

i. To within 30 inches of the surface with Permeable Flowable Fill (Controlled Low Strength Material). Orange pigmentation is encouraged, but not required; or

ii. With a cap of poured or pre-cast concrete that is four inches thick and 24 inches wide directly above the fiber optic facility. The trench backfill material shall consist of Soil Aggregate Designations I-1, I-2, I-3, I-11 or I-13 placed and compacted in accordance with the NJDOT Standard Specifications to within 30 inches of the surface.

5. The permittee shall install a continuous plastic ribbon marking tape on the Permeable Flowable Fill directly above the fiber optic facility or on the trench backfill material directly above the fiber optic facility.

6. At the top 30 inches from the surface, the permittee shall:

i. With respect to flexible pavement, replace the Hot Mix Asphalt (HMA) with HMA Base Course, Mix I-2 or Superpave HMA 19M64 Base Course in the same thickness as the existing bituminous courses, and replace the subbase with Dense Graded Aggregate Base Course (DGABC) in the same thickness as the existing subbase. One year after the initial placement, the permittee shall remove the upper two inches of the HMA wider than the trench width by milling and shall replace it with two inches of HMA Surface Course, Mix I-4 or Superpave HMA 12.5H64 Surface Course. The Department shall determine the width of milling based on the relationship between the trench and the travel lanes. During the year waiting period, the permittee shall maintain the trench area in good condition, as determined by the Department. In those instances where, through past resurfacings, the bituminous material thickness exceeds 14 inches, the replaced HMA, Mix I-2 need not exceed a maximum thickness of 14 inches. The DGABC below the bituminous layer shall be 16 inches thick even if the existing subbase layer is thicker than 16 inches;

ii. With respect to composite pavement:

(1) Replace the existing HMA pavement with HMA Base Course, Mix I-2 or Superpave HMA 19M64 in the same thickness, replace the existing concrete pavement with jointed, reinforced Portland Cement Concrete Base Course in the same thickness, and replace the existing subbase with DGABC in the same thickness. One year after the initial placement, the permittee shall remove the upper two inches of HMA wider than the trench width by milling and shall replace it with two inches of HMA Surface Course, Mix I-4 or Superpave HMA 12.5H6 Surface Course. The Department shall determine the width of milling based on the relationship between the

trench and the travel lanes. During the year waiting period, the permittee shall maintain the trench area in good condition, as determined by the Department;

(2) In those instances where, through past resurfacings, the bituminous material thickness exceeds eight inches, the replaced HMA Base Course, Mix I-2 need not exceed a maximum thickness of eight inches. The concrete base course below the HMA courses shall be 12 inches thick. The DGABC below the concrete pavement need not exceed 16 inches thick even if the existing subbase layer is thicker than 16 inches.

(3) The permittee may elect to substitute an equal thickness of HMA Base Course, Mix I-2 or Superpave HMA 19M64 Base Course for Portland Cement Concrete Base Course in composite sections only if a Maintenance Bond is provided against settlement, deformation or cracking of the surface for a three-year period following final acceptance of the construction work.

iii. With respect to Portland Cement concrete pavement, replace existing concrete surface course with the same thickness of jointed reinforced Concrete Surface Course. Replace the existing subbase with the same thickness subbase designation I-3 in accordance with NJDOT Standard Specifications.

iv. With respect to a berm or sidewalk, replace in-kind including re-establishing the grass.

7. The permittee shall restore the surface to a smooth and sound condition that shall meet or exceed pre-existing and surrounding conditions, as set forth in N.J.A.C. 16:25-9.

8. The fiber optic facility shall be detectable by standard locating equipment operated on the surface.

9. The minimum lateral proximity to a parallel utility facility (including the State's fiber optic ducts) shall be 18 inches.

10. The permittee shall construct manholes or hand holes so that the longest dimension is parallel to the roadway and not within the roadway.

11. The Department discourages but may authorize the location of a fiber optic facility in the shoulder of the roadway near the gutter line, based upon consideration of the practicability of other alternatives, the relative hardship to the applicant, the applicant's long-term economic and financial stability, and the public interest in the grant or denial of the application, and subject to the provisions of N.J.S.A. 27:7-26, as amended and supplemented, and N.J.A.C. 16:41-3.1(g), as amended and supplemented.

