

The Kentucky Department of Highways is responsible for controlling both public and private usage of right of way of the State Roadway System.

The purpose of this website is to assist an individual or company in obtaining a permit to perform work upon the state of Kentucky's right of way.

Kentucky Revised Statute 177. 106 authorizes the Secretary of Transportation to issue encroachment permits.

The Department of Highways is required by Administrative Regulations, which have the effect of law, to see that *all* permitted work is done in compliance with the time limit specified in the permit.

FREQUENTLY ASKED QUESTIONS

1. Who Issues Permits?

- a. Permit engineers located in the twelve Department of Highways' District Offices throughout the state are delegated the responsibility of reviewing and issuing permits.

2. Who Needs a Permit?

- a. Any firm, individual, or governmental agency who desires access to a road on the State Highway System, or desires to perform any type of work within the right of way of such road must obtain a permit from the Department of Highways. No permit shall constitute a license to perform any work that is inconsistent with or that does not meet the requirements of local, state, federal, and/or any other agency having jurisdiction over the permitted work location.
- b. Issuing a permit is neither an automatic action nor a foregone conclusion. Each case is considered on its own merits, considering the reasonable rights and responsibilities of both the traveling public and the applicant desiring either access to or encroachment with the state right of way.

3. When Should I Contact the Highway Department?

- a. Since state maintained roads may be affected by future development projects, any proposed access or encroachment should be coordinated at the earliest possible date at the appropriate Highway District Office. This early coordination can, in many instances, prevent later project conflicts and delays if the applicant's proposal does not meet the Department's requirements.
- b. Permit construction may affect the flow of traffic on a highway. Requirements for maintaining traffic control may be found in the *Manual on Uniform Traffic Control Devices*, a nationwide regulatory manual which has the effect of law.

4. How Do I Apply For A Permit?

- a. Call or visit the highway district which has jurisdiction in the county where the work is proposed and arrange to meet with the permit engineer at the site.

5. What Will I Need To Bring With Me To A Meeting?

- a. The permit applicant, prior to meeting with the permit engineer, should have a preliminary sketch or site plan of the proposed work area. The permit engineer can review the proposal and if necessary contact other state agencies so they can provide necessary expertise in the area of drainage (i.e., water control), traffic control, construction procedures, material evaluations, etc., prior to or at the onsite meeting.

6. Can't We All Just Meet At The Job Site For Approval?

- a. At a time and date agreeable to the permit applicant and the permit engineer, a meeting at the proposed development site should be conducted in order to resolve any problems prior to formal submission of the permit request. The permit applicant should be prepared to show at the site exactly what he wants to do.
- b. The permit engineer along with other Department of Highway personnel deemed necessary will be ready to advise what is necessary in preparing plans and technical documents required to obtain a permit. The permit engineer will provide Permit Application (TC 99-1) and Permit Bond (TC 99-7) forms. He also will have prepared the Required Documentation and Information (TC 99-18) form which will assist the applicant in preparing the permit request for formal submission.
- c. During the on-site meeting, the applicant should thoroughly read the Documentation and Information form. The permit engineer will answer questions and discuss requirements on the Permit Application and Bond forms. The permit engineer will also advise as to the amount of indemnity (bond or check) necessary to guarantee the completion of the project. The types of indemnity are explained in detail later in this website
- d. *NOTE: A Power of Attorney document must accompany the bond when the permit request is formally approved.*

7. Will I Be Required To Provide any Plans or Drawings?

- a. Plans, Drawings & Specifications - The permit applicant will be required to prepare, at his expense, a plan (to scale) which shows the scope of work to be done on and adjacent to the state's right of way.
- b. These plans should contain all the information checked on the Documentation and Information form (TC 99-18).
- c. Department of Highway roadway plan sheets with the encroachment shown in red will be required for submittal along with the applicant's plan and other necessary documents. *(These are normally available at the District Office for a nominal charge.)*

- d. Specifications: At the on-site meeting, the permit engineer will discuss the 4-page General Notes and Specifications form (TC 99-21). The form is subdivided into ten areas which deal with the manner in which the work on state right of way will be done. If there are any questions concerning the form, the permit engineer will advise as to what is necessary for the site development and why.
- e. When all the required documents and plans have been completed, they should be submitted to the district permit engineer for processing.
- f. Upon approval of the permit , two (2) copies of the permit will be returned to the applicant. One (1) copy is for the applicant's records. Since the permit is a permanent, binding contract, it should be kept in a safe place. The contractor performing the work must have in his possession at all times the other copy of the permit as well as the approved detailed drawings of work to be done.
- g. *NOTE: The permit engineer will expedite the request immediately upon receiving it, but certain permit requests will involve more processing time since they may require review by other agencies. If requested, an approximate approval date will be given upon forms/ submission of the permit to the district permit engineer.*

8. What Is An “Indemnity” and Why Do I Need It?

- a. KRS 177.106 authorizes the Secretary of Transportation to issue right of way encroachment permits.
- b. This authorization allows the Secretary to require the applicant to provide a bond or cash indemnity to ensure that all permitted construction, installations, and activities are in accordance with the terms of the permit and to guarantee that all non-conforming aspects of the work or activities can be corrected without expense to the Department.
- c. The indemnity amount will be determined by the District Office officials.

