commission, its Commissioners, officers, or employees, the Commission only will have the right to withhold from any payments due or to become due to the Contractor an amount sufficient in the Commission's judgment to protect and indemnify it, its Commissioners, officers, and employees from and against any and all such claims, loss, cost, expense, liability, damage or injury, including legal fees and disbursements, or the Commission only in its discretion, may require the Contractor to furnish

a surety bond satisfactory to the Commission guaranteeing such protection, which bond will be furnished by the Contractor within five (5) days after written demand has been made therefor. In the event performance of the terms of this paragraph by the Contractor requires the retention of legal counsel on behalf of the Commission, the selection of such legal counsel by the Contractor will be subject to the approval of the Commission, such approval not to be unreasonably withheld by the Commission. In the event the Commission is required to take legal action to enforce the terms of this Paragraph, Contractor will be responsible for the Commission's cost of collection including attorney's fees.

107.15 OPENING SECTIONS OF PROJECT TO TRAFFIC - The Representative will have the authority to order, in writing, any substantially completed section of the project opened to traffic when seasonal, local, or other conditions relating to the project or public convenience justify such action; however, such opening will not be held to be an acceptance or a waiver of any provisions of the specifications or the contract.

Furnish, place, and maintain necessary traffic control devices, as directed, at the Commission's expense, as specified in Section 110.03. Conduct the remainder of construction operations so as to cause the least obstruction to traffic.

Any section of the project opened before project completion will be subject to the applicable requirements specified in Section 110.08(a).

After opening a section of the project to traffic, any damage to satisfactorily completed work items within the section which occurs due to vehicles, other than construction vehicles and equipment engaged on the project, and not to defective materials and/or workmanship, and which occurs despite satisfactory precaution taken, will be replaced or repaired, as directed, at the Commission's expense, as specified in Section 110.03.

107.16 CONTRACTOR'S RESPONSIBILITY FOR WORK –

(a) Responsibility for Performed Work. The terms and conditions of the Contract will be in effect until the work is completed and accepted by the Commission, as evidenced by the dated completion certificate issued by the Commission. However, the Contractor will be relieved of responsibility for further physical work and maintenance as specified in Section 110.08(a). The issuance of the completion certificate does not relieve the Contractor and Surety from continuing liability for latent defects, as specified in Section 107.16(b).

(b) Responsibility for Latent Defects. The Representative will determine if a defect is a latent defect. The Contractor and the Surety continue to be liable for all latent defects; however, the Surety is liable only until the performance bond is released. Satisfactorily repair or correct latent defects at no expense to the Commission. If defects cannot be satisfactorily repaired or corrected, provide reimbursement for any expenses or damages incurred by the Commission because of latent defects. Failure to satisfactorily correct latent defects, or to reimburse the Commission for expenses or damages incurred as a result of latent defects, will be considered sufficient cause to suspend or remove prequalification, according to 67 PA Code Chapter 457, regulations governing prequalification of prospective bidders, provided that any adjudication regarding such latent defects is final.

(c) Responsibility During Temporary Suspension of Work. Should the work be temporarily suspended, wholly or in part, according to the provisions specified in Section 105.01(b), written notification will be given of the suspension and the reason(s) for the suspension.

If the work is temporarily suspended, wholly or in part, due to the fault of the Contractor, the Required Completion Date and any specified Milestone Date(s) will not be changed, unless otherwise directed by the Chief Engineer.

After a whole or partial suspension, upon receipt of written notice from the Representative, actively resume work according to the detailed schedule of operations.

(d) Specified Suspension of Work. The Commission reserves the right to suspend work, wholly or in part, and on a temporary basis, to accommodate the customers, traffic requirements and maintenance operations. The extent of such specified suspension of work will be included within the Special Provisions for the project. Responsibility for maintenance of the roadway and its repair during such periods of specified suspension of work will be the responsibility of the Commission.

The Contractor is not responsible for winter maintenance activities which include snow removal and the application of deicing chemicals or anti-skid materials, during such periods of specified suspension of work.

107.17 CONTRACTOR'S RESPONSIBILITY FOR PUBLIC OR PRIVATE FACILITIES AND STRUCTURES - Cooperate with others in the performance of corrective project work, as specified in Section 105.06.

The Commission will cooperate in the issue of notices and will participate in all essential field conferences relating to the facilities and structures.

107.18 FURNISHING OF RIGHT OF WAY - The Commission will be responsible for securing all necessary rights of way in advance of construction. Any exceptions will be indicated in the proposal and contract.

107.19 PERSONAL LIABILITY OF PUBLIC OFFICIALS - In carrying out any of the provisions of these specifications or in exercising any power or authority granted to them by or within the scope of the contract, no liability may be placed upon the Commissioners, Chief Executive Officer, Engineer, or their authorized representatives, either personally or as officials of the Commission. In such matters, they act solely as Commission agents and representatives.

107.20 NO WAIVER OF LEGAL RIGHTS - The Commission, the Chief Executive Officer, the Engineer, or the Representative will not be prevented by an erroneous

- measurement,
- computation,
- estimate, or
- certificate

made or given by them or any agent or employee of the Commission, under any provision or provisions of the contract at any time, either before or after the completion and acceptance of, and payment for the roadway, from showing at any time that any

- measurement,
- computation,
- estimate, or
- certificate

is untrue or incorrectly made in any particular or that the work or material or any part does not conform to the specifications and contract.

The Commission will have the right to reject the whole or any part of the work or material, should any

- measurement,
- computation,
- estimate,
- certificate, or
- payment

be discovered or be known to be inconsistent with the contract terms or otherwise improperly given. The Commission will not be prevented, notwithstanding any

- measurement,
- computation,
- estimate,
- certificate, or
- payment

from demanding and recovering from the Contractor or surety, such damages as it may sustain by the failure to comply with the terms of the specifications and contract or on account of any overpayment(s) made on any estimate or certificate.

Neither the payment on any estimate or certificate signed by the Commission nor any extension or remission of contract time nor any possession taken by the Commission or its employees, will operate as a waiver of any portion of the Contractor of any power herein reserved by the Commission or any right to damages herein provided, nor will any waiver of any breach of contract held to be a waiver of other or subsequent breach.

The terms of this contract will not be waived or modified by any verbal communication between the Contractor and Commission personnel.

107.21 WORKERS' COMPENSATION INSURANCE – Section 107.31.

107.22 MINIMUM WAGE SPECIFICATIONS AND RATES –

(a) Requirements. According to the provisions of the Pennsylvania Prevailing Wage Act 43 P.S. 165-1, and the implementing Regulations of the Pennsylvania Department of Labor and Industry, comply with the prevailing minimum wage predetermination requirements, as specified in the proposal, specifications, and contract.

(b) Responsibility for Payment of Wages. Accept responsibility for all wages paid or due to any employees engaged upon the project under contract, as mandated by the Pennsylvania Prevailing Wage Act, various applicable Federal acts, and the contract. Do not attempt to pass such responsibility elsewhere. Do not require employees to refund, directly or indirectly, any part of such wage(s). Where

classification, reclassification, or additional classifications of workmen are made according to the Pennsylvania Prevailing Wage Act and its regulations, make no claim against the Commission for additional compensation for such classification, reclassification, or additional classification.

If after a contract has been awarded, it is decided, because of unforeseen construction development, to list an additional classification and wage rate, the Commission, with or without application by the Contractor, will make written request for a wage determination by the Secretary of Labor and Industry.

No person may be employed on the project under contract, except according to the classification set forth in the decision of the Secretary of Labor and Industry.

(c) Certification and Payment of Rate of Wage. According to the provisions of the Pennsylvania Prevailing Wage Act and various applicable Federal acts, including their implementing regulations, file with the Commission a weekly statement and a final statement at the conclusion of project work under contract, certifying that all employees have been paid wages in conformity with the provisions of the contract, as prescribed by the regulations of the Pennsylvania Department of Labor and Industry, implementing the Pennsylvania Prevailing Wage Act. If any wages remain unpaid, list on the statement the amount of wages due to each employee. Certify that, directly or indirectly, no refunds are received from any employee of any such minimum wage(s), other than deductions authorized by the Pennsylvania Wage Payment and Collection Law, 43 P.S. 260.1. Use forms furnished by the Commission and submit the forms to the Representative within 14 calendar days after the regular payment date of the payroll period. Payment of the current and semifinal estimates and final settlement will be withheld if such certification is not submitted, using the proper form, within the prescribed time limit.

(d) Posting. Post a notice(s) in the manner and form prescribed by the current regulations of the State Department of Labor and Industry. This notice is to be clearly legible and to be placed in a prominent and easily accessible place at the project site under contract, as well as at places where employees are paid their wages.

(e) Records and Inspection. Keep accurate records of employment and wage payments, including all the information required by the regulations of the State Department of Labor and Industry implementing the State Prevailing Wage Act, as amended. Keep time cards of employees, as required by the cited regulations and act. In addition, keep the original signed indentures for each apprentice and the approvals of the Pennsylvania Apprenticeship and Training Council. Preserve the records for 2 years from the date of payment and keep open at all reasonable hours, for inspection by the Commission and by the State Secretary of Labor and Industry. Make these records easily accessible within the State within a period of 7 days from the date on which the State Secretary of Labor and Industry requests in writing that such records be made available. For the purpose of such inspection, furnish the authorized inspectors of the Commission every assistance in determining the wages paid in compliance with the regulations.

(f) Penalties. Failure to comply with the Pennsylvania Prevailing Wage Act and its regulations will result in withholding money due or to become due on the project contract. It will also result in termination of the right to proceed with the project work under contract and/or other penalties prescribed by law.

(g) Federal-Aid Projects. All Federal-Aid Projects are subject to the implementing rules and regulations of the various Federal departments. Accordingly, the contract provisions and the penalties prescribed for their violations, both of which are required to be incorporated verbatim in all contracts for such Federal-Aid Projects, will be set forth in the proposal and the contract applicable to each project.

107.23 HAULING RESTRICTIONS –

(a) General. Accept responsibility for all hauling done on the project and on adjacent highways, in connection with the contract. Hauling restrictions on highways will be according to the applicable sections of the Pennsylvania Vehicle Code, Act of 1976, No. 81.

Before submission of the bid, if truck delivery of long bridge members (in excess of 70 feet) is contemplated, obtain, in writing, a determination if a hauling permit can be issued for the routing from the proposed source(s) of supply to the project.

Without written permission, do not move and/or operate heavy-duty construction grading and hauling equipment over existing or new pavements, subbase, base and surface courses, and structures which will remain in service.

No special permits will be required for the transfer of oversize or overweight equipment or vehicles from one work area to another work area within the project limits. However, correct any damage caused by the transfer of equipment or vehicles.

If, in special cases, further restrictions are necessary, such restrictions will be indicated and/or specified in the proposal.

Hauling restrictions on the Turnpike system will be governed also by appropriate Commission rules and regulations.

(b) Weight Limits and Weighing.

1. Do not operate on public highways any vehicles which are in excess of the registered, gross, and/or axle weight limits established in Chapter 49 of the Vehicle Code, 75 PA. C.S. Chapter 49, or as posted by the Department.

2. Submit to weighing by Department weigh teams when requested. If, as a result of such a weighing, it is determined that a vehicle owned or leased by the Contractor or any Subcontractor has been operated on public highways carrying a weight in excess of the above registered, gross or axle weight limits, the sum of \$50 for each 500 pounds or part thereof of such excess weight will be deducted as liquidated damages from money due or to become due. These liquidated damages are attributable to inherent damage to the highway which is not readily ascertainable and do not relieve the Contractor of responsibility to pay ascertainable damage as may be required in other sections of these Specifications.

3. When a weight slip shows that a vehicle delivering material to the project exceeds limits specified in Section 107.23(b), the Contractor will be assessed liquidated damages as specified in Section 107.23(b)2. Weighing by a Department Weigh Team will not be required.

107.24 ACCESSIBILITY OF FIRE HYDRANTS - Make necessary arrangements with the local authorities to provide fire protection at all times. Keep the fire hydrants adjacent to the work readily accessible to fire apparatus and do not place material or other obstructions within 15 feet of any hydrant.