12. The number of ducts shall not exceed four one and one-fourth inch ducts, unless a waiver has been granted by the Department in accordance with N.J.A.C. 16:25-2.3. In exchange for the waiver on installations one-half mile long or longer, the Department shall require that the each fiber optic company donate the use of one duct (one and one-fourth inch nominal size with associated manholes) to the Department for State use. When more than one company occupies the same trench, they may elect to donate the use of either one duct each or one duct jointly. The permittee shall maintain the donated duct and associated hand holes in good repair. The facilities within the duct and hand hole shall be the responsibility of the State. The permittee shall not begin construction until the Department receives formal documentation from the permittee indicating the permittee's commitment to donate the duct use.

13. The permittee shall design and construct the fiber optic facility to avoid future relocations within the limits of all projects listed in the Department's then-existing five-year Capital Construction Program. The Department shall waive this requirement if the permittee executes an agreement to absorb all relocation or accommodation costs resulting from the construction of any project listed in the then-existing five-year Capital Construction Program. The permittee shall not undertake construction within the limits of such a project until the permittee and the Department's Utility Engineering Unit execute a written agreement regarding the payment of future relocation costs.

14. The permittee shall provide the Department with as-built plans based on the New Jersey Plane Coordinate system with offsets shown from existing physical features. The plans shall record the vertical and horizontal location of the fiber optic facility for each change in grade or alignment. In no case shall more than 100 feet separate the locations where the vertical and horizontal data are recorded. The as-built plans shall show the horizontal and vertical locations of manholes or hand holes. The permittee shall submit four prints and one reproducible of the as-built plans within one month of completion of construction.

Amended by R.2003 d.291, effective July 21, 2003.

See: 35 N.J.R. 1489(a), 35 N.J.R. 3377(a).

In (s)13, rewrote the last sentence.

Administrative correction.

See: 35 N.J.R. 4124(a).

#### **16:41-6.4 Movement or relocation of highway facilities**

(a) When a permit requires the Department's movement or relocation of highway facilities, the Department shall prepare a cost estimate. The applicant shall provide a check or money order in the amount of the cost estimate to the Regional Maintenance Engineer along with the permit fee. The Department shall not execute the permit until the applicant has provided the check or money order.

(b) When the Department has completed the movement or relocation, the Department shall deduct the full cost of the activity from the amount of the check or money order. If the amount of the check or money order is less than the cost of the activity performed by the Department, the Department shall bill the permittee for the balance due. If the permittee does not pay the balance due within 30 days of billing, the Department may initiate legal action. If the amount of the check or money order is more than the cost of the activity performed by the Department, the Department shall refund the difference.

#### **16:41-6.5 Bonds**

Permittees who own facilities within Department rights-of-way requiring numerous permits over an extended period may execute a bond for single restoration and maintenance highway occupancy permits instead of paying the bond required by N.J.A.C. 16:41-6.3(e) and (k). The Bureau of Maintenance shall hold the bond.

#### **16:41-6.6 Agreements**

(a) The Department may require an agreement as a condition of a permit, when the Department, in its sole discretion, determines that this condition is necessary, convenient, or desirable. The Regional Maintenance Office shall notify the applicant of such a determination. When the Regional Maintenance Office issues the permit, execution of the agreement shall be one of the conditions. The permit applicant shall perform no activity within Department rights-of-way or property under the jurisdiction of the Department before the execution of the agreement. If the applicant does not respond to the Department's correspondence regarding the agreement within 90 days of the correspondence, the permit expires.

(b) The Department shall estimate Department costs for administration and inspection. The permittee shall be responsible for the payment of actual Department costs.

#### **16:41-6.7 Permit expiration**

In addition to expiring at the conclusion of the fixed time periods set forth in N.J.A.C. 16:41-6.2(f), a permit may expire pursuant to N.J.A.C. 16:41-6.8.

#### **16:41-6.8 Permit violations**

(a) When the Department becomes aware that a permit condition has been violated, it shall notify the permittee, in writing, that the permittee has 30 days within which to remedy the violation.