9. What Kind of Indemnity Can I Provide?

- a. There are several types of indemnity which may be posted as a guarantee that the permitted work will be completed to the satisfaction of the Department. These are:
 - i. **SELF INSURED** - Governmental agencies and public utilities may be granted self-insured status upon submission of an affidavit to the Transportation Cabinet, Permits Branch of the State Highway Engineer's Office verifying physical assets equal to \$500,000 in the Commonwealth of Kentucky and agreeing to conditions required by the Department to apply to all permits granted under the bond. The applicant's assets must be of physical nature, located permanently within the Commonwealth of Kentucky.
 - ii. **CASH** - Cash indemnities may be provided by the applicant in the form of certified checks, payable to: Treasurer, Commonwealth of Kentucky.
 - iii. **BONDS** - A construction bond issued by the permittee's insurance company may be posted as a guarantee that all permitted work on the state's right of way will be completed as approved by the Department.

- b. These temporary indemnities shall not be accepted for less than \$5,000 unless the applicant can provide a written statement presenting sufficient facts to show that the bond cost would create a financial hardship to the applicant. In any case, the amount of the indemnity shall be for such amount and for such duration that will safeguard the interest of the Department.

10. Do I Have Any Legal or Obligatory Responsibilities?

- a. As the responsible party to whom the permit is issued, following are several statements outlining what the applicant must do before beginning work and what is expected if the roadway or right of way is damaged by him or his contractor.
 - i. **Responsibility for Damages or Liabilities** - The applicant shall at all times hold harmless the Commonwealth of Kentucky, Department of Highways or any political subdivision of the Commonwealth of Kentucky from responsibility for any damages or liability arising from the installation, construction, maintenance, repair, operation, or use of the permitted facility.
 - ii. **Notification of Utility Companies** - The permit applicant shall notify utility companies and advise them of the proposed work prior to the start of actual work.
 - iii. **Utility Relocation and/or Adjustment** - All utility relocations, adjustments, and modifications necessitated within state right of way, by development of private property frontages as authorized by permits, are to be at the expense of the permit application.
 - iv. **Frontage Rights** - If the permit application and drawings propose work along and on the right of way in front of other private property, the signature of these owners stating their approval, or a copy of the recorded easement must be on or attached to the permit application before the permit can be issued. (Item 3 on back of Application)
 - v. **Damage to Highway Facilities** - Any damage or disturbance to highway facilities, appurtenances (culvert, bridge, guardrail, etc.) natural growth, or any feature within the right of way other than has been authorized by permit shall be repaired or replaced by the person responsible as directed by the Department.
 - vi. It is important that the permit applicant contact the utility companies in his area and request that they locate any underground utilities which may be on the state's right of way at the work site. The utility company(ies) can prepare an estimate of cost to relocate these utilities, if necessary to move them.

11. General Construction Practices Required of the Permittee

- a. **Traffic Control** - The need for standard traffic controls is especially acute during roadway construction, maintenance, and utility (work zone) operations. Abnormal conditions are the rule and, therefore, traffic is particularly dependent

on design, placement, and uniformity of traffic control devices to direct and guide it safely and efficiently through what would otherwise be a hazardous area. Prior to beginning construction of the permitted encroachment, the permit holder or his designated representative shall establish a traffic control and signing arrangement as required by the Manual on Uniform Traffic Control Devices to advise and warn motorists that they are entering a construction area.

- b. **Storage of Material and Equipment** - In order to maintain a safe area for the motorist and pedestrian, all construction material shall be stored off the state's right of way. All construction equipment shall be parked off the right of way during nonworking hours. During working hours the equipment, when not in use, shall be parked as far from the roadway pavement as possible. In order to minimize obstacles adjacent to the roadway, all employee vehicles are to be parked off the right of way.
- c. **Work Area Maintenance** - During construction of the permitted work, the responsible person must keep the work area clear of any debris which would create a hazard to the pedestrian and motorist using the roadway and adjacent appurtenances. This includes maintaining a debris free roadway and shoulder (i.e., tracking of mud by trucks and cars). There must be on-going inspections to ensure compliance with this requirement. If the work is being done in an urban area and involves sidewalk removal, a temporary walkway shall be provided through the work area for pedestrians. Every effort should be made by the permittee to provide a safe work area for both pedestrians and motorists.
- d. **Construction Specifications** - Unless otherwise directed by the permit engineer or his designated representative, all methods of construction on the state's right of way must conform to the Kentucky Transportation Cabinet, Department of Highways' Standard Specifications for Road and Bridge Construction and Standard Drawings Manual (latest edition).

12. When Does The Work Need To Be Completed (Release)

- a. Based upon the permittee's estimate of time to complete the permitted work, the permit engineer will assign a date that the work shall be completed. This date will be either January 1 or July 1. Prior to the completion date, the permit engineer or his representative will inspect the permitted work and advise if additional work is needed to meet the terms of the permit. It is advisable to meet with Permit personnel and review the completed work as to compliance with the permit drawings and specifications. If the work is found to be satisfactory, the indemnity will be released.

- b. It is necessary to complete the permitted work by the completion date on the permit to minimize the expense of maintaining traffic control devices (signs, barricades, etc.) and disruption to the general public.
- c. If the work is not finished before expiration of the completion date, failure to advise the permit engineer could result in forfeiture of the indemnity and cancellation of the permit. The cancellation of the permit would result in the permitted encroachment being completed or removed by state forces with appropriate legal action to recover any cost incurred.
- d. A permit is effective until revoked by the Department and the terms on the permit and accompanying permit documents and drawings remain in effect as long as the encroachment exists.