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White Paper on PennDOT Stormwater Policy

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Issue: Municipal Maintenance Responsibilities for Subsurface Stormwater Facilities on State Highways

Background:

The state legislature adopted the State Highway Law of 1945. Section 421 of the act states, "It is unlawful for any person to discharge sewage or drainage, except surface drainage, on, or within the legal limits of, any state highway". An exception in the act exists for driveway drainage and that coming from a municipal roadway. For many years it was standard for storm drainage systems in curbed sections of roadways in Boroughs and Cities to be maintained by the municipality. In 1997 a Commonwealth Court case, *Nellie Wallace v. PADOT* resulted in a decision affirming that "...The obligation of the Commonwealth in the reconstruction, resurfacing, or maintenance as hereinbefore provided shall be limited to that part of the street or section thereof *between curb lines* as established at the time of passage of this act (State Highway Law of 1945), but shall not include the portions of such streets which are or may be used or occupied by the structures or surface facilities of any public utility company..." This decision reaffirmed the PennDOT policies incorporated into its Maintenance Manual beginning in 1988 requiring that townships maintain storm water systems along state highways. This policy has been disputed ever since by municipalities as an unfunded mandate. The results of the PennDOT policy are mixed with most townships unwilling to accept responsibility for storm water systems on state highways.

In February 2007 the Pennsylvania State Transportation Advisory Committee (PSTAC) issued a report entitled "Storm Water Facilities on State Highways" to identify the current responsibilities for storm water maintenance along state highways, to evaluate the extent and associated costs of storm water maintenance along state highways, and to develop equitable alternatives for improving the management of these facilities and the funding for ongoing maintenance and improvements. The full report can be found at:
<ftp://ftp.dot.state.pa.us/public/Bureaus/Cpdm/TAC/Storm%20Water%20Facilities%20on%20State%20Highways%20Final%20Report.pdf>

In late December representatives of PSATS met with Deputy Secretary Scott Christie to discuss the revised draft PennDOT policy that would clarify maintenance responsibilities of parties applying to access storm water facilities.

The first draft of the policy required the local government to apply for a Highway Occupancy Permit (HOP) that would establish future maintenance obligations. The HOP for land development could be obtained by the developer but would be transferred to the local government upon completion of the project. This approach was not acceptable to municipal representatives and at the time of this writing the Deputy Secretary is working on a revised draft.

Discussion:

An issue that has become more prominent within the Centre Region of Centre County, has been the position of the Pennsylvania Department of Transportation (PennDOT) regarding both the long and short term maintenance of storm water drainage inlets and drainage piping within their rights-of-way.

This matter has become a concern in the Centre Region after municipal Public Works Directors noted the number of storm pipe failures on Atherton Street. As an example, the stormwater pipe collapsed under the South Atherton Street bike path (Harris Township) in 2004. The Township applied for and received a TE grant (Safe Routes to Schools) in 2005 to fund the repairs. It was completed in 2008. The project doubled in price between the time the grant was awarded and actual construction and the Township had to kick in money of its own to finish the project.

Patton Township experienced similar problems within the cartway of Atherton Street when the storm water pipe collapse leaving a gaping hole in the roadway along the curb line.

Recent discussions have lead to College, Ferguson and Patton Townships and the Borough of State College to rank the replacement of the Atherton Street storm pipe system high on the 2040 Long Range Transportation Plan projects. Further, the Centre County Metropolitan Planning Organization has allocated nearly \$500,000 to study the problem. The cost estimate to cure the problem is \$15 million.

If the PADOT policy remains unchanged the cost to repair not only the Atherton Street storm water pipe could be compounded by other failing stormwater piping in sections of curbed state highways along College Avenue, Pine Grove Road, Park Avenue, and Beaver Avenue.

This paper comments on and provides some suggestions on this issue, with discussion points on (1) improvements made under a State permit versus improvements completed by PennDOT; (2) conclusions made by PennDOT versus recommendations made in the Pennsylvania State Transportation Advisory Committee (PSTAC) Report on Storm Water Facilities on State Highways, dated February 2007; (3) routine maintenance versus long-term maintenance, which is

referred to as capital replacement; and (4) the logic of physical repair/replacement and funding responsibilities.