107.25 DISCRIMINATION ON ACCOUNT OF RACE, COLOR, RELIGIOUS CREED, ANCESTRY, SEX, AGE, OR NATIONAL ORIGIN PROHIBITED IN CONNECTION WITH EMPLOYMENT –

(a) General. Do not discriminate against any individual, who is qualified and available to perform the work to which the employment relates, by reason of race, color, religious creed, ancestry, sex, age, or national origin.

(b) Penalties. Failure to comply with the above provisions, prescribed in greater detail in 15 P.S. 7306, and modified by Pennsylvania Human Relations Act 43 P.S. 951, may result in the deduction of money due or to become due for each violation. A second or subsequent violation will result in cancellation or termination of the contract upon which the violation occurred, and forfeiture of all money due or to become due, and other penalties prescribed by law.

(c) Federal-Aid Projects. In addition to the above, the requirements of Section 107.22(g) also apply.

107.26 SELECTION OF LABORERS AND MECHANICS - This Section does not apply to projects which are partially or totally financed with Federal funds.

(a) Veteran Preference. In employment on public works, provisions of 51 P.S. 492.1 require a preferential rating, similar to that given to State employees, to any soldier making application for employment and on intended discharge for reduction in force. The word "soldier," as used in the cited act, means a person who served in the armed forces of the United States or in any official women's organization, during any war or armed conflict in which the United States was engaged, and who has an honorable discharge from such service.

107.27 WATERWAY REGULATIONS AND WATER POLLUTION CONTROL –

(a) Waterway Regulations. Conduct indicated work in waterways, flood plains or their hydrologically connected wetlands according to the requirements of permits or approvals issued by the U.S. Army Corps of Engineers, the U.S. Coast Guard, the DEP, the DCNR and/or the Pennsylvania Fish and Boat Commission, whichever is applicable. Do not conduct work, including borrowing or wasting material other than indicated, in waterways, floodplains or their hydrologically connected wetlands before obtaining the required permits or approvals.

(b) Water Pollution Control. Comply with all applicable State and Federal laws and regulations preventing the pollution of surface water and ground water resources.

(c) Act 247. According to Act 247, enacted by the General Assembly of the Commonwealth of Pennsylvania and approved by the Governor on October 26, 1972, ascertain the current statutes, rules, and regulations concerning anti-pollution measures. Include in the bid price all costs of complying with the terms of the statutes, rules, and regulations. No separate or additional payment will be made for such compliance. In the event that the statutes, rules, and regulations are amended, or if new statutes, rules, or regulations become effective, perform all additional and/or extra work deemed necessary, as ordered in writing and directed by the Representative, as specified in Section 110.03.

Determine what local ordinances, if any, will affect the project work. Check for any county, city, borough, or township rules or regulations applicable to the area in which the Project is being constructed, and, in addition, for any rules or regulations of other organizations having jurisdiction, such as chambers-of-commerce, planning commissions, industries, or utility companies who have jurisdiction over lands which the project occupies. Include any costs of compliance with local controls in the prices bid, even though documents of such local controlling agencies are not listed. No separate or additional payments will be made for complying with existing, amended or new local ordinances, directives, or controls.

107.28 EROSION AND SEDIMENT POLLUTION CONTROL PLANS AND PERMITS

(a) Upon receiving Notice to Proceed, the Contractor shall perform the Municipal Separate Storm Sewer System (MS4) training available on the Commission's Electronic Bidding System (EBS). The confirmation of completion email shall be emailed to the PTC Representative as proof of completing the training prior mobilizing to the project site and before any earth disturbance activities commence. This training must be completed at least once per year throughout the life of the contract. Email the proof of completion to the Representative prior to March 31st in each subsequent year.

(b) If the project has a Chapter 102 NPDES Permit, in addition to the completion of the MS4 Training, the Contractor shall also complete the Co-Permittee Acknowledgement Form, prior to mobilizing and before any earth disturbance activities commence. Contractor will become a co-permittee for the NPDES permit throughout the entire project.

(c) Install and maintain erosion and sediment (E&S) pollution control devices as indicated on approved plan or submit an alternate plan for accomplishing equal or better temporary and permanent erosion and water pollution control. If an alternate plan is submitted, do not start work until the plan is approved by the County Conservation District and the Commission. If a National Pollutant Discharge Elimination System Permit (NPDES) is involved, do not start work until the plan is approved by the DEP and/or the authorized County Conservation District and the Commission.

Immediately take corrective action, at no expense to the Commission, upon notification by the Representative of any noncompliance with the provisions of this section. Failure or refusal to promptly comply with any such notice upon receipt may, at the Commission's sole discretion, result in the withholding of payment of estimates for work completed until the requirements of the E&S plan are met or result in the issuance of a written order stopping all or part of the work until the corrective action has been taken and the requirements of the E&S plan are met. No claims for any extension of time, costs, or damages arising from, related to, or based upon any such notices of noncompliance or stop orders will be granted, paid, or considered.

If corrective action or noncompliance with the provisions of this section are determined to be a result of design errors or omissions, or a precipitation event exceeding the design storm criteria, any resulting claims for extensions of time, costs or damages arising from, related to, based upon any such notices of noncompliance, or stop work orders, will be resolved in accordance with Section 110.03 with regard to payment and or 108.06 with regard to an extension of time.

Utilize Commission, DEP, or other authorized agency's form(s) included in the contract or project permits unless directed otherwise by the Representative, DEP, the County Conservation District or other authorized regulatory agency.

For the purpose of determining compliance with the provisions of this section, "substantial completion" will be considered to have been attained when all the following project milestones have been reached:

- Either a semi-final or final inspection has been performed, physical work is complete,
- Earth disturbance activity has been permanently stabilized and sufficient vegetative growth has been achieved to meet permit conditions (uniform 70% perennial vegetative cover).
- Installation of PCSM Best Management Practices (BMPs) has occurred if applicable. Upon completion of PCSM conversions and facilities, the County Conservation District must approve the removal of all remaining E&S BMPs.

(d) When the Commission and the County Conservation District agree that substantial completion has been achieved, the Representative shall submit a Notice of Termination Form to terminate the NPDES permit for the project. At the discretion of the Commission, the Representative may complete and submit the Co-Permittee Liability Release Form when the contractor has met all contractual obligations, including the contractor's responsibilities pertaining to the NPDES permit.

107.29 THIRD-PARTY LIABILITY - Contracts covered by these specifications are not to be construed for the benefit of any person or political subdivision not a party to this contract, nor will this contract be construed to authorize any person or political subdivision not a party to this contract to maintain a lawsuit on or under this contract.

107.30 SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES - This Section only applies to projects which are partially or totally financed with Federal funds.

(a) General.

1. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Executive Order 11246 and Executive Order 11375, are set forth in Required Contract Provisions (Form FHWA-1273) and these requirements;

imposed pursuant to 23 U.S.C. 140, as established by Section 22 of the Federal-Aid Highway Act of 1968. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-43 and the provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. The requirements set forth herein constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

2. Work with the Commission and the Federal Government in carrying out equal employment opportunity obligations and in their review of contract activities.

3. Comply with and have subcontractors (not including material suppliers) comply with the following minimum specific requirement activities of equal employment opportunity. The Equal Employment Opportunity Requirements of Executive Order 11246, as set forth in 23 CFR 633, are applicable to material suppliers as well as contractors and subcontractors. Include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

(b) Equal Employment Opportunity Policy. Accept as operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through positive continuing programs:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action includes: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.

(c) Equal Employment Opportunity Officer. Designate and make known to the Commission contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who has the responsibility for and is capable of effectively administering and promoting an active company program of equal employment opportunity and who has been assigned adequate authority and responsibility to do so.

(d) Dissemination of Policy.

1. Make all company staff members related to the project who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, fully cognizant of, and have them implement, the company's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement is met, take the following actions as a minimum:

1.a Conduct periodic meetings of supervisory and personnel office employees before the start of work and then not less often than once every 6 months, at which time the contract equal employment opportunity policy and its implementation will be reviewed and explained. Have the meetings conducted by the EEO Officer or another knowledgeable company official.

1.b Give all new company supervisory or personnel office employees a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the company's equal employment opportunity obligations within 30 days following their reporting for duty on the project.

1.c Instruct all company personnel who are engaged in direct recruitment for the project by

the EEO Officer or appropriate company official in the company procedures for locating and hiring minority group employees.

2. In order to make the equal employment opportunity policy known to all company employees, prospective employees, and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., take the following actions:

2.a Place notices and posters setting forth the equal employment opportunity policy in areas readily accessible to company employees, applicants for employment, and potential employees.

2.b Bring the equal employment opportunity policy and the procedures to implement such policy to the attention of company employees by means of meetings, employee handbooks, or other appropriate means.

(e) Recruitment.

1. When advertising for employees, include in all advertisements for employees the notation: "An Equal Opportunity Employer." Publish all such advertisements in newspapers or other publications having a large circulation among minority groups in areas from which the project work force would normally be derived.

2. Unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, through the company EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to for company employment consideration.

In the event a valid bargaining agreement exists providing for exclusive hiring hall referrals, observe the provisions of that agreement to the extent that the system permits compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Executive Order 11246, as amended.)

3. Encourage present company employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, discuss information and procedures with regard to referring minority group applicants with employees.

(f) Personnel Actions. Establish and administer wages, working conditions, and employee benefits and take personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, without regard to race, color, religion, sex, or national origin. Follow the following procedures:

1. Conduct periodic inspections of the project site to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

2. Periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

3. Periodically review selected personnel actions in depth to determine where there is evidence of discrimination. Where evidence is found, promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, take corrective action to include all affected persons.

4. Promptly investigate all complaints of alleged discrimination made to the company in connection with obligations under this contract, attempt to resolve such complaints, and take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, include in such corrective action such other persons. Upon completion of each investigation, inform every complainant of all of his/her avenues of appeal.

(g) Training and Promotion.

1. Assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

2. Consistent with company work force requirements and as permissible under Federal and State regulations, make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, provide 25% of apprentices or trainees in each occupation in their first year of apprenticeship or training. In the event the Special Provision for Trainees is provided under this contract, this subparagraph will be superseded.

3. Advise employees and applicants for employment of available training programs and entrance requirements for each.

4. Periodically review the training and promotion potential of minority group and women employees and encourage eligible employees to apply for such training and promotion.

(h) Unions. If reliance is made in whole or in part upon unions as a source of employees, use maximum effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions either directly or through a contractor's association acting as agent will include the procedures set forth below:

1. Use maximum efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

2. Use maximum efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union is contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

3. Obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information, so certify to the Commission and set forth what efforts have been made to obtain such information.

4. In the event the union is unable to provide a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it is no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents meeting obligations pursuant to Executive Order 11246, as amended, and these requirements, immediately notify the Commission.

(i) Subcontracting.

1. Use maximum efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contact Commission personnel to obtain lists of minority-owned construction firms.

2. Use maximum efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

(j) Records and Reports.

1. Keep such records as are necessary to determine compliance with the company's equal employment opportunity obligations. Design the records kept to indicate:

1.a The number of minority and non-minority group members and women employed in each work classification on the project.

1.b The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).

1.c The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.

1.d The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

2. Retain all such records for a period of 3 years following completion of the contract work and make them available at reasonable times and places for inspection by authorized representatives of the Commission, the Department and the FHWA.

3. Submit to the Commission a report each month after construction begins for the duration of the project, indicating the work hours, number of minority, women and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form EO-400, and according to the instructions included thereon. Form PR-1391 is to be submitted annually for the month of July, reflecting personnel figures for the project work force, for the last payroll period preceding the 31st of the month. If on-the-job training is being required by Special Provision for trainees, furnish Form EO-365 for each trainee employed, on a monthly basis, and Form FHWA-1409 semi-annually.

107.31 CONTRACTOR'S INSURANCE - The Contractor shall not commence work under this contract until Contractor has obtained all insurance required under this section and such insurance has been approved by the Commission. The Contractor shall maintain, at its own expense, throughout the period of the contract, and any extensions thereof, the following minimum insurance coverages of the types and in the amounts described below.

(a) Workers Compensation Insurance. Workers compensation insurance as required by the Workers Compensation or Occupational Disease Laws of the Commonwealth of Pennsylvania or any other state, if applicable, including, when required, the United States Longshoremen's and Harbor Workers Act, the Federal Employers Liability Act and the Jones Act, covering all employees who perform any of the obligations of the Contractor under the contract. If an employer or employee is not subject to workers compensation laws of the governing State, then the insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer

or employee were subject to the workers compensation laws.

