

CHAPTER V

LICENSING PROCEDURES, AGREEMENTS, DENIAL OF APPLICATION

Section 1. General.

(a) Wyoming Statute 1-26-813 requires that permission be obtained from the Department prior to constructing any utility facilities along, across, or under the streets, roads, and highways under Department jurisdiction.

(b) The Department has developed a license form and a license agreement, as well as requirements for an exhibit showing what the applicant proposes to construct on the highway right-of-way and where this facility is to be located.

(c) The Department has also developed a Joint Occupancy Agreement for those instances where a utility facility with prior rights may be located within the highway right-of-way.

(d) An Exhibit (Drawing) of the facility's location within the highway right-of-way is required.

(e) The licenses and any agreements executed between the Department and a utility which refer to or authorize occupancy of highway R/W become a permanent part of the Department files and will be used on future highway projects to determine whether a reimbursement is due the utility for relocation.

Section 2. Application Procedure.

(a) Applicants who wish to cross or encroach upon highway rights-of-way under Department jurisdiction may contact the respective WHD District Maintenance Engineer in whose area the facility is to be installed and explain what they wish to do. (See District Boundary Map in Appendix).

(b) The proposal should consist of drawings that show where the facility will be placed relative to the roadway template. (See Exhibits in Appendix).

(c) Upon review and incorporation of WHD District stipulations into the design, the applicant will fill out the License (WHD Form E-54) and submit four signed and dated copies, with an Exhibit attached to each, to the District Maintenance Engineer. (See Appendix for sample form).

(d) After review of the formal application (license with exhibit), the District will either approve the application by signing it or they may opt, depending on the complexity or size of the proposed utility project and/or if the proposed work will be done by contractors working under the utility's supervision, to prepare a License Agreement which will set forth additional criteria to be followed.

(e) A standard attachment to any license will be WHD Form E-54A which sets forth specific criteria to be followed by the utility or its contractor during construction. (See attachments in Appendix).

Section 3. License Form (WHD Form E-54)

(a) Form E-54, with Form E-54A and a detailed Exhibit is the most often used permit for licensing utility crossings and/or encroachments. Forms are provided by the District Office.

(b) The applicant shall fill in the top portion of page one with the name of the owner of the facility, a description of the proposed installation, the Section, Township, Range, the Highway/Route number, County, and the highway milepost of the proposed facility or the beginning and ending milepost for an encroachment.

In Section 6 indicate the date of the exhibit.

(c) On page two fill in the name of the company or owner of the facility (not the consulting engineer or individual making application on behalf of the owner), mailing address and telephone number, signature of owner or company official and the date it was signed.

(d) Form E-54 may not be used to permit railroad track crossings or water, sanitary sewer, storm sewer, or other municipal systems when the parallel encroachment is located outside of the corporate limits and is over 500 feet in length. (See License Agreement below).

(e) Drilling, blasting or any type of longitudinal (parallel) seismographic investigation will not be allowed within any highway right-of-way. WHD Form M-23, Seismographic Cable Crossing License shall be issued by the District. (See Operating Policy 19-3).

(f) Upon approval of Form E-54, the WHD District Office will return one copy to the applicant with authorization to proceed with construction, retain one copy for the District files, send one copy to the respective WHD Maintenance Foreman, and send one copy to the Utilities Section in Cheyenne for cataloging in the inventory and storing in the Department's permanent files.

Section 4. License Agreements - Utility Lines.

(a) Depending on the complexity, length, and/or if the utility's project is to be constructed by a contractor(s) hired by the utility, the WHD District Office may require that a License Agreement be prepared by the WHD Utilities Section in Cheyenne.

(b) The District Office will transmit all exhibits and information submitted by the applicant, as well as specific stipulations the District wants incorporated, to the Utilities Section for preparation of the Agreement. Copies of the agreement will be sent to the applicant for signatures and upon complete execution by all parties the authorization to proceed with construction will be given by the WHD District.

Section 5. License Agreements - Railroad Crossings.