Permitted Work versus State Constructed Roads

Some of the logic used in memoranda by PennDOT mentions work performed by some cities well over fifty years ago, in which curbs were added to existing streets as a cosmetic feature. In a case where a city performed the work, it certainly could be argued that this was constructed under a permit with the State and that the city then took over maintenance responsibilities for those curbs, and necessary drainage facilities that accompanied that work. However, PennDOT has been constructing curbed street sections, using design standards they developed for both storm drain inlets and drainage piping. In those cases, which is the vast majority of curbed streets, the curb (and gutter), inlets, and drainage pipes are an integral part of the street and not an appendage to the pavement section. It would be very rare that a municipality was involved in the design of that system, and have the drawings of those drainage systems. There is relative certainty that PennDOT has never deeded over the inlet and piping systems to the municipalities. So it would be illogical for a municipality to ever expect to program funding for the maintenance of these facilities.

Conclusion versus Recommendations of the PSTAC Report

The PSTAC Report does not conclude that the municipalities are, in fact, the responsible party for maintenance of storm water drainage systems within state rights-of-way, but notes that it is a point of contention. The primary recommendations of this report are that additional funding needs to be identified and that action is needed from the General Assembly.

Routine Maintenance versus Capital Replacement

Much of the memoranda and PSTAC report use the term “maintenance” when referring to either short term (routine) maintenance, and then expanding that to apply to long term maintenance, which again is referred to as capital replacement in this paper. If it actually was decided, via a legal ruling or new legislation, that local municipal governments should be responsible for “routine maintenance”, there may be ways for municipalities to fund this or perform the work under PennDOT’s AGILITY program. It could be argued that the local public works

departments would be more suited to performing inlet cleaning and grading of drainage ditches and outlet pipes. However, the “capital replacement” of storm drainage inlets and piping is only needed every twenty to fifty years. With the local municipalities not being aware of the locations, sizes, and materials for these drainage facilities, it is unreasonable to expect them to find funding sources for these expensive projects. It is much more logical for this type of replacement work to be performed as part of a larger street repair or overlay program.

Logic of Physical Replacement (Construction) and Funding Mechanism

As mentioned earlier, storm drainage systems are an integral part of street construction. Therefore, it is logical that these drainage systems be inspected, and repaired/replaced if needed, during the repair or overlay of a street. It would be absurd to have a municipality tear out perfectly good asphalt and subgrade material, curb and gutter, and then replace the same in order to replace deteriorated storm pipes. Not only would this be doubly expensive versus doing this work with a street overlay, it would result in many streets with long and expansive patches. Funding for replacement of drainage facilities should be programmed and paid for as part of the street overlay.

Developing a Regional Policy:

The COG Public Services Committee has requested that the Municipal Managers to develop a regional position for the Public Services and COG General Forum consideration on the PADOT Maintenance Manual Policy. The position paper would provide the basis for regionally consistent communications with PennDOT and elected state officials on changes to the Maintenance Manual. It may also initiate a regional discussion on how storm water improvements and/or replacements should be funded. The position should consider the following:

- Is there any obligation that municipalities be responsible for storm water pipes on curbed sections of state highways?
- If there is an obligation what if any cost sharing should there be between the state and municipalities?
- Should these types of projects be a priority of the CCMPO?
- What is the Centre Region’s position on issuance of Highway Occupancy Permits for connections to state storm water pipes by municipalities and/or developers?
- Should the state authorize municipalities to collect storm water impact fees when a developer connects to the state storm water pipes under an HOP?

- **Should non Centre Region municipalities be consulted in developing a position paper?**

Recommendation

Replacement/repair of drainage systems should be the responsibility of the party that is maintaining the street/cartway or right-of-way. In State rights-of-way, this would be PennDOT. Years ago there was a PennDOT motto stated “Maintenance First”. Although the public demand is always for new highways, roadway widening projects, and other “new” projects, the maintenance of our existing roadway systems (including drainage facilities), should be planned and programmed.

Work that a municipality or developer performs under a State permit is different. In that situation, there should be bonding, trust fund or some other surety funding in place that PennDOT can draw from when it’s time to make repairs or modifications.

As stated earlier, it might make sense for the local public works departments to perform the routine maintenance, not “capital replacement” on behalf of PennDOT, perhaps through the AGILITY or other type of program.