(b) Employer's Liability Insurance. Employer's liability insurance with limits of not less than \$500,000 bodily injury each accident, \$500,000 bodily injury by disease, and \$500,000 bodily injury by disease each employee.

(c) Commercial General Liability Insurance. Commercial general liability insurance (CGL) with limits not less than \$1,000,000 each occurrence. If the CGL contains a general aggregate limit, it shall apply separately to each site or location. CGL insurance shall be written on the Insurance Services Office Inc. (ISO) occurrence form CG 00 01 12 07 (or substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under contract (including the tort liability of another assumed in a business contract but not including breach of contract damages). There shall be no endorsement or modification of the CGL coverage limiting the scope of coverage for liability arising from explosion, collapse, and underground property damage.

(d) Business Auto Liability Insurance. Business auto liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability, including bodily injury or death and property damage, arising out of any auto (including owned, hired, and non-owned autos). Business auto coverage shall be written on the current ISO form or a substitute form providing equivalent liability coverage.

(e) Commercial Umbrella Liability Insurance. Commercial umbrella liability insurance with a limit of not less than \$ 6,000,000 per occurrence.

Required limit of \$7 million may be satisfied by a combination of primary and umbrella limits.

(f) Additional Insured Status. The Pennsylvania Turnpike Commission, its directors, commissioners, officers, agents and employees, the Design Engineer, the Commonwealth of Pennsylvania, Pennsylvania Department of Transportation and the Commission's General Consulting Engineer shall be included as Additional Insureds under the insurance policies maintained pursuant to 107.31. The general liability additional insured coverage must be provided in the form of endorsements to the Contractor's policy using both ISO CG 2010 (07/04) and ISO CG 2037 (07/04) or their equivalent. The endorsement forms must be specified on the certificate of insurance and, if other than the ISO forms noted above, copies of the endorsement must be provided and approved by the Pennsylvania Turnpike Commission. Such insurance policies shall also include cross-liability coverage as provided under standard ISO forms' separation of insured clause. The above insurance shall apply as primary insurance with the respect to any other insurance or self-insurance programs afforded to the Commission. The named insured (Contractor) shall be solely responsible for reimbursing any deductible amount to the insurer. The Commission reserves the right to request disclosure any self-insured retentions (SIR's) in excess of \$25,000 per occurrence. Such SIR's may be subject to approval by the Commission.

(g) Waiver of Subrogation. Contractor waives all rights of subrogation against the Commission, its directors, commissioners, officers, and employees for recovery of damages to the extent these damages are covered by any of the Contractor's insurance policies maintained above.

(h) Insurance Companies and Underwriters. The insurance coverages shall be placed with insurers and underwriters that have an A.M. Best's rating of no less than A- with a financial size category of IX, or better.

All insurance policies must be written by an insurance company licensed and authorized to do business in Pennsylvania. Insurance policies and certificates must signed by a resident Pennsylvania Agent of the issuing Company. Policies and certificates issued by an eligible Surplus Lines Insurer must be signed by a party duly authorized to bind, on behalf of the eligible Surplus Lines Insurer. All

insurance policies shall be endorsed to provide for thirty (30) days written notice to the Commission prior to cancellation or material change of any insurance referred to therein, and shall be provided to the Commission upon request. The preceding is subject to existing Commonwealth of Pennsylvania statutory cancellation provisions relating to non-payment of premium and misrepresentation by the insured.

(i) Evidence of Insurance. Prior to commencing work and maintained throughout the Contract term, Contractor shall furnish the Commission with a certificate(s) of insurance, acceptable to the Commission, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements herein.

Failure of the Commission to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of the Commission to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligations to maintain such insurance. The Commission shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with the above insurance requirements is received and approved by the Commission. Contractor shall provide certified copies of all insurance policies required above within thirty (30) days of written request for said copies; Contractor may omit certain confidential or proprietary information from said insurance policies prior to providing such to the Commission.

(j) No Representation of Coverage Adequacy. By requiring insurance herein, the Commission does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the Commission in this contract.

(k) Payment. Incidental to the project.

107.32 USE OF UNITED STATES-FLAG VESSELS – For Federal-Aid contracts, the Contractor is referred to the requirements of Public Law 664 as further specified in Part 381, Title 46, Code of Federal Regulations.

(a) The Contractor agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50% of the gross tonnage involved (computed separately for dry bulk carriers, dry cargo liners, and tankers), whenever shipping any equipment, material, or commodities for this contract, to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, furnish a legible copy of a rated, "on-board" commercial ocean bill-of-lading. Furnish the bill-of-lading in English, for each shipment of cargo described above, to both the Commission (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590.

3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to the contract.

107.33 NON-DISCRIMINATION CLAUSE – This section does not apply to projects which are partially or totally financed with federal funds.

During the term of this Contract, Contractor agrees as follows:

(a) Not to discriminate against any employee, applicant for employment, independent Contractor or

any other person in the hiring of any employee who is qualified and available to perform the work to which the performance relates because of race, color, religious creed, ancestry, union membership, political affiliation, age, sex, sexual orientation, national origin or non-job-related handicap or disability. Not to discriminate against or intimidate any employee hired for the performance of work under the Contract on the basis of race, color, religious creed, ancestry, union membership, political affiliation, age, sex, sexual orientation, national origin or non-job-related handicap or disability. Take affirmative action to ensure that applicants, employees or agents are equally treated during employment without regard to their race, color, religious creed, ancestry, union membership, political affiliation, age, sex, sexual orientation, national origin or non-job-related handicap or disability. Such affirmative action includes, but is not limited to, the following: Employment, promotions, demotions or transfers; recruitment and recruitment advertising; layoff or termination; pay rates, fringes or other forms of compensation and selection for training. Post in conspicuous places at all work sites, such as the outside of a trailer or an outside bulletin board that are available to employees, agents, applicants for employment and other persons, a notice to be provided by the Pennsylvania Turnpike Commission setting forth the provisions of this non-discrimination clause. Notices posted outside must be weatherproof.

(b) In advertisements or requests for employment placed, state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, union membership, political affiliation, age, sex, sexual orientation, national origin or non-job-related handicap or disability.

(c) Send each labor union or workers' representative with which the Contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of its commitment to this non-discrimination clause. Similar notice is to be sent to every other source of recruitment regularly used by Contractor.

(d) It is no defense to a finding of noncompliance with this non-discrimination clause that Contractor had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor will be considered in mitigation in determining appropriate sanctions.

(e) Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons so that Contractor will be unable to meet its obligations under this non-discrimination clause, employ and fill vacancies through other non-discriminatory employment procedures. See Attachment 1.

(f) Comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the non-discrimination clause of this Contract or with any such laws, this Contract may, after hearing and adjudication, be terminated, canceled or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Pennsylvania Turnpike Commission contracts, and other sanctions may be imposed and remedies invoked. Further, all money due or to become due under the contract may be forfeited for a violation of the terms or conditions of this provision of the contract.

(g) Upon written request, furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the Pennsylvania Turnpike Commission. If Contractor does not possess documents or records reflecting the necessary information requested, furnish such information on reporting forms supplied by the Pennsylvania Turnpike Commission.

(h) Actively recruit Diverse Business subcontractors or subcontractors with substantial Diverse Business representation among their employees. Diverse Business subcontractor recruitment includes, but is not limited to the database available on the website for the Department of General Services and the

Federal Government's system of award management database. Further, maximize participation by business certified by the following third-party certifying organizations: (1) the National Minority Supplier Development Council; (2) the Women's Business Development Enterprise National Council; (3) the Small Business Administration; (4) the Department of Veteran Affairs; and (5) the Pennsylvania Unified Certification Program. Diverse Business hiring and recruitment considerations are listed in Attachment 1. For information regarding Diverse Business concerns, please contact the Pennsylvania Turnpike Commission's Office of Diversity and Inclusion at 717-831-7265.

(i) Upon award, furnish a copy of the Equal Opportunity Plan (EOP) to the Commission's Office of Diversity and Inclusion that demonstrates the company's efforts to include diverse businesses in contracting and equal opportunity hiring. The EOP should contain the company's policy statement, a nondiscrimination statement, workforce demographic, program objectives, internal monitoring, and dissemination of the plan.

(j) Include the provisions of this non-discrimination clause in every subcontract so that such provisions will be binding upon each subcontractor and its employees.

(k) Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania or where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

The Commission will furnish the Contractor with forms to comply with this section.

107.34 DIVERSE BUSINESS (DB) REQUIREMENTS - This section does not apply to projects that are partially or totally financed with federal funds.

(a) General Requirements. Section 303 of Title 74 of the Pennsylvania Consolidated Statutes, 74 Pa.C.S. § 303, requires bidders and contractors on contracts funded pursuant to the provisions of Title 74 (Transportation Code) and 75 (Vehicle Code) administered and issued by the Commission to make good faith efforts to solicit subcontractors that are Diverse Businesses (DBs) as defined in Section 303. The DB requirements of Section 303 apply to this contract.

Section 303 requires bidders to make good faith efforts, as described below, to solicit subcontractors that are DBs during the bidding process to maximize participation of DBs in competitive contracting opportunities.

The Commission is committed to participation by DBs and will enforce the requirements of Section 303 and this section. Failure to make good faith efforts and demonstrate such good faith efforts in the solicitation of subcontractors may result in rejection of the bid.

Bidder shall document and submit to the Commission all good faith efforts, as described in this section, to solicit subcontractors that are DBs during the bidding process.

Bidders are encouraged to utilize and give consideration to contractors offering to utilize DBs in the selection and award of contracts.

Bidder shall not discriminate on the basis of gender, race, creed or color in the award and performance of contracts in accordance with 62 Pa.C.S. §3701.

Failure to comply with the requirements of Section 303 or this specification may result in the imposition of sanctions as appropriate under section 531 of the Procurement Code, 62 Pa.C.S. § 531 relating to debarment and suspension.

The Commission's Director of the Office of Diversity and Inclusion, or his or her designee, is designated the Responsible Official who shall supervise the DB program and ensure that the Commission complies with the DB program.

(b) Diverse Business Participation Level. The Commission has established the Diverse Business (DB) minimum level of participation indicated in the Special Provisions for this project.

This minimum level of participation serves exclusively as a guide in determining bidder responsibility. Attainment of the level is not a measure of bid responsiveness. Predetermined amounts shown in the proposal will be excluded from the total bid price for determination of participation level.

DB Subcontractors and Manufacturers will be credited at 100%. Regular dealers will be credited at 60% of the costs of materials or supplies. DB Transaction Expeditor/Broker and others providing BONA FIDE services not listed above will be credited the entire amount of the fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

1. Manufacturers. A DB Manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

2. Regular Dealers. A DB Regular Dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock and regularly sold to the public in the usual course of business. A regular dealer, is a firm that engages in, as its principal business, and in its own name, the purchase and sale of the products in question. A DB regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment. DB brokers and DB packagers are not regarded as DB manufacturers or DB regular dealers.

3. Providers of BONA FIDE Services. This includes fees or commissions charged for providing a BONA FIDE service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, fees charged for delivery of materials and supplies required on job site (but not the cost of the materials and supplies themselves) when the DB hauler, DB trucker or DB delivery service is not also the DB manufacturer or DB regular dealer in the materials and supplies, the fees or commission charged for providing any bonds or insurance specifically required for the performance of the contract, provided that all above such fees or commissions are determined by the Commission to be reasonable and not excessive as compared with fees customarily allowed for similar services.

4. Transaction Expeditor/Broker. A DB packager, broker, manufacturers' representatives, or other persons who arrange or expedite transactions and who arrange for material drop-shipments.

(c) Definitions. The following definitions apply to terms used in this specification:

1. Disadvantaged Business – A business that is owned or controlled by a majority of persons, not limited to members of minority groups, who are subject to racial or ethnic prejudice or cultural bias.

2. Diverse Business – A disadvantaged business, minority-owned or women-owned business or service-disabled veteran-owned or veteran-owned small business that has been certified by a third-party certifying organization.

3. Minority-owned Business – A business owned and controlled by a majority of individuals who are African Americans, Hispanic Americans, Native Americans, Asian Americans, Alaskans or Pacific Islanders.