(a) When a railroad company or an industry approaches the District regarding the construction of a track crossing, whether at-grade or requiring a separation structure, the District shall review the proposed location and method of construction with the applicant and their engineer, provide stipulations to be incorporated into the applicants design, and send all pertinent information to the Utilities Section in Cheyenne for preparation of an Agreement.

(b) Crossing requests for railroad company owned and operated communications and/or signal systems may be handled with a Form E-54, at the discretion of the District.

Section 6. License Agreements - Fiber Optics Cables.

(a) When a communications company, federal agency, or other governmental agency approaches the District regarding the crossing and/or parallel encroachment of fiber optics facilities, the District shall review their proposed construction, stipulate changes in the proposed construction method and/or location, and furnish Form E-54B (Fiber Optics Construction Standard) to the applicant.

(b) After the Districts recommendations have been incorporated into the applicants design and all other provisions of Department regulations have been met, the District will furnish all pertinent information and exhibits to the Utilities Section in Cheyenne for preparation of a License Agreement.

(c) In cases where the applicant's proposed project consists of crossings and/or encroachments in several locations within a WHD District, one License Agreement may be prepared to cover the entire District instead of each crossing or encroachment separately, at the discretion of the District.

Section 7. License Agreement - Special Situations. Any time the District receives a request for a crossing and/or encroachment that meets all criteria for being placed within the highway right-of-way or involves work by others within the R/W and Form E-54 is not specific enough to cover the proposed work, the pertinent background information, proposal, and exhibits may be sent to the Utilities Section for consultation with the WHD Staff and attorney, as well as preparation of a special agreement.

Section 8. Exhibits for Licenses.

(a) General - All Installations.

(i) Each License Form E-54 and/or License Agreement shall have a drawing(s) attached which shows the current man-made and natural terrain features and how the proposed facility is to be constructed in order to miss obstacles within the highway R/W.

(ii) Exhibits that show straight line construction with a standard offset distance are only acceptable if a field review by the WHD District confirms that construction along straight lines is practical. (See related Section on location within the R/W).

(iii) If unanticipated or unusual circumstances are encountered during utility construction which force a deviation in excess of two feet from the approved horizontal alignment, the respective District Maintenance Engineer will be contacted prior to making the deviation, for approval of the deviation and an amended exhibit will be filed by the utility.

(iv) As a minimum the exhibit will show the following:

(A) The existing roadway, right-of-way line, right-of-way fence, and cross fences if they are not on the R/W line. Existing approaches, intersecting roads or streets, drainage ditches, irrigation ditches, pipes and culverts that have to be crossed. Existing major utility facilities. The proposed utility alignment with offset distances from either the roadway centerline or right-of-way line.

(B) Land description and accurate ties to the nearest highway milepost. If milepost markers are not available the tie shall be to a highway station.

(C) Location of existing facilities on the highway R/W that are owned and/or operated by the applicant.

(D) Proposed locations of all appurtenances like air relief valves, manholes, pedestals, junction boxes, line markers, vent pipes, guys and anchors, etc.

(E) Size and or capacity of the proposed facility (i.e. kv, cablepairs, pipe diameter), pipe type and wall thickness for carrier and casing, product to be carried, as applicable.

(b) Aerial Crossings.

(i) In addition to the above, the exhibit will show the low sag design clearance above the high point of the roadway.

(ii) Any existing or proposed underbuilt facilities, including those by others.

(iii) Cross-sectional view of highway R/W showing the location of poles or support structures relative to roadway centerline or R/W lines. (Also see additional text).

(c) Buried Crossings.

(i) Cross-sectional view of highway R/W at the crossing, showing the depth of the facility relative to natural ground, roadway drainage ditch and roadway template.

(ii) Location of bore and receiving pits.

(iii) If casing pipe or conduit is used, show where the casing will end.

(iv) If heavy wall thickness pipe is used instead of casing pipe, show where the heavy wall thickness pipe transitions back to normal thickness pipe. (Also see additional text).

Section 9. Change of Ownership.

