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ROADS: IMPACT OF OIL AND GAS DRILLING

ROAD USE AGREEMENTS

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ROADS: IMPACT OF OIL & GAS DRILLING

1. BACKGROUND

- 1.1. Natural gas industry requires high volume of use of county and township highways in connection with well drilling for each site.
 - Estimated that one well will require 900-1300 truck loads of liquid hauling (includes water to site and flow back).
 - Experience of other areas has been that this high volume use can result in significant damage to local highways, bridges and culverts.
 - Cornell Local Roads Program cites statistics that indicate impact of 1,000 truck loads per year on a county highway of 3" asphalt, 6" base and 12" sub-base represents 0.13% of road's useful life. Same number of truck loads on a town road of 2" asphalt and 12" base represents 2% of road's useful life.

2. TOWNSHIP CONCERNS

- 2.1. Obviously, biggest concern is the impact on roads. Many township roads are not made for heavy truck load and increased traffic, and often the damage can be quite extensive.
- 2.2. Public safety also significant concern
 - Noise, dust, and other potential environmental concerns.
 - Traffic regulation - Affect on normal traffic within township – how to maintain road accessibility for all.
- 2.3. Allocating responsibility for damage to road
 - During transport to or as a result of drilling process.
 - Critical to address who is responsible for pre-use improvements, maintenance during use, damage from use, and post-use repairs.
 - Emergency repairs, notification and timeframes.
- 2.4. Coordination with County and State officials, as needed.

3. STATE ACTION

3.1. Severance Tax, Excise Tax, Windfall Profits Tax, Impact Fees, Assessments, Road Use Maintenance Agreements.

3.1.1. **Cols Dispatch** headline, Jan 18, 2012 - *Kasich seeks taxes on oil, gas drilling, Assessments would help pay to repair roads*

“Ohio’s oil and gas industry would pay an “impact fee” for deep-shale wells to cover the cost of infrastructure damage caused by oil and gas extraction, part of a package of taxes and fees for the industry that Gov. John Kasich soon will propose. ...

“We have to make sure we have impact fees,” Kasich said. “At some point, these counties are going to benefit, but in the early years, when it comes to the erosion of roads and infrastructure, we need to make sure that these locals are going to be in a position to manage their infrastructure.”

The proposals probably will be included in Kasich’s midbiennial budget review, to be introduced in the first half of this year, although they could be announced separately before the budget review is unveiled, he said.”

3.2. Road Use Maintenance Agreements (RUMA).

ODNR has just released a model Road Use and Maintenance Agreement (“RUMA”). At this point, it is intended to be a template, with specifics left to the discretion of and for the benefit of counties and townships.

Caveat from OTA: “A meeting was held on February 7, 2012 with representatives of ODOT, ODNR and the Governor’s Office. Their position on a RUMA being a requirement in order to obtain the ODNR permit to drill has changed. The idea now is that when a permit request is received, ODNR will inquire whether a RUMA is in place or if good faith efforts have been made to negotiate a RUMA. If the answer to either question is yes, the permit will be granted. In other words, the lack of a RUMA will not prevent a permit from being granted by ODNR. The OTA is evaluating its position on this in light of this recent change.” From OTA press release issued February 7, 2012.

4. TOWNSHIP AUTHORITY

4.1. Authority/duty to maintain roads

5571.02 Control and maintenance of township roads.

The board of township trustees shall have control of the township roads of its township and, except for those township roads the board places on nonmaintained status pursuant to section [5571.20](#) of the Revised Code, shall keep them in good repair.

5571.05 Supervision of maintenance and repair of township roads.

In the maintenance and repair of roads, the board of township trustees and any township highway superintendent appointed by it, shall be subject to the general supervision and direction of the county engineer. Such board of township trustees shall follow the direction of the engineer as to methods to be followed in making repairs. See also R.C. 5575.07, Supervision by County Engineer – Appointment of Inspector.

5589.03 Refusal or neglect of officials to perform duty.

No county engineer, township trustee, or township highway superintendant shall willfully neglect, fail or refuse to perform the duties of his office. Conviction for such neglect, failure, or refusal shall operate as a removal from office.