4. Professional Services – An industry of infrequent, technical or unique functions performed by independent contractors or consultants whose occupation is the rendering of the services, including: (1) design professional services as defined in 62 Pa.C.S. § 901 (relating to definitions); (2) legal services; (3) advertising or public relations services; (4) accounting, auditing or actuarial services; (5) security consultant

services; (6) computer and information technology services; and (7) insurance underwriting services.

5. Service-Disabled Veteran-Owned Small Business – A business in the United States which is independently owned and controlled by a service-disabled veteran(s), not dominant in its field of operation, and employs 100 or fewer employees.

6. Subcontractor- Any individual, partnership, firm, or corporation entering into a contract with the prime contractor for work under the contract, including those providing professional and other services.

7. Third-party Certifying Organization – An organization that certifies a small business, minority-owned business, women-owned business or veteran-owned small business as a diverse business. The term includes: (1) the National Minority Supplier Development Council; (2) the Women’s Business Development Enterprise National Council; (3) the Small Business Administration; (4) The Department of Veteran Affairs; (5) the Pennsylvania Unified Certification Program.

8. Veteran-owned Small Business –A small business owned and controlled by a veteran or veterans.

9. Women-Owned Business – A business owned and controlled by a majority of individuals who are women.

(d) Responsibilities of Bidder at Bidding Stage and Prior to Award

1. Submission Requirements – Contractor Responsiveness. Bidders are required to submit documentary evidence of DBs that have been contacted and that are to be used. Bidders must submit documentation of such solicitations and commitments, concurrently with the bid, on PTC Form 22-94-16R (DB Subcontractor and Supplier Solicitation Sheet), PTC Form 22-95-32R (DB Subcontractor and Supplier Commitment Sheet), and PTC Form 2013-89 (Good Faith Effort Checklist). Failure to submit the required information on DB participation may result in rejection of the bid as being non-responsive. The aforementioned forms are included in the bid documents. Completed forms 22-94-16R and 22-95-32R and accompanying documents regarding solicitation of and commitments to DBs become part of the contract.

Mailings to large numbers of DBs which are intended to provide notice of a contractors' interest in bidding a Commission contract will not be deemed solicitations, but rather will be treated as informational notifications only.

Only make actual solicitation of DB subcontractors, manufacturers, regular dealers, transaction expeditor/broker and/or providers of BONA FIDE services whose work, material, supplies, equipment and/or services are within the project scope and are related to project line items or portions thereof which the Contractor reasonably believes it will choose to subcontract, purchase or lease.

If the minimum level of participation is not met, the three (3) low bidders are required to deposit, fax, mail or electronically transmit sufficient evidence, which demonstrates to the Commission that the bidder has not engaged in discriminatory practices in the solicitation and commitment of subcontracts and supply contracts. Sufficient evidence must be documentation of good faith efforts made prior to bid submission and must be received by the Pennsylvania Turnpike Commission’s Contract Management Services Manager by 3:00 PM, Prevailing Local Time, of the second business day following the day of the bid opening by any of the following methods:

- Deposit required documents in or send overnight mail service to Pennsylvania Turnpike Commission’s Construction Department, Attention: Contract Management Services Manager, 700 S. Eisenhower Boulevard, Middletown, PA 17057.
- or send them to Pennsylvania Turnpike Commission’s Contract Management Services Manager by facsimile (FAX) 717-986-9762.
- or e-mail them to ebsadmin@paturnpike.com.

2. Evidence of Good Faith Efforts. The Commission will review the documentation corresponding to the solicitation of DB Subcontractors or Suppliers (PTC Form 22-94-16R) and commitments made to DB Subcontractors or Suppliers (PTC Form 22-95-32R), as well as any additional commitments. If the Commitment Sheet demonstrates that the bidder has met the minimum level of participation, the bidder is not required to submit documentary evidence of Good Faith Efforts. All bidders must submit the Good Faith Efforts Checklist (PTC Form 2013-89) with the bid. Failure to submit the Good Faith Efforts Checklist with the bid may result in a rejection of the bid. Any discrepancy between the commitments submitted with the bid and the documentary evidence of Good Faith Efforts submitted subsequent to the opening of bids may result in the rejection of the bid.

The evidence submitted by the bidder is required to demonstrate the following:

2.a. The bidder, whose actions resulted in a limited or no commitment to DBs in accordance with the Contract, must demonstrate that it sought to maximize participation by DBs, and its solicitation and commitment decisions were not based on policies that disparately impact diverse businesses.

2.b. The bidder shall indicate whether DBs were solicited or permitted an equal opportunity for DBs and non-DBs to quote, for each type of work the bidder intends or expects to subcontract or for all materials and services the bidder intends or expects to procure. When DB quotes that were provided to bidders during the pre-bid stage are not selected due to low bid justification, the bidder must submit, on the subcontractors'/suppliers' letterhead all subcontractor (DB and non-DB) quotes considered that shall include line items, quantities, and bid prices, where applicable.

2.c. In any instance where a DB has not been committed to for a type of subcontract work or materials contract in any area where a quote was received from a DB, document the non-usage.

2.d. If no quotations are received from solicitation of DBs, this information should be noted with the bid submittal along with detailed information on the solicitation effort (Form 22-94-16R).

Documentation supporting the items identified by the bidder on the Good Faith Efforts Checklist will be evaluated by the Commission for purposes of determining whether the bidder has met the Good Faith Efforts requirement.

If the bidder who has not met the required minimum participation level does not submit sufficient evidence such that it is received by the Pennsylvania Turnpike Commission's Contract Management Services Manager by 3:00 PM of the second business day following the day of the bid opening, the bid submissions will be considered non-responsive and the bid rejected. It is the bidder's responsibility to ensure that the Commission's Contract Management Services Manager has timely received sufficient evidence of good faith efforts.

3. Replacement of a DB Subcontractor During Bid Evaluation. If at any time during the evaluation of a bid it becomes necessary to replace a subcontractor that is a DB, the bidder, as appropriate, shall immediately notify the Director of the Commission's Office of Diversity and Inclusion or his/her designee of the need to replace the Diverse Business, which notice shall include the reasons for the replacement.

4. Contractor Responsibility – Acceptance or Rejection of Bids. Upon receipt of bids for a construction contract, the submittals of each bidder will be subject to review by the Commission to determine whether the bidder has complied with Section 303 and this specification in the selection of subcontractors, manufacturers, regular dealers, transaction expeditor/broker and other providers of a BONA FIDE service. If a bidder has met the minimum level for DB participation, the bidder will be presumed not to have discriminated in its selections. Where the minimum level is not met and the bid has not otherwise been rejected for reasons of non-responsiveness, the Commission will determine whether

discrimination has occurred.

After review of PTC Form 22-94-16R (DB Subcontractor and Supplier Solicitation Sheet), PTC Form 22-95-32R (DB Subcontractor and Supplier Commitment Sheet), and other relevant information, the Commission will determine whether or not discrimination has occurred. If the Commission determines that discrimination has occurred, the bidder will thereby be deemed to be not responsible and its bid will be rejected.

DB firms and commitment amount made at the time of bidding are to be maintained throughout the term of the contract. Any change in DB firms or commitment amount must be pre-approved by the Commission.

The Commission, its designees or agents have the right to obtain documents and information from any contractor, subcontractor, manufacturer, regular dealer, transaction expeditor/broker or other provider of a BONA FIDE service that may be required in order to ascertain bidder or contractor responsibility. Except as otherwise provided by law and/or for use by the Commission, its designees or agents for investigations and proceedings following therefrom, the documents submitted with the bid will be confidential.

(e) Contractor Requirements During Construction

1. Replacement of a DB Subcontractor. Contractor must continue good faith efforts through completion of the project. If at any time during the construction of a project, it becomes necessary to replace a subcontractor that is a DB, the contractor, as appropriate, shall immediately notify the Director of the Commission's Office of Diversity and Inclusion or his/her designee of the need to replace the DB, which notice shall include the reasons for the replacement.

2. Records. Maintain project records as are necessary to determine compliance with its DB commitments. Maintain all records for a period of 3 years following acceptance of final payment. Make these records available for inspection by the Commission, its designees or agents. These records should indicate:

2.a. The number of DB and non-DB subcontractors, manufacturers, regular dealers, transaction expeditor/broker and other providers of BONA FIDE service, and the type of work or materials or services performed on or incorporated in this project.

2.b. The progress and efforts made in seeking out DB contractor organizations and individual DB contractors for work on this project to increase the amount of DB participation and/or to maintain the commitments made at the time of the bid to DBs.

2.c. Documentation of all correspondence, contacts, telephone calls, and other contacts made to obtain the service of DBs on this project.

3. Reports. Submit reports as required by the Commission, or at least on a monthly basis, of those contracts and other business executed with DBs with respect to the records referred to in subsection (e)2. above in such form and manner as prescribed by the Commission. Submit the monthly reports to the Representative by the twentieth day of the following month and have them contain:

3.a Number of contracts awarded to DBs noting the type of work and amounts of each contract executed with each firm, including the execution date of each contract.

3.b The amounts paid to each DB during the month and the date of payment.

3.c Upon completion of individual DB firm's work, submit paid invoices or a certification attesting to the actual amount paid to each firm. In the event the actual amount paid is less than the award amount, a complete explanation of difference is required.

4. Subcontracts/Purchase Orders

4.a. Subcontracts with DB firms will not contain provisions waiving legal rights or remedies provided by laws or regulations of the Federal Government or the Commonwealth of Pennsylvania or the Commission through contract provisions or regulations.

4.b. Prime contractor will not impose provisions on DB subcontracts that are more onerous or restrictive than the terms of the prime's contract with non-DBs.

4.c. Subcontracts should evidence that DB subcontractors were advised of the availability of mobilization funds and that they were provided an opportunity to refuse said mobilization. Include a signed statement with the subcontract attesting to the aforementioned.

4.d. Executed copies of subcontracts/purchase orders are to be received by the Commission before the commencement of work by the DB.

5. Payments to DB Subcontractors

5.a. Checks should be issued for this project only and not commingled with payment for other projects.

5.b. Dual party checks should be issued only with the concurrence of both the DB and the prime contractor. If no agreement can be reached, the prime contractor must demonstrate a clear business necessity for same.

5.c. Payments to DBs are to be made within five business days of receipt of payment by the prime contractor.

6. Construction

6.a. Sufficient notice is to be given to DBs concerning the initial and subsequent construction meeting which impact on their area of work. Written notice is to be provided concerning the time, date, and location of the aforementioned meetings. Before the commencement of work by the DBs, a meeting will be scheduled by the project superintendent to clarify scheduling, work expectations, and payment schedule. Notice will be provided to the Director of the Commission's Office of Diversity and Inclusion or his/her designee that the aforementioned meeting has occurred.

6.b. DBs should not have more restrictive requirements placed upon them than is placed upon other non-DBs subcontractors/suppliers on the project.

(f) Post-Construction Evaluation. Following completion of the Contractor's work, the Director of the Commission's Office of Diversity and Inclusion or his/her designee will review the overall DB participation to assess the Contractor's compliance with Section 303 and this specification section. Appropriate sanctions may be imposed under 62 Pa.C.S. § 531 (relating to debarment or suspension) for a Contractor's failure to comply with Section 303 or the within specification.

107.35 ENVIRONMENTAL POLLUTION CONTROL - Conduct all operations in accord with all local, state and federal rules and regulations pertinent to the control of air, water and other environmental pollution.

Equip all construction vehicles and equipment with functioning exhaust mufflers to minimize noise levels. Locate access and haul roads as far as practical from sensitive receptors including schools, churches, and residences. Construct temporary noise mitigation features, including constructed walls, between stationary equipment and sensitive receptors as determined and required by the Commission. Where practical, locate construction trailers and/or material stockpiling areas between sensitive receptors and the construction area.

Control fugitive dust created by material hauling and grading operations by means such as wetting down roadways. Keep to a minimum the use of heavy equipment and unnecessary idling near sensitive receptors whenever possible.

107.36 PUBLIC WORKS EMPLOYMENT VERIFICATION ACT -

(a) General. In accordance with Act 127 of 2012, known as the Public Works Employment Verification Act (“the Act”), effective January 1, 2013, 43 P.S. §§167.1-167.11, use the Federal Government’s E-Verify system to ensure that all employees performing work on the project, including subcontractor’s employees, are authorized to work in the United States.