If a utility contemplates selling portions or all of their facilities, which include crossing or parallel encroachments on Department R/W, the license holder shall notify the Department in writing of this intent and provide the name, address and telephone number of the buyer, as well as a list itemizing all of the crossings and encroachments involved in the transfer by land description and highway milepost.

The Department may choose to have the new owner sign new License Forms (E-54) if only a few locations are involved, or opt to write a Change of Ownership Agreement, to be executed by all parties, if several crossings/encroachments are involved in numerous locations.

Section 10. Abandonment of Facilities.

(a) If a utility contemplates abandoning or otherwise taking out of service a previously licensed facility, the Department shall be notified in writing, with a listing showing the location(s) of the facility by land description and highway milepost, and if possible a copy of the originally issued license(s).

(b) If the Department, based on engineering judgement and future plans for highway work, determines that the facility should be removed from the highway R/W, the owner will be notified and shall remove the facility and restore the highway R/W as directed by the Department.

(c) If a utility sells their facility to a salvage firm for removal, the salvage contractor is required to contact the respective WHD District Maintenance Engineer who will provide applicable stipulations regarding safety of traffic and restoration of the highway R/W. The utility holding the license will remain responsible until the work is done to the satisfaction of the Department.

(d) The WHD District will notify the Utilities Section when the abandonment and/or removal of a facility has been authorized so that the appropriate notation can be made to the main file copy of the original license.

Section 11. Cancellation of a License, Suspension, Removal of a Facility.

(a) By the Utility.

(i) A utility must cancel a previously granted license if no construction has taken place within 12 months by notifying the respective District Maintenance Engineer and/or the Utilities Section in Cheyenne.

(ii) A utility must cancel a previously granted license after a facility has been taken out of service and removed. (Also see Abandonment).

(b) By the Department.

(i) The Department may cancel a license if construction by the utility has not been completed within 12 months after approval has been given by the District, unless prior arrangements for a longer period have been made with the District.

(ii) The Department may cancel a license and direct removal of a facility installed in a location other than approved by the District. (Also see Removal and Suspension in this Section).

(iii) The Department may suspend a license if the facility was placed in a location other than approved by the District. (Also see Removal and Suspension in this Section).

Section 12. Cause for Removal or Suspension of a License.

(a) Removal.

(i) The Department may require removal of a facility when the installation deviates more than two feet horizontally an/or was installed at a shallower depth than approved by the District and thereby causes an unnecessary encumbrance on the operation, maintenance and safety of the highway and the right-of-way.

(ii) If such a removal is necessary in the best engineering judgement of the District, the utility shall be notified by the District of the remedial measures to be taken and the time frame in which the removal will be accomplished. This notification should be sent by Registered Mail.

(iii) Failure by the utility to respond will be prosecuted in accordance with the due process procedures and provisions of the Wyoming Administrative Procedures Act.

(b) Suspension of a License

(i) The Department may suspend a license, for the same violations listed above, when the utility installed facility does not cause an immediate hindrance to operations, maintenance, and safety of the highway and its right-of-way, but is not in compliance with the license.

(ii) The utility will be notified by the District in writing that the facility is not in compliance with the approved license and exhibit and that the utility is required to file an amended exhibit showing the actual location of the facility.

Failure to respond by the utility within the time frame set by the District will cause all other submitted requests for licenses to be held in suspension until the amended exhibits have been received.

(iii) WHD District personnel may suspend a license and stop further construction on a utility project in progress if the utility's practices are in violation of the Department's safety requirements and/or create a hazard to the public.

The utility and/or its contractor will be allowed to continue with construction only after the safety violations have been corrected.

Section 13. Additional Facilities on Existing License.

(a) Additional facilities by the same utility may be attached to or located immediately adjacent to an existing licensed facility, provided the existing facility is in compliance with the provisions of this regulation and the additional facility can be installed likewise.

(b) At the discretion of the District such additional facilities may be authorized for construction upon submittal of an amended exhibit showing the location of the additional line.

(c) In case of an aerial facility that is being upgraded to a larger capacity, or in case of an underbuilt by the utility holding the existing license, the revised exhibit should show the increased capacity and revised low sag vertical clearance above the high point of the paved portion of the road, which shall be no less than eighteen (18) feet and/or otherwise in compliance with the National Electric Safety Code.