1. Failure to remedy the violation within the specified time limit shall cause expiration of the permit.

2. The Department shall provide written notice of the effective date of the expiration and may seek the civil penalties provided for in N.J.S.A. 27:7-41.1 or other available remedies.

3. The penalties shall commence on the day following the date of expiration.

4. The Department may remedy the violation and shall deduct the full cost of such work from the amount of any bond, check, or money order held by the Department.

5. If the amount of the guarantee is less than the cost of the repairs performed for the Department, the Department shall bill the permittee for the balance due.

6. If the permittee does not pay the balance due within 30 days of billing, the Department may initiate legal action.

(b) When the Department determines that an emergent situation exists that results from a permit condition violation, the Department shall notify the permittee.

1. The permittee shall make emergency repairs within 24 hours, or as otherwise directed by the Department.

2. If the permittee fails to make the designated repairs within the specified time limit, the permit shall expire and the Department may either remedy the violation or terminate the activity and shall deduct the full cost of any work done from the amount of any bond, check or money order held by the Department.

3. If the amount of the guarantee is less than the cost of the repairs performed for the Department, the Department shall bill the permittee for the balance due.

4. If the permittee does not pay the balance due within 30 days of billing, the Department may initiate legal action.

(c) If the permittee disagrees with the Department's determination that a violation exists, the permittee may appeal pursuant to N.J.A.C. 16:41–6.12.

#### **16:41–6.9 Permit revocations or modifications**

The Department may revoke or modify any permit after the Commissioner determines that the conditions that existed at the time the Department executed the permit have changed.

#### **16:41–6.10 Permit extensions**

(a) If a permittee starts activity authorized by a permit within the permit time established at N.J.A.C. 16:41–6.2(f), but cannot complete the activity within the allotted time, the permittee shall request an extension of time in writing from the appropriate Regional Maintenance Office and shall submit the required extension fee identified at N.J.A.C. 16:41–7.1 in the form of a check or money order. The Department may approve one, one-year extension, except for "Temporary Use" permits, which cannot be extended.

(b) Permits for monitoring wells may be extended more than once, when required by the Department of Environmental Protection.

#### **16:41–6.11 Acceptance of permit**

The start or performance of any activity under a permit shall constitute full understanding and acceptance of, and agreement with, the terms and conditions of the permit and shall represent the express intention and obligation of the permittee to comply therewith.

#### **16:41–6.12 Appeal process**

(a) The appeal process for highway occupancy applications and permits, except for utility opening applications and permits and wireless communication site survey applications and permits, is as follows:

1. The applicant or permittee shall submit a written request for reconsideration to the Regional Maintenance Engineer within 30 days of a notice from the Department. The request shall include reasons for the appeal.

2. Within 10 days of receipt of the reconsideration request, the Regional Maintenance Engineer shall schedule a meeting with the appellant that shall take place within 30 days thereafter. The meeting will provide the appellant with an opportunity to present additional information in furtherance of the appeal.

3. The Regional Maintenance Engineer shall render a decision in writing within 15 days of the meeting and shall so notify the appellant. If the appellant does not agree with the decision of the Regional Maintenance Engineer, the appellant may submit a further appeal to the Executive Director for Regional Operations within 15 days.

4. The Executive Director for Regional Operations shall schedule an informal hearing within 10 days of receipt of the appeal. The Executive Director for Regional Operations shall conduct the hearing. At the hearing, the appellant shall have an opportunity to present additional information.

5. In reaching the final agency decision, the Executive Director for Regional Operations shall consider all of the information previously provided and the additional information presented at the hearing, as well as the criteria set forth in these rules and the public's right and interest in a safe and efficient highway system. The Executive Director for Regional Operations shall render the final agency decision, with reasons, within 10 days of the informal hearing and shall so notify the appellant in writing.

(b) The appeal process for utility opening applications and permits is as follows:

1. The applicant or permittee shall submit a written request for reconsideration to the Regional Maintenance Engineer within 30 days of a notice from the Department. The request shall include reasons for the appeal.

2. Within 10 days of receipt of the reconsideration request, the Regional Maintenance Engineer shall schedule a meeting with the appellant that shall take place within 30 days thereafter and will provide the appellant with an opportunity to present additional information in furtherance of the appeal.