(b) Verification Form. Verify the employment eligibility of each new employee hired after January 1, 2013 and submit the Commonwealth Public Works Employment Verification Form (“Form”) to the Commission.

(c) Contractor. Submit the Form with the bid. The authorized signer of the bid hereby states that he or she possesses sufficient knowledge to make the representations and certifications on the Form. Failure to provide a completed Form will result in rejection of the bid, and may subject the Contractor to the enforcement activities, sanctions and civil penalties specified in the Act.

(d) Subcontractor. Obtain a form signed by an authorized representative of the subcontractor performing work on the project, possessing sufficient knowledge to make the representations and certifications on the Form. Submit it to the Representative prior to the Subcontractor performing any work on the project. Failure or refusal to provide the Form will be considered a refusal to comply with contract requirements and may subject the subcontractor to the enforcement activities, sanctions and civil penalties specified in the Act. Include information about the requirements of the Act in all subcontracts.

(e) Department of General Services. The Department of General Services is the Commonwealth agency responsible for enforcement and administration of the Act. Please direct questions about the Act to:

Department of General Services Public Works
Employment Verification Compliance Office
Room 105 Tent Building
18th and Herr Streets
Harrisburg, PA 17125
Fax: 717-214-3669

107.37 BLASTING - Blasting is not permitted unless otherwise specified in the Special Provisions.

ATTACHMENT 1

PENNSYLVANIA BLACK WEEKLY NEWSPAPERS

The New Pittsburgh Courier

<https://newpittsburghcourier.com>
315 East Carson Street
Pittsburgh, PA 15219
Rod Doss, Editor, Publisher
Phone: (412) 481-8302

The Philadelphia Tribune

<http://phillytrib.com>
520 South 16th Street
Philadelphia, PA 19146
Irv Randolph, Managing Editor
Phone: (215) 893-4050

The Philadelphia Sunday SUN

<https://www.philasun.com/>
P.O. Box 18869, Philadelphia, PA 19119
Phone: (215) 848-7864
Fax (215) 848-7893

STATEWIDE PENNSYLVANIA BLACK MAGAZINES

Talk Magazine

<http://talkmagazineonline.com>
PO Box 143
Monroeville, PA 15146-0143
Luther Sewell, Publisher
Phone: (412) 823-4007

PENNSYLVANIA HISPANIC NEWSPAPERS

Al-Dia

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Radio One Philadelphia
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Bala Cynwyd, PA 19004
Phone: (610) 538-1101

WAMO 100.1 FM

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21 Yost Blvd – Suite 505

Pittsburgh, PA 15221

Phone: (412) 829-0100

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wurdradio.com

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1341 N. Delaware Avenue, Suite 300

Philadelphia, PA 19125

Phone: (215) 425-7875

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rumbalancaster.iheart.com

Livestream

WHOL 99.5 FM Allentown and 1400/1600 AM

1125 Colorado Street

Allentown, PA 18103

Phone: (610) 434-4801

Rumba 100.5 FM Lancaster

www.iheart.com/live/rumba-1005-5108/

Livestream

PENNSYLVANIA COMMUNITY – BASED ORGANIZATIONS

Pittsburgh NAACP

2203 Wylie Ave.

Pittsburgh, PA 15219

Constance Parker – President

(412) 471-1024

Philadelphia NAACP

1619 W. Cecil B. Moore Ave.

Philadelphia, PA 19121

Mr. Anthony Jackson, Attorney

(215) 978-7500

Urban League of Pittsburgh

1 Smithfield Street – Third Floor

Pittsburgh, PA 15222

(412) 227-4802

Urban League of Philadelphia

121 S Broad Street - 9th Floor

Philadelphia, PA 19107

(215) 985-3220

CHAMBERS OF COMMERCE

**African American Chamber of Commerce of
Western Pennsylvania Chamber of Commerce**

<https://aaccwp.com/>

436 Seventh Ave. – Suite 2220

Pittsburgh, PA 15219

Email: information@aaccwp.com

Phone: (412) 392-0610

**Pittsburgh Metropolitan Area Hispanic
Chamber of Commerce (West)**

<https://pmahcc.wildapricot.org/>

Koppers Building

6 Loop Street – Suite 4

Pittsburgh, PA 15215-3248 U.S.A.

Email: chamber@pmahcc.org

Phone: (412) 784-1355

Philadelphia Hispanic Chamber of Commerce

<https://www.philahispanicchamber.org/>

1520 Locust Street Suite 1001

Philadelphia, PA 19102

Phone: (215) 845-5456

THIRD-PARTY CERTIFYING ORGANIZATIONS

Minority Business Enterprise-MBE Certifying Entity for the National Minority Development Council:
Eastern Minority Supplier Development Council <https://emsc.org>

Philadelphia:

Rodin Place
 2000 Hamilton Street
 Suite 308
 Philadelphia, PA 19130
 Phone: 215-569-1005
 Fax: 215-569-2667

Pittsburgh:

the Historic ALCOA Building
 611 William Penn Place
 Suite 401
 Pittsburgh, PA 15219-6923
 Phone: 412-391-4423
 Fax: 412-391-3132

WBE Certifying Entity for the Women's Business Enterprise Network Council:

Women's Business Enterprise Center <https://wbeceast.com/>

Philadelphia:

1315 Walnut Street
 Suite 1116
 Philadelphia, PA 19107
(215) 790-9232

Pittsburgh:

700 River Avenue
 Suite 210
 Pittsburgh, PA 15212
(412) 935-2545

8a Certifying Small Business Entity:

United States Small Business Administration <https://certify.sba.gov>

Pittsburgh District Office

411 Seventh Avenue Suite 1450
 Pittsburgh, PA 15219
 Phone: (412) 395-6560
 (412) 395-6562

Central Pennsylvania District Office

1 Penn Center
 2601 N. 3rd Street Suite 503
 Harrisburg, PA 17110
 Phone: (717) 782-3840

Eastern Pennsylvania District Office

SBA District Office
 660 American Ave, Suite 301
 King of Prussia, PA 19406
 Phone: (610) 382-3062

Veteran Owned Small Business and Service-Disabled Veteran Owned Small Business Verification Source
United States Department of Veteran Affairs <https://www.va.gov/osdbu/verification> and
<http://www.vetbiz.gov/>

U.S. Department of Veteran Affairs

1500 North Second Street - Suite 2
 Harrisburg, PA 17102
 Phone: 717-782-3954 Or 877-927-8387
 Fax: 717-782-3791

*Certification for the US Department of Transportation Disadvantaged Business Enterprise (DBE) is a provided through the **Pennsylvania Unified Certification Program (PAUCP)** and its certifying entities.*
www.paucp.com

OTHER REFERRAL SOURCES

The System for Award Management (SAM) <https://www.sam.gov/SAM> is an official website of the U.S. government. There is no cost to use SAM. You can use this site to register to do business with the federal government, update or renew your entity registration, check status of an entity registration or search for entity registration and exclusion records.

Pennsylvania Department of Transportation (PENNDOT) Diverse Business (DB) Supportive Services Center @ Cheyney University: <https://padbssc.com> (provides in person and virtual training, technical assistance, and support to Pennsylvania's Diverse (DB) Program for state funded contracts.

Pennsylvania Department of Transportation (PENNDOT) Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) Supportive Services Program <https://penndbe.prorankllc.com> provide the training, technical assistance, and business development services to DBE and SBE firms to enable them to acquire the proficiency, experience and expertise necessary to compete on an equal basis, with non-DBE firms for federally-assisted PennDOT contracts and subcontracts.

Pennsylvania Department of General Services (DGS) Bureau of Diversity, Inclusion and Small Business Opportunities Small Diverse Business (SDB) Verification Program <https://www.dgs.pa.gov> provides a list of self-certified Small (SB) and Small Diverse Businesses (SDB) in the searchable database at www.dgs.internet.state.pa.us/suppliersearch.

PA DEPARTMENT OF LABOR AND INDUSTRY

BUREAU OF WORKFORCE DEVELOPMENT PARTNERSHIP

PENNSYLVANIA CAREERLINK: pacareer.link.pa.gov One-stop On-Line Resource for job Seeker Services, Employer Services, Social Services, Resources and Training:
<http://www.pacareerlink.state.pa.us>

SECTION 108 - PERFORMANCE AND PROGRESS**108.01 SUBLETTING OR ASSIGNMENT OF CONTRACTS –**

(a) The following does not apply to projects which are partially or totally financed with federal funds.

The Commission does not recognize subcontractors and will deal exclusively with the prime contractor.

(b) The following only applies to projects which are partially or totally financed with federal funds.

1. General. Do not sublet, sell, transfer, assign, or otherwise dispose of the contract or contracts or any portion or rights, title, or interest, without the written consent of the Representative.

If consent is given, subletting a portion of the contract will be allowed; however, do not sublet a portion exceeding 50% of the original total contract price except as provided herein.

Use only prequalified subcontractors, classified for the type of work undertaken.

For prequalification capacity evaluation, the amount of subcontracted work will be charged solely to the subcontractor when the subcontractor and items of work to be undertaken are named in the bid on the page titled "List of Subcontractors", and to both the prime contractor and the subcontractor when the subcontractor is named after the award of the contract.

Do not replace or cancel a subcontractor named in the bid without the approval of the Representative, which approval will not be unreasonably withheld.

Subcontracts or transfer of contract will not release Contractor liability under the contracts and bonds.

2. Specialty Items. "Specialty Items", as identified in the proposal, may be performed by subcontract. The cost of any specialty items performed by subcontract may be deducted from the original total contract price before computing the amount of work allowed to be performed by subcontract.

3. Disadvantaged Business Enterprises (DBE). When requirements for DBE are included in the proposal, the cost indicated on the original Attachment A (Form 502002213) submitted for DBE's utilization may be deducted from the original total contract price before computing the amount of work allowed to be performed by subcontract, provided a completed Form PTC-431 has been submitted with the bid. In cases where specialty items and DBE involvement overlap, any cost deducted is restricted to a single assignment of either specialty item or DBE goal amount, but not both. The maximum amount of the DBE cost that may be deducted is equal to 40% times the difference between the original total contract price and the specialty items' cost.

4. Diverse Business (DB). When requirements for DB are included in the proposal, the cost of the Agreement Amount indicated on the original PTC Form 22-95-32R submitted for DB utilization may be deducted from the original total contract price before computing the amount of work allowed to be performed by subcontract, provided a completed Form PTC-432R has been submitted with the bid. In cases where specialty items and DB involvement overlap, any cost deducted is restricted to a single assignment of either specialty item or DB agreement amount, but not both. The maximum amount of the DB cost that may be deducted is equal to 40% times the difference between the original total contract price and the specialty items' cost.

5. Subcontract Approval. Do not allow any work on the project that is assigned to others (including services) to be performed until a copy of the executed subcontract (agreement or any other assignment of the contract) has been reviewed and is available on the project to Commission representatives for purposes of monitoring contract compliance. The Commission will verify that the

subcontract is evidenced in writing and that all pertinent provisions and requirements of the prime contract are physically incorporated or included by reference. It should be noted that the allowance for pertinent provisions to be included in a subcontract by reference does not apply to the provision entitled "FAR—Required Contract Provisions Federal-Aid Construction Contracts" (Form FHWA-1273), which must be physically incorporated into all related subcontract agreements of \$10,000 or more with the exception of material supply, engineering, or architectural service contracts.

108.02 NOTICE TO PROCEED - As soon as practical after approval of the contracts, bonds, and insurance certificates by the Chief Counsel, the Chairman, or the Secretary Treasurer, or their respective designees, and subject to the provisions of Section 103.07, a written Notice to Proceed will be sent, specifying the calendar date on which to begin the work.

(a) Requirements for Starting Work. Begin work on the Notice to Proceed Date specified in the Notice to Proceed and complete all physical work, including any authorized additional or extra work, on or before the Required Completion Date.

(b) Notice to Proceed Period. The Notice to Proceed will be issued within 30 days after the award of the contract. Extension(s) of the 30-day period will be made only by mutual written consent of the parties to the contract provided such written consent is given prior to the expiration of the 30-day period.

108.03 PERFORMANCE AND PROGRESS –

(a) Preconstruction Conference. Before the start of work, a preliminary conference will be held in the Representative's office. The purpose of this conference will be to discuss the scope of the project work, to discuss all essential matters pertaining to the satisfactory project completion, and to resolve any questions regarding contract interpretation.