(Conviction?)

4.2. Authority to make road improvements

5571.01 Road improvements.

(A) A board of township trustees may construct, reconstruct, resurface, or improve any public road or part thereof under its jurisdiction, or any county road, intercounty highway, or state highway within its township. In the case of a county road, the plans and specifications for the proposed improvement first shall be submitted to the board of county commissioners of the county and receive its approval. In the case of an intercounty or state highway, the plans and specifications first shall be submitted to the director of transportation and receive the director's approval. The board of township trustees may widen, straighten, or change the direction of any part of a road in connection with the proceedings for its improvement.

(B) The board of township trustees may construct, improve, maintain, or repair the berm of any road under its jurisdiction, in order to provide a hard surface or other improved approach to rural mail boxes located on public highways.

...(E) Subject to divisions (F) and (G) of this section, a board of township trustees may purchase or lease and erect and maintain at intersecting roads, at least one of which is a township road, suitable traffic control devices and traffic control signals. The traffic control devices and traffic control signals and their placement and maintenance shall conform with the manual and specifications adopted under section [4511.09](#) of the Revised Code. In purchasing or leasing and erecting and maintaining the traffic control devices and traffic control signals, the board may expend any moneys that are available to it that legally may be expended for that purpose.

4.2.1. See also R.C. 5573.01, Resolution for Road Improvement; 5573.10, Estimated Assessment on Real Estate; 5571.011, Relocating Roads; 5571.20, Township Trustees may place Graveled Road or Unimproved Road in Nonmaintained Status; 5575.01, Maintenance and Repair of Roads by Contract or Force Account.

4.2.2. Townships (which are not Home Rule) do not have authority to set maximum weight and size on roadways or to classify township roadways and bridges as to maximum weights and speed. See OAG 2010-008; R.C. 5577.08.

4.3. Authority to Engage in Litigation Regarding Damages to Township Roadways.

4.3.1. See **R.C. 5571.09, Suits by Boards of Township Trustees.**

The board of township trustees may bring and maintain all suits involving an injury to any township road, ditch, drain, or watercourse under the jurisdiction of such board **and for the prevention of injury thereto**. In case such road, ditch, drain, or watercourse is under the jurisdiction of two or more boards of township trustees, such joint board may bring and maintain such action. Such board or joint board may recover, by suit or otherwise, any real estate or interest therein, legal or equitable, belonging to the township, or any money or other property due the township.

See also **5577.12, Liability for damages – prosecution – application of moneys.**

4.3.2. Injunction Action Possible.

4.4. Township Authority to Enter into Contracts to Maintain and Repair Roadways.

4.4.1. **R.C. 5575.06, Donations of labor or material.**

The board of township trustees may accept donations of labor or material for a proposed road improvement, and in determining which road shall first be improved, it may, when acting by unanimous vote, and without a petition, take into consideration the amount of such donations. The board may require the persons donating labor or material to enter into a contract that such labor will

be performed and material furnished at the time required by the board. Such contract shall set forth the value of the labor or material, and in case of failure to furnish such labor or material the value fixed in the contract shall be conclusive in any suit brought by the board for damages for the breach of contract.

--Issues:

--Donation? Why not consideration?

--Sufficient right to require the county engineer to be involved, or authority to hire a private engineer?

5. CONTRACTUAL WAYS TO ALLOCATE RESPONSIBILITY FOR DAMAGES

5.1. There are generally two types of agreements that have been used to ensure that contractors/operators reimburse townships/counties for the effect of increased use on roads: "Post and Bond" and RUMAs. Both types provide for up front acceptance by contractor/operator of liability for damage to roads without resort to courts (unless breach).

5.1.1. Post & Bond Agreements – Cover specific roads and specific reimbursement for repairs. Advantage to having a road posted and bonded is that it lets companies know up front what will be expected of them if their equipment causes excessive damage, and the townships can set the amount required (in some states this is set by state law).