3. The Regional Maintenance Engineer shall render a decision in writing within 15 days of the meeting and shall so notify the appellant. If the appellant does not agree with the decision of the Regional Maintenance Engineer, the appellant may submit a further appeal to the Director of Design Services within 15 days.

4. The Director of Design Services shall schedule an informal hearing within 10 days of receipt of the appeal. The Director of Design Services shall conduct the hearing. At the hearing, the appellant shall have an opportunity to present additional information.

5. In reaching the final agency decision, the Director of Design Services shall consider all of the information previously provided and the additional information presented at the hearing, as well as the criteria set forth in these rules and the public's right and interest in a safe and efficient highway system. The Director of Design Services shall render the final agency decision, with reasons, within 10 days of the informal hearing and shall so notify the appellant in writing.

4. The Manager of the Office of Major Access Permits shall schedule an informal hearing within 10 days of receipt of the appeal. The Manager of the Office of Major Access Permits shall conduct the hearing. At the hearing, the appellant shall have an opportunity to present additional information.

5. In reaching the final agency decision, the Manager of the Office of Major Access Permits shall consider all of the information previously provided and the additional information presented at the hearing, as well as the criteria set forth in these rules and the public's right and interest in a safe and efficient highway system. The Manager of the Office of Major Access Permits shall render the final agency decision, with reasons, within 10 days of the informal hearing and shall so notify the appellant in writing.

Amended by R.2003 d.291, effective July 21, 2003.

See: 35 N.J.R. 1489(a), 35 N.J.R. 3377(a).

In (b), rewrote 3 through 5.

Administrative correction.

See: 35 N.J.R. 4124(a).

(c) The appeal process for wireless communication site survey applications and permits is as follows:

1. The applicant or permittee shall submit a written request for reconsideration to the Supervisor of the Wireless Communications Unit within 30 days of a notice from the Department. The request shall include reasons for the appeal.

2. Within 10 days of receipt of the reconsideration request, the Supervisor of the Wireless Communications Unit shall schedule a meeting with the appellant that shall take place within 30 days thereafter. The meeting shall provide the appellant with an opportunity to present additional information in furtherance of the appeal.

3. The Supervisor of the Wireless Communications Unit shall render a decision in writing within 15 days of the meeting and shall so notify the appellant. If the appellant does not agree with the decision of the Supervisor of the Wireless Communications Unit, the appellant may submit a further appeal to the Manager of the Office of Major Access Permits within 15 days.

## SUBCHAPTER 7. FEES

### 16:41-7.1 Fees

(a) When an applicant proposes to undertake activities that are associated with different types of permits, the fee associated with the highest cost permit shall be applicable.

(b) Anyone under contract to the Department and working on Department rights-of-way or on property under the jurisdiction of the Department at the written request of the Department shall not be assessed an application or permit fee for any required permit.

(c) Fees for applications, permits, and renewals are set forth below and are non-refundable. Fees shall be in the form of a check or money order made payable to the Department. The Department shall not accept cash. The applicant shall submit the application fee with the application. The applicant shall not submit the permit fee until the applicant returns the signed proposed permit to the Regional Maintenance Office. The Department shall not execute a proposed permit until the applicant has submitted the proper fee for the permit and the applicable entity identified at N.J.A.C. 16:41-6.2 has signed the proposed permit.

Type	Number	Unit	Application	Permit	Extension
Utility Openings	0 to 20	Square Feet (SF)	\$400.00	\$150.00	\$150.00
	20 to 200	SF	\$600.00	\$200.00	\$200.00
	Greater than 200	SF	\$900.00	\$300.00	\$300.00
Poles	1 to 10	Unit	\$250.00	\$ 75.00	\$ 75.00
	Greater than 10	Unit	\$475.00	\$150.00	\$150.00
Curb, Sidewalk or Handicapped Ramp	0 to 200	Linear Feet (LF)	\$300.00	\$100.00	\$100.00
	Greater than 200	LF	\$600.00	\$200.00	\$200.00
Drainage Facilities	1 to 5	Unit	\$175.00	\$ 50.00	\$ 50.00