In addition to the Construction Schedule specified in 108.03(b), the following documents must be submitted within 30 days of the Notice to Proceed by the Contractor:

1 Reproducible Copy of the Contractor's Estimated Monthly Values of the progressing project and its various categories of work. This schedule of values will indicate those dollars which the Contractor estimates will be due him for each monthly period of work. This schedule will complement the approved construction schedule and the values indicated are to reflect the estimated percentages of completion applicable to the progressing project and its various major categories of work.

1 Copy of the Material Sources Form Supplied by the Commission. The Contractor may submit a single form relative to all materials or several forms as the required information becomes available to him. However, no material will be used on the project until the form pertinent to that material is submitted and accepted by the Representative.

The Commission may require a Detailed Estimate or item cost breakdown applicable to "Lump Sum" contracts and to major items of work bid on a "Lump Sum" price. For "as-designed" structures bid on a lump sum basis, the items in the lump sum breakdown must match the Tabulation of Bridge Bid Items shown in the plans. However, the Representative reserves the right to require a detailed estimate for items bid on a unit price basis whenever, in his judgment, the complexity of the work performed under the unit price necessitates the further examination of the methods and costs involved in the determination of the unit price.

Additional information may be required from the Contractor by the Representative, depending upon the specific items of work included in the project.

(b) Construction Project Scheduling. The Contractor is required to submit a fully detailed and complete schedule of operations for progressing the project and its various major categories of work.

Schedule each operation necessary for the performance of all work separately for the Commission's review of the methods and sequences of work. Show all sequencing and all other aspects of how work on the project will be scheduled and performed. Prepare the schedule in bar-graph, CPM or PERT form unless the Representative directs a particular method due to the complexity of the project.

Prepare a complete schedule that adheres to and incorporates all contract time requirements and restrictions, shows work being completed on or before the Required Completion Date, meets any specified Milestone Date(s), and is in compliance with all contractual requirements.

Show all contracted work in the schedule. Show the sequence and interdependence of activities for completion of all work. Consider and make appropriate scheduling and operational allowances for seasonal weather conditions and ambient temperatures, permitting requirements, plant establishment periods, and any required testing periods.

If the submitted schedule is not acceptable to the Commission, re-submit until an acceptable schedule is provided. Acceptance of the Contractor's schedule or any revision(s) thereto, by the Commission, will not constitute the Commission's approval of or agreement with the sequence of operations, the durations of activities, the adequacy or propriety of resources, the identity of controlling operations, nor the feasibility or any other characteristics of the schedule or its revisions.

Once the schedule is accepted by the Representative, it will be considered the official schedule for all purposes. The Commission will not release current estimate payments until the schedule is submitted and accepted.

Provide a Three Week Look Ahead Schedule which is to be updated on a weekly basis and submitted to the Representative by noon each Wednesday.

If the latest completion time for any work on the current schedule results in an operation being delayed 10 working days or more beyond the Required Completion Date or any specified Milestone Date(s), as adjusted if appropriate, the Representative may require, in writing, that the Contractor submit a written description of the plan to recover all lost time and maintain the Required Completion Date or specified Milestone Date(s). If the order of project operations is changed to the extent that the Contractor is no longer following the accepted schedule, the Representative may require, in writing, that a revision to the schedule be submitted. If the recovery plan is not received within 7 calendar days and/or the schedule revision is not received within 14 calendar days from the date of the request by the Representative, the Commission will not release current estimate payments until the required information has been submitted and accepted.

If a request for a time extension is approved or a time reduction processed, the Commission will use the changed Required Completion Date and/or Milestone Date(s) for the purpose of monitoring progress, assigning resources, authorizing additional and/or extra work, processing contract adjustments associated with incentive/disincentive clauses, and assessing liquidated damages. Contractor imposed dates in the schedule; other than the Required Completion Date, specified Milestone Date(s), and/or any contractually specified sequences; will not be binding on the Commission.

108.04 LIMITATION OF OPERATIONS –

(a) Maintenance of Traffic. Conduct the work in a manner and sequence that assures minimal interference to traffic.

(b) Completion of Sections of Project. Complete any designated section or sections of the project as indicated; as specified; or when directed, in writing, as specified in Section 107.15.

The Contractor will be relieved of responsibility for further physical work and maintenance only for work items within the section of the project which are satisfactorily completed at the time of, or subsequent to, opening of the section to traffic. The Contractor's responsibility for further physical work and maintenance remains for work items within the section of the project which are not satisfactorily completed at the time of, or subsequent to, opening of the section to traffic.

Release of Contractor responsibility is further contingent on the following:

- a final inspection of the section has been made as specified in Section 110.08(a);
- the Contractor's obligation under the contract to replace defective work or material is not relieved;
- the Contractor's responsibility for repairing any damage to satisfactorily completed work items within the section, which occurs due to construction operations, is not relieved; and
- any work done by the Commission, on a designated section of the project that may have been satisfactorily completed, as provided, does not waive the rights of either party to the entire contract.

(c) Maintenance of Existing Vegetation. In order to maintain natural vegetation in all undisturbed areas, do not cross these areas with construction equipment or make any other use of these areas, except at allowed locations.

(d) Working Schedule. Schedule and execute work operations to present the least inference to traffic and complete all operations within the specified contract time. There will be no restrictions to the Contractor's working time, except for the specified holiday periods and time periods indicated in the Minimum Lane Requirement Charts attached to the contract or as specified in the Special Provisions in which the Contractor may utilize lane or shoulder closure traffic patterns. These time periods indicate when the Contractor may begin setting up the lane closure pattern including the uncovering of any signs and activation of any Type A, B and C lights associated with the signs to the time the pattern is to be completely removed from the roadway with all signs covered and all Type A, B and C lights associated with the signs deactivated.

All operations not requiring lane closure patterns may be performed on a 24-hour per day basis provided specified controls for maintenance and protection of traffic are utilized.

Ascertain any and all restrictions in regard to working times which may be imposed by local, state and federal agencies.

No work may be performed without the specified traffic control and protection whether working roadway pavement or shoulders.

The Chief Executive Officer may impose restrictions on the Contractor's operations, including complete suspension to eliminate unsafe traffic conditions or congestion of the Turnpike, without liability for any delay.

108.05 CHARACTER OF WORKERS; METHODS AND EQUIPMENT –

(a) General. Employ at all times sufficient labor and equipment for performing the work, as specified in Section 108.03.

(b) Competence of Workers. Employ only competent and efficient superintendents, forepersons, clerks, timekeepers, equipment operators, laborers, mechanics, or artisans for every kind of work. Whenever, in the Representative's opinion, any person is unfit to perform the task, does the work contrary to instructions, or exhibits improper conduct, discharge the person immediately and do not employ the person again on the project without written permission of the Representative. Failure to remove such person, as ordered, or failure to furnish suitable and sufficient personnel for the proper completion of the work, after being ordered to correct the deficiency, may result in suspension of the work, by written notice from the Representative, until such orders are followed.

If the superintendent or representative on the project fails to cooperate with the Commission's authorized representatives in any way, the Representative will give a written order for dismissal and replacement of that superintendent or representative.

(c) Equipment. Furnish the type, condition, and quantity of equipment that meets the qualifications necessary for the proper execution of the work within the specified contract time. Maintain the equipment in good condition, subject to acceptance, prior to and during use in connection with the project. If special equipment, not normally used in highway construction, is required to be used, comply with Section 108.05(c)2.

1. Alternate Method and/or Equipment. If the contract specifies that construction be performed by the use of certain methods and equipment, use such methods or equipment, unless others are authorized. To use a method or type of equipment other than those specified, request authority to do so. Provide the request in writing and include a full description of the methods and equipment proposed to be used, with an explanation of the reasons for desiring to make the change. If acceptance is given, it will be on condition that construction work is performed in conformity with contract requirements. If, after trial use of the substituted methods or equipment, it is determined that the work produced does not conform to contract requirements, discontinue the use of the substitute method or equipment. Complete the remaining construction with the specified methods and equipment. Remove the deficient work and replace it with work of specified quality, or take such other corrective action, as directed. No change will be made in the basis of payment for the construction items involved, nor in contract time, as a result of authorizing a change in methods or equipment under these provisions.

2. Test of New Special Equipment. A vendor or manufacturer of equipment not currently used may submit the necessary technical data concerning the item to the LTS. If the item warrants further investigation, the LTS may grant permission to the vendor to contact a contractor for the experimental use of the equipment on an appropriate project under construction. The experimental operation will be observed by representatives of the LTS and the District Engineer/Administrator's office, to obtain data necessary to substantiate a final recommendation to the Department.

3. Roller Requirements. Provide rollers, of the type(s) specified for the various items of construction, complying with the following:

3.a Three-wheel power rollers, with an unballasted load of not less than 300 pounds per linear inch of tread of rear wheels, having a manufacturer's certified metal weight of not less than 10 tons.

3.b Tandem power-driven rollers, with a ballasted load of not less than 330 pounds per linear inch of tread of drive roll, having a manufacturer's certified metal weight of not less than 10 tons.

3.c Tandem power-driven rollers, with a load of not less than 120 pounds per linear inch of tread of drive roll, having a manufacturer's certified metal weight of either not less than 5 tons or more than 8 tons or either not less than 8 tons or more than 10 tons.

3.d Self-propelled trench type rollers, with a minimum trench roller factor (RF_t) of 2.0 using the following equation:

$$RF_t = (F_c \cdot (f \cdot A)^2) / (W_d \cdot 650)$$

where,

RF_t = Trench roller factor (dim)

F_c = Maximum centrifugal force (lb)

f = Minimum vibration frequency (Hz)

A = Maximum vibration amplitude (in)

W_d = Drum width (in)

Trench-type rollers may be hand operated or remotely controlled. Use trench rollers capable of being operated in both static and vibratory modes. Roller drums must have alternating rows of raised pads across the entire drum width and be equipped with scraper bars at each drum to assist in removal of soil from between the pads. Smooth steel drums are prohibited.

Supply manufacturer's technical data, measured data, and the serial number for the specific trench roller being used to the Representative before beginning compaction operations. Verify that the roller meets the minimum requirements. Equipment that does not meet the minimum requirements will be rejected. Operate equipment in accordance with manufacturer's recommendations and at a frequency and amplitude to provide the minimum required RF.

3.e Pneumatic-tire rollers, used to compact base courses, may be either single-axle type and may be equipped with pneumatic tires of equal size and diameter on any one axle. Uniformly inflate tires so that air pressure does not vary more than 5 pounds per square inch. Use rollers of sufficient weight and dimensions that, when loaded, will cause the pneumatic tire wheels to exert a ground pressure of not less than 300 pounds per inch of width of tread, as measured on a hard surface.

3.f Pneumatic-tire rollers, used to compact hot asphalt mixtures of a self-propelled type. Use rollers having not less than seven wheels mounting smooth tread pneumatic tires, not less than 7 ½ inch x 15 inch size, each tire capable of exerting an average contact pressure through a range from 60 pounds per square inch to 95 pounds per square inch. Use rollers with wheels equally spaced along both axles and so arranged that those on one axle track midway between those of the other, with the wheels on one or both axles arranged to oscillate in pairs or to be individually sprung.

Use rollers equipped with power steering and fluid drive or a torque converter, capable of turning or reversing on the hot material without surface scuffing or displacement, and provided with means of wetting and cleaning the tires during operation, to prevent adhesion of hot asphalt mixture to the tires.

Make provision for checking tire pressures during operation. Keep the tires uniformly inflated at the designated pressure and with the difference in pressure between any two tires not to exceed 5 pounds per square inch.

In operation, adjust the tire pressure and wheel load, as required, to provide an average contact pressure of from 60 pounds per square inch to 95 pounds per square inch over the surface, to conform to the requirements of both the particular application and the material being compacted.

Equip the roller with means of adjusting the wheel load by ballasting and provide tires with a ply-rating that supports the maximum operating wheel load, at the specified maximum contact pressure.

Furnish copies of the roller manufacturer's charts or tabulations, showing the contact areas and average contact pressures for the full range of both tire inflation pressures and tire loadings for each type and size of compactor tire furnished. Also, furnish copies of the calibration table or chart for the ballast box, showing both the volume of the box in cubic feet, for at least each 3-inch increment of depth, and the empty or tare weight of the roller.