Section 14. Additional Facility-Different Owner.

(a) A utility may allow secondary use by other utilities provided the utility proposing to underbuild has been granted a license from the Department and the low sag vertical clearance is not less than eighteen (18) feet above the high point of the paved portion of the road and/or otherwise is in compliance with the National Electric Safety Code.

(b) If a utility is contemplating installing a facility in a joint trench with someone else, licensing procedures shall be followed by all users of the common trench.

Section 15. Denial of Request to Construct on Highway Right-of-Way. Wyoming Statute 1-26-813 states that public utility facilities and fixtures may be set along, across or under any public roads, streets and waters of this state in such a manner as not to inconvenience the public in their use.

(a) Based on the provisions of this statute, and the exercise of good engineering judgement weighed against the public good, the Department may deny occupancy of highway right-of-way by utility facilities under the following conditions:

(i) The facility will interfere with ongoing maintenance operations.

(ii) In backslopes of erosive soils or slopes steeper than 2:1.

(iii) Within the roadway template except for buried facilities that cross at a safe distance below the drainage ditch, and except in urban areas or city street roadway templates where poles may be placed behind the sidewalk, slopes permitting, and buried facilities may be placed under the traveled lanes or sidewalk.

(iv) In road segments where it is known that road construction will take place in the near future.

(v) Any other area within the highway right-of-way where, from an engineering, maintenance, or traffic safety point of view, the operations of the Department will be hindered.

(vi) Within the limits of the clear recovery area as determined by use of the AASHTO Guide for Selecting, Locating, and Designing Traffic Barriers and the Roadside Design Guide, or similar criteria normally used in highway design.

Section 16. Joint Occupancy Agreements.

(a) If, during the construction or reconstruction of a road, the facilities of a utility are incorporated within the new highway right-of-way and the utility facilities do not have to be relocated due to conflict with the road construction, the Utilities Section will prepare a Joint Occupancy Agreement which recognizes that the utility had a prior right in the location shown on the exhibit and that future relocation and/or adjustments of the utility, necessitated by future road construction, will be at the expense of the Department.

(b) The same provisions as in (a) above apply to a utility facility that is being incorporated into new highway R/W and must be relocated due to conflicts. The utility may be relocated within the new highway R/W rather than on a new private easement outside of the highway R/W, provided the new location does not interfere with the road's construction and future operations.

(c) The Department will reimburse relocation costs for a facility of the same type and capacity as described in the original Joint Occupancy Agreement.

(d) Issuance of a license (Form E-54) for a facility covered under such an agreement is not required.

Section 17. Relocation/Adjustment Agreement.

(a) If a utility facility is being relocated from a private right-of-way due to a road construction project, the utility may place the relocated facility within the existing or new right-of-way of the subject road providing the stipulations of this regulation can be met.

(b) The relocation/adjustment agreement contains language which stipulates that future relocation of the facility due to highway projects will be reimbursed by the Department for a facility of the same type and capacity as was originally relocated under the agreement.

(c) Issuance of a license (Form-54) for a facility covered under such an agreement is not required.

Section 18. Approaches and Driveways. Access to utility facilities located adjacent to but outside of the highway R/W may be granted by the District Engineer provided the proposed location meets all Department safety criteria and other provisions and policies.

Application should be made to the District by separate procedure.

Section 19. Groundwater Monitor Wells. Requests for the construction of these wells on highway right-of-way may come from Federal or State agencies as well as from private individuals who have a requirement to monitor groundwater for pollution.

License Form E-54 may be issued for these facilities as long as the well location(s) is not interfering with maintenance activities or anticipated construction/reconstruction of the road, and as long as the location of the facility and the periodic extraction of samples or inspection does not create a hazard to pedestrians or vehicle traffic during and after the placement of the well.

Upon completion of the testing/monitoring activity, the well shall be capped and the site restored by the Licensee as specified by the Department's engineer.

Private use of these wells for irrigation or other purposes after completion of the testing period shall not be permitted.