3.g Padfoot rollers with a minimum pad contact pressure of 160 pounds per square inch, a flat pad contact surface with a minimum pad contact area of 15 square inches, and a minimum pad projection of 3.0 inches from the surface of the drum. Calculate pad contact pressure by dividing the static roller weight by the product of the maximum number of pads sighting across the roller drum and the pad contact area.

Use padfoot rollers capable of being operated in both static and vibratory modes. Roller drums must have alternating rows of raised pads across the entire drum width and be equipped with a scraper bar(s) to assist in removal of soil from between the pads.

Supply manufacturer's technical data, measured data, and the serial number for the specific padfoot roller being used to the Representative before beginning compaction operations. Verify that the roller meets the minimum requirements. Padfoot rollers that do not meet the minimum requirements will be rejected.

3.h Smooth drum tandem vibratory rollers of a self-propelled type, with the necessary frequency and amplitude to achieve required density without objectionable undulations, material pickup, or other surface defects. Use a vibrator drive that automatically stops when the roller changes direction or stops.

3.i Smooth single-drum vibratory rollers of a self-propelled type, with a minimum drum width (W_d) of 48 inches and a minimum vibratory roller factor (RF_v) of 2.0 using the following equation:

$$RF_v = (F_c * (f * A)^2) / (W_d * 1,000)$$

where,

RF_v = Vibratory roller factor (dim)

F_c = Maximum centrifugal force (lb)

f = Minimum vibration frequency (Hz)

A = Maximum vibration amplitude (in)

W_d = Drum width (in)

The vibratory rollers must be capable of achieving the required density without objectionable undulations, material pickup, or other surface defects. Use a vibrator drive that automatically stops when the roller changes direction or stops.

4. Other Compaction Equipment. Permission may be given for the use of other types of impact vibratory, and/or compaction equipment designed for, and capable of accomplishing, compaction. Specific minimum requirements for various types of lightweight and/or hand-operated compaction equipment are provided below.

Supply manufacturer's technical data, measured data, and the serial number for the specific compactor being used to the Representative before beginning compaction operations. Verify that the compaction equipment meets the minimum requirements. Equipment that does not meet the minimum requirements will be rejected.

4.a Hand operated impact rammer (jumping jack) with a minimum required impact rammer factor (RF_i) of 2.0 using the following equation:

$$RF_i = (w_o * (f * A)^2) / (W_p * L_p * 400)$$

where,

RF_i = Impact rammer factor (dim)

w_o = Operating weight (lb)

f = Percussion rate or frequency (Hz)

A = Rammer stroke or amplitude (in)

W_p = Rammer plate width (in)

L_p = Rammer plate length (in)

The rammer plate length and width must be reported as the actual dimensions of the plate. Verify that the plate dimensions reported on the manufacturer's technical data sheet are correct for the actual impact rammer being used. Use rammer plates constructed of steel. Plastic, rubber, or wood rammer plates are prohibited. Operate equipment in accordance with manufacturer's recommendations and at a percussion rate and stroke to provide the minimum required RF_i .

4.b Hand operated vibratory plate compactor with a minimum required plate factor (PF_v) of 2.0 using the following equation:

$$PF_v = (F_c * (f * A)^2) / (A_p * 100)$$

where,

PF_v = Vibratory plate factor (dim)

F_c = Maximum centrifugal force (lb)

f = Minimum vibration frequency (Hz)

A = Maximum vibration amplitude (in)

A_p = Effective plate area (in²)

The effective plate area must be reported as the actual area of the bottom surface of the plate in contact with the ground when placed on a firm surface. Verify the effective plate area in the presence of the Representative. Use vibratory plates constructed of steel. Plastic, rubber, or wood plates are prohibited. Operate equipment in accordance with manufacturer's recommendations and at a frequency and amplitude to provide the minimum required RFv.

5. Material Transfer Vehicle (MTV) Provide a Material Transfer Vehicle (MTV) to be used as an intermediate and separate motorized, self-propelled unit between the haul vehicle and the asphalt paver as follows:

- Provide adequate covers of sufficient size to protect the material in the MTV and maintain specified temperatures, under all conditions.
- Capable of transferring the material from the haul vehicle to the paver hopper at a uniform and continuous rate to allow continuous movement of the paver.
- Equipped with remixing augers for remixing the asphalt material before transferring to the paver hopper.
- Free of petroleum oils, solvents, or other material, which adversely affect asphalt concrete.

In addition, equip the asphalt paver with a manufactured hopper insert to provide a mass flow of material directly to the slat conveyors of the paver. Deliver mixture through the MTV at the correct laying temperature as specified in Section 413 or Section 419, and free from lumps of chilled material.

6. Cranes. Crane operators must hold a valid Crane Operator's license for the Commonwealth for the size and type of crane to be used. Before performing work with a crane, submit a copy of the operator's license to the Representative. In addition, one on-site meeting must be held with the crane operator(s) to discuss safety and crane type(s), size(s), location(s) and movements. For projects that require an erection plan or pre-erection meeting or both, ensure that the crane operators are in attendance at the meeting and invite the Bridge Engineering Manager to the meeting. If the crane operator cannot attend the meeting, a representative from the crane company must be in attendance. Remediate possible mat shifts and correct possible conflicts observed with the operation.

7. Approvals and Reservations. All equipment and its use on the project is subject to the approval of the Representative and the Commission reserves the right of the Representative to require additional controls, modifications and alternate methods of operation to ensure the proper effect from the operating equipment. Equipment not capable of operations necessary to meet the approval of the Representative will be removed from the project or confined to such operations where its capabilities are considered adequate for the approval of the Representative.

108.06 TIME EXTENSIONS AND REDUCTIONS - A time extension or time reduction may be granted by the Commission as a result of the following events or occurrences, provided the required written request is submitted to the Representative within 10 calendar days of the event or occurrence. Include, with the time extension request, a revision to the Schedule.

- Progress on one or more controlling operations is adversely affected by an act or omission of the Commission, which is not the fault of the Contractor, all of which will be determined by the Representative.
- Satisfactory project completion requires work in greater or lesser quantities than those indicated in the contract for one or more controlling operations.
- The Representative, in writing, eliminates an item of work or reduces the quantity of an item of work and the elimination or reduction affects progress on one or more controlling operations.
- The Representative, in writing, authorizes additional or extra work, which affects progress on one or more controlling operations.
- A strike or labor dispute that causes, despite all reasonable efforts by the Contractor to avoid it, a shutdown of the entire project or of one or more controlling operations as specified in Section 108.10.

108.07 LIQUIDATED DAMAGES –

(a) Construction Engineering Liquidated Damages. For each day that any physical work remains uncompleted after the Required Completion Date, the sum per day specified in the following schedule, unless otherwise stated in the proposal, will be deducted from money due or to become due. This deduction will not be as a penalty, but as Construction Engineering Liquidated Damages.

Original Contract Amount		Schedule of Daily Charges For Construction Engineering Liquidated Damages
From More Than	To and Including	Per Calendar Day
\$ 0	\$ 400,000	\$ 885
400,000	1,000,000	1,675
1,000,000	5,000,000	2,440
5,000,000	10,000,000	3,755
10,000,000	15,000,000	5,240
15,000,000		6,220

In the event the Contractor is declared in default, as specified in Section 108.08, Construction Engineering Liquidated Damages will be charged as provided by this section. If the total amount chargeable as Construction Engineering Liquidated Damages exceeds the amount payable to the Contractor or the surety, the excess is to be paid to the Commission by the Contractor or the surety.

(b) Road Users Liquidated Damages. When indicated in the proposal, Road Users Liquidated Damages will be charged for each day that the roadway is not opened to unrestricted traffic after the specified Milestone Date. The sum per day will be deducted from money due or to become due. This deduction will not be as a penalty, but as Road Users Liquidated Damages.

In the event the contractor is declared in default, as specified in Section 108.08, Road Users Liquidated Damages will be charged in the amount indicated. If the total amount chargeable as Road Users Liquidated Damages exceeds the amount payable to the Contractor or the surety, the excess is to be paid to the Commission by the Contractor or the surety.

(c) Work Zone Liquidated Damages. A sum of no less than \$1000 per day will be charged as liquidated damages for failure to comply with maintenance and protection of traffic specifications and drawings. This deduction will not be as a penalty, but as Work Zone Liquidated Damages.

(d) Erosion and Sedimentation Control (E&S) Noncompliance Liquidated Damages. Begin work to correct any noncompliance with Section 107.28 (Erosion and Sediment Pollution Control Plans and Permits) within 24 hours of notification by the Representative of the noncompliance. At the time of notification, the Representative will provide the Contractor with a copy of the visual site-inspection report or the report from DEP or their designee or other regulatory agency that identifies the noncompliance.

A sum of \$1,500 per 24-hour period will be charged as E&S noncompliance liquidated damages for failure to begin work within 24 hours of notification of noncompliance and for each subsequent 24-hour period until E&S compliance is attained. This deduction will not be as a penalty, but as E&S noncompliance liquidated damages.

The liquidated damages specified in this section are in addition to, and not in derogation of, the contractor's obligation set forth in Section 107.01 to indemnify the State and its representatives against any claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, including violations by Contractor employees, as well as any other obligation that the contractor may have to indemnify or hold the State and its representative harmless.

108.08 DEFAULT AND TERMINATION OF CONTRACT - In the following paragraphs, the word "Contractor" also means the surety, in case of default, and completion of the contract by the surety.

(a) Delay, Neglect, or Default. The Contractor may be declared in default for the following reasons:

- failure to begin work within the time specified in the Notice to Proceed;
- failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work according to the contract terms;
- unsatisfactory performance of the work;
- failure or refusal to remove material, or to repair or remove and replace any work, rejected as defective or unsatisfactory;
- discontinuing work without approval;
- failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
- insolvency or bankruptcy;
- commission of any act of bankruptcy or insolvency;
- making assignment for the benefit of creditors;

- failure or refusal within 10 days after written notice by the Commission, to make payment or show cause why payment should not be made, of any amounts due for material furnished, labor supplied or performed, for equipment rentals, or for utility services rendered, as covered by the Payment Bond;
- failure to protect, to repair, or to make good any damage or injury to property, as specified in Section 107.12; and
- not performing work in an acceptable manner for any cause.

The Commission, upon written notice from the Representative or upon other proof satisfactory to the Commission, and after having given written notice to the Contractor and the surety of such delay, neglect, or default on the part of the Contractor, will have power and authority, without violating the contract to:

- declare the Contractor in default;
- take the completion of the work out of the hands of the Contractor;
- appropriate or use any or all material and equipment of the Contractor assembled for the project;
- enter into a contract or contracts for the completion of the work, according to the contract; or
- use such other methods that will be expedient for the completion of the contract in a satisfactory manner.

(b) Completion by Surety. The Commission may elect to take the performance of the work from the Contractor. The Commission may at that time notify and require the surety to complete the contract according to its terms. Also, require the surety to render within 3 months from the completion certificate date, but before payment on the final certificate, a detailed statement of the costs of the completion of the work, including receipts and disbursements of all funds received and paid on account. However, the responsibility of the surety extends only to the limit of the bond amount.

(c) Completion by Commission Forces. The Commission may elect to take the performance of the work from the Contractor and fulfill the contract with Commission forces. At that time and in the Commission's name, the Commission may take all right, title and interest in and to the equipment and material owned by the Contractor and assembled for use in the execution of the contract, and may use them for completion.

(d) Settlement of Contract. If the contract completion by any of the methods specified results in financial loss to the Commission, the Commission may dispose of any of the remaining equipment and material taken over as specified in Section 108.08(a) or (c), without further legal process and in the manner that may be considered in the Commission's best interests. Any equipment or material not required for completion or recoupment of loss, or for legal charges against the contract, or any balance remaining from the disposition of material and equipment after deducting losses by the Commission, or any legal charges against the contract, will be turned over to the party legally or equitably entitled to them.

In the event the contract is completed by Commission forces, all proper costs and legal charges incurred by the Commission in connection with the contract will be deducted from money due or to become due to the Contractor. The Commission will credit the Contractor with the amount realized from the disposal of equipment or material.

If legal charges against the contract and the expense incurred by the Commission in connection with contract completion by any of the methods specified, less the credits herein provided for, exceed the sum which would have been payable under the contract for the completed work, the Contractor or the surety are liable to the Commission for the excess amount.

If such legal charges and expenses are less than the contract value of the completed work, the difference will be paid to the Contractor or such difference may be paid to the surety, in an amount not exceeding the total amount which has been paid by the surety on its obligations under the Performance Bond and the Payment Bond. In this event, the surety is required to furnish evidence satisfactory to the Commission that such payments have been made and that any balance remaining after payment to the surety will be paid to the Contractor.

(e) Termination Clause. The Commission may, by written notice, with the approval of the FHWA where applicable, terminate the contract or any portion because of any of the following conditions:

- the Contractor is prevented from proceeding with the construction contract as a direct result of a President's Executive Order with respect to the occurrence of war or in the interest of national defense;
- the Commission or the Contractor is prevented from proceeding with the construction contract as direct result of an Order of a Court of competent jurisdiction;
- funds necessary for the project completion become unavailable;
- for the Commission's convenience, the Commission has determined that such termination will be in the Commission's best interest; or
- all of the work of any controlling operation is delayed for more than 90 consecutive calendar days, for any cause beyond the responsibility of the Contractor. The Commission may enter into an Agreement with the Contractor or may terminate the contract by written notice to the Contractor. If an agreement is entered into, it will be executed by the Contractor and the Commission, approved by the Surety and the Chief Counsel, the Chairman, or the Secretary Treasurer, or their designees.

When the contract, or any portion is terminated before completion of all items of contract work, payment will be made for each unit of work fully completed at the contract unit price and payment for each partially completed unit of work will be as mutually agreed or at the percentage of the contract unit price that the cost of the partially completed unit is of a fully completed unit with a maximum allowable of 100%. No claim for lost profits or damages of any kind will be allowed for the termination.

Acceptable material, obtained by the Contractor for the work, will be purchased from the Contractor at actual cost, as shown by receipted bills and actual cost records, at such points of delivery as may be designated.

Termination of any portion of the contract does not relieve the Contractor of responsibilities for the completed work, nor will it relieve the surety of its obligation for any claim arising out of the performance of the work.

108.09 NONCOMPLIANCE BY THE CONTRACTOR - In addition to the elective measures the Commission may take for violation of the contract, as provided in Section 108.08, the Commission will also have the discretionary right to take any or all of the following actions if the Contractor fails, neglects, or refuses to comply with the requirements of Sections 105.03, 107.12, 107.16(c), 110.03(d) or 901:

- The Commission may shut down the work until the requirements of the violated section are met. In this event, no remission will be made in contract time for the period for which the work is shut down.
- The Commission may withhold payment of estimates for work completed until the requirements of the violated section are met.
- The Commission may enter upon the project and perform all work necessary to conform to the requirements of the section violated, then deduct the cost from money due or to become due to the Contractor or the surety. If the Contractor fails to comply with the requirements specified in Sections 107.12 and 107.16(c), the Commission will not proceed until 48 hours after written notice to the Contractor and the surety that the Commission will take such action.
- The Commission has the right to enter upon the project and repair or replace public or private property which has been damaged in violation of Section 107.12, to estimate the amount of such damage, and to deduct the amount from money due or to become due to the Contractor or the surety. When money is deducted as provided, the Commission will settle with the property owner and secure a written statement, releasing the Commission and the Contractor from further responsibility for such damage.

108.10 STRIKES OR LABOR DISPUTES - Time extensions will be considered appropriate in the event of a strike or labor dispute which causes, despite all reasonable efforts of the contractor to avoid it, a shutdown of the entire project or of one or more controlling operations, whether the strike or labor dispute involves a union bargaining with the Contractor, a subcontractor, the Commission, or third parties. In no event, however, will the Contractor be entitled to any delay costs for labor, material, equipment, or related expenses such as overhead or administrative costs, profit, etc., resulting from the strike or labor dispute, regardless of whether the strike or labor dispute involves a union bargaining with the Contractor, a subcontractor, the Commission, or third parties affecting a controlling operation.

However, reimbursement for additional costs to maintain required signs and devices for the maintenance and protection of traffic during the temporary suspension of work will be made in accordance with the provisions of Section 110.03.

108.11 WINTER SHUTDOWN - During the winter shutdown period, schedule and perform operations to provide maximum safety for traffic during the period of adverse weather. Coordinate activities with the Commission's winter maintenance operations; plowing snow, spreading anti-skid materials and de-icing chemicals.

The guide rail and median barrier must be in place during any extended period when the roadway is subject to winter storms. Ensure that all guide rail, concrete barrier, or equivalent protection, remain or be in place at the time of winter shutdown.

The Contractor may submit an alternate schedule to show his anticipated performance during the winter months. Such alternate schedule must be submitted to the Representative for his approval prior to performance. However, it is to be understood that in the event weather conditions prevent the fulfillment of the schedule, immediately perform all work, including installation of the guide rail and median barrier, as may be necessary to provide the degree of protection required, at no additional cost. The Commission reserves the right to shutdown the Contractor's operations whenever adverse winter weather conditions are forecast.

Temporary precast concrete barrier may be used on the centerline during winter shutdown in lieu of installing the median barrier, providing drainage in the median can be maintained.

All work and costs for use of the temporary precast concrete barrier during the winter shutdown is the responsibility of the Contractor. Replacement of damaged barrier sections, costs and related repair work as a result of traffic accidents will be the responsibility of the Commission.

Spare sections of temporary precast concrete barrier from regular maintenance and protection of traffic patterns must be available for the Commission's use in repairing the temporary precast concrete barrier during the winter shutdown. Arrange for proper storage of the precast units at a location readily accessible to Commission Forces during the winter shutdown period. Storage will be as directed by the Representative and in such manner as to prevent hazard to motorists.

SECTION 845 - EROSION AND SEDIMENTATION CONTROL DURING CONSTRUCTION

845.1 DESCRIPTION - This work is construction of temporary or permanent control measures, as indicated on the plans or as ordered during the contract life, to control pollution of surface water and groundwater.

845.2 MATERIAL -

- As specified in applicable parts of Sections 804, 805, and 806.
- Erosion and Sediment Pollution Control Devices - As shown on the Standard Drawings and Contract Drawings.
- Other water pollution control measures and devices as directed by the Representative.

845.3 CONSTRUCTION -

(a) General. Provide, install and maintain erosion control measures as shown on the plans, if an Erosion and Sedimentation Plan has been approved for the project, and as directed by the Representative. During construction, provide water pollution control measures to prevent or abate unforeseen pollution of surface water and groundwater resources, as directed by the Representative.

Coordinate control measures with the Erosion and Sediment Control Plan, if included, and permanent features to assure economical, effective and continuous pollution control throughout the construction and post-construction periods. Also comply with the requirements of Section 107.28.

If directed, place pollution control measures for authorized construction areas outside the right-of-way.

Comply with all applicable Federal, State and local laws, rules or regulations.

Perform all construction in a manner that controls pollution and soil erosion and adhere to the following at no additional cost to the Commission:

- Apply water to access roads, haul roads, and other work areas to keep dust within tolerable limits. Ensure that water used for sprinkling is completely additive free and approved by the Representative. Use no material other than water, as specified herein, for dust control.
- Locate equipment repair, maintenance and staging areas so that chemicals, fuels, lubricants, etc., will not discharge into streams, drainage features, watercourses, or wetlands.
- Reduce to the greatest extent practicable the area and duration of exposure of readily erodible soils.

During the construction operations, take the following erosion and sediment control measures as specified herein and/or shown in the Standard Drawings.

- Retard the rate of runoff and trap sediment by utilizing inlet protection, compost filter sock, silt fence barriers, rock filter outlets and dewatering basins.
- Direct all pump discharges resulting from dewatering operations to a suitable sediment trap.
- Protect the soils by seeding, temporary vegetation and/or mulching.

- Complete and protect segments of work as rapidly as is consistent with construction schedules.
- Isolate any active flow present at the time of ditch regrading by sand bagging, pumping or other suitable means.
- Stabilize all ditches immediately after work is complete or if work is suspended for 4 or more days.
- Waste areas, both within Commission Right-of-Way and outside Commission Right-of-Way, must have proper erosion and sedimentation control devices installed and maintained.

If work is suspended for 4 or more days, implement temporary measures to control erosion. Temporary measures may include, but are not limited to diverting surface water from disturbed areas, sloping the top of fills in the upstream direction, diversions, mulching, and seeding. Soils or topsoil maintained in small stockpiles or in trucks for a short duration, may be protected against erosion by covering with polyethylene or other plastic or rubber sheeting with approval from the Representative.

Upon permanent stabilization of all areas disturbed by construction, remove sediment from all control devices and remove all silt fence barriers and compost filter sock from the site. Unless otherwise approved by the Representative, dispose of all erosion and sediment control devices off site.

(b) Maintenance and Cleaning of Sedimentation Structures.

1. General. This proposal is intended to minimize erosion and subsequent sedimentation of waters of the Commonwealth within the adjacent area to the project caused by the roadway reconstruction and rehabilitation of the Pennsylvania Turnpike.

Adhere to the following guidelines during construction:

- Minimize the area worked and the time of exposure before stabilization.
- Preserve existing vegetation, especially trees and dense ground cover to the greatest extent possible.
- Install temporary and/or permanent measures to control storm water runoff in order to protect soil exposure during construction, whether as specified in the plans or as directed by the Representative.
- Establish permanent vegetation as soon as finished grade is achieved in an area.
- Protect disturbed areas by placing straw mulch according to Section 805.3 when work will cease for a period of 4 or more days.
- Whenever a slope is achieved in an area and the seeding or planting prescribed is out of season, the slope will be protected with an application of Formula E Seeding, and mulch. In no case is an area to be left bare because of the season.

2. Cleaning of Structures. Section 861.3(b).

845.4 MEASUREMENT AND PAYMENT - The proposal will indicate a predetermined amount (PDA) of money for this item.

(a) Contract Items. For performance of work, identified as having similar items listed in the contract, the contract unit price will be paid.

(b) Erosion and Sedimentation Control During Construction. Items of work not identified in the contract will be paid as follows:

1. Negotiated Price. At an agreed upon price. This price will be agreed upon with the Commission, prior to performing the work. When applicable, agreement is also required with the FHWA.

2. Force Account Basis. Section 110.03(d)

SECTION 861 - CLEANING SEDIMENTATION STRUCTURES

861.1 DESCRIPTION—This work is the installation of temporary and permanent sediment markers and the removal and disposal of sediment deposited in erosion and sedimentation control structures and/or devices.

861.2 MATERIAL -

- (a) Temporary Marker - Section 808.2(i)1., 2" x 2" x 6'-0" wood stake.
- (b) Permanent Marker - Section 1110.02(b)2., Type 2 R/W Line Post, 6'-3".
- (c) Paint - Fluorescent spray as approved by the Representative.
- (d) Seeding and Soil Supplements – Section 804.2.

861.3 CONSTRUCTION -

(a) **Sediment Markers.** Place markers as shown on the Erosion and Sedimentation Control Plan or as directed. Drive stakes for temporary markers a minimum of 2'-0" into the base of the trap or as indicated. After installation, mark the exposed portion of the post at the clean-out elevation noted on the drawings with approved fluorescent paint. Maintain the marker in a stable condition during the entire construction contract time period. Replace broken stakes as necessary.

(b) **Cleaning of Sedimentation Structures.** Inspect all control devices on the project on a weekly basis and within 24 hours of each rainfall. When sediment accumulation has reached the clean out elevation marked on the sediment marker or a point one-third the depth of the sediment structure or device, remove and dispose of the sediment so it does not erode into the construction area, wetlands, natural waterways and/or any drainage feature. Do not damage the control structure or device and do not disturb the sides of the basin. After removing sediments, reseed the disturbed area as required.

861.4 MEASUREMENT AND PAYMENT -

(a) **Permanent and Temporary Sediment Markers.** Incidental to the project.

(b) **Cleaning of Sedimentation Structures.** Cubic Yard.

The sediment removed will normally be measured by the number of full loads hauled multiplied by the rated capacity of the hauling equipment, in cubic yards. Cross-sectional measurements will be used for large quantities and when not using hauling equipment.

(c) **Seeding and Soil Supplements.** Section 804.4.