5.1.2. Road Use Agreement ("RUMA") – Can cover all roads in jurisdiction and provide comprehensive procedures for contractor's use of roads, including improvements before use begins, repairs and restoration to roads. Most RUMAs such as model RUMA attached are limited to specific designated roadways.

6. ODOT MODEL ROAD USE AND MAINTENANCE AGREEMENT

6.1. Developed by ODOT with input from county and township representatives

ODOT held two working sessions with all seven of District 11's county engineers, plus county engineers from Ashland, Coshocton, and Stark, as well as the Senior Policy Analyst from the County Commissioners Association of Ohio (CCAO) and the Executive Director of the Ohio Township Association. The agreement was also reviewed and commented on by the Oil and Gas Exploration Society through Chesapeake Energy.

“Effective January 1, 2012, this RUMA will be a check-off in the permitting process for a new Horizontal Oil and Gas Well Permit.” PER ODOT Div. 11 Newsletter. (Now reversed. See Section 3.2.)

- 6.2. RUMA developed in response to concerns that industry leaders were finding varying requirements in different townships and counties within which they were trying to do business. Counties and townships also felt the need for a required standard agreement due to the future demand by different energy companies, which may not be as proactive as others.
- 6.3. The ODOT RUMA is set up with certain general provisions in the main document with the intention that an Appendix be included to add any additional terms that counties or townships desire.
- 6.4. Includes definitions of County/Township as “Authority” and Oil/Gas Company as “Operator,” as well as for “Development Project Site” and “Drilling Activity”.
- 6.5. General provisions include requirement of Operator to maintain and repair roads and bridges to their condition prior to when the “Drilling Activity” began. See **Now, Therefore**, clause.
- 6.6. The parties must mutually agree upon the strengthening and upgrading of roads and bridges (Based on Engineer Report provided by Operator and approved by County Engineer within thirty (30) days). See **Further** clause.
 - 6.6.1. Industry response: Thirty (30) days for review is much slower than the pace these companies move at. The high dollar associated with each well and the operator’s ability to move on it can’t be limited to this type of timeframe. Most leases are time sensitive and action has to be taken on the site, whether it is construction of the pad or drilling operations. Thirty (30) days could mean loss of a lease and/or the sitting of a drilling rig which can cost more than \$50,000.00 per day.
- 6.7. Limited to certain roadways. See Sections 1 and 2.
- 6.8. Operator, in accordance with operator’s engineering report approved by the county engineer, must strengthen and/or upgrade roads prior to drilling activities, as well as maintain them throughout the term of the agreement. Appendices can be used to supplement this section. See Section 3.
- 6.9. Operator must provide 30 days notice of drilling activities at railroad sites, provide for joint inspection, coordinate the work, provide for a separate agreement with the railroad company and excuse the authority of any liability for the same. See Section 4.

- 6.10. Either party can terminate for “just cause” with 30 days written notice. In such event, parties inspect and operator must complete restoration at its sole expense. See Section 5.
- 6.11. Operator must post bond or other surety. Exceptions – see a. and b. See Section 6.
 - 6.11.1. Industry response: Operators who are performing improvements to the road prior to hauling operations do not want to bond the roads, and will probably seek to achieve one of the exceptions.
- 6.12. Operators’ motor vehicles must comply with legal size, load and weight limits of state law and local permit. See Section 7. (Use appendix).
- 6.13. Operator must provide emergency contact and other information. See Section 8.
- 6.14. Authority can require additional traffic signage at operator’s expense, See Section 9.
 - 6.14.1. Industry response: Whomever is responsible for signage is opening themselves up for liability. In the event something isn’t signed and an accident occurs, who is the responsible party that will be found liable in court.
- 6.15. Operator indemnifies Authority. See Section 10. Very important!
- 6.16. Operator assumes liability for subcontractors and agents. Section 11. Also very important!
- 6.17. No stated term for this agreement. See Section 15.
 - Query: When does agreement end?
- 6.18. See Sample Appendix A attached to Model RUMA.

7. BEST PRACTICES FOR ROAD USE AGREEMENTS.

7.1 PREVENTIVE MEASURES.

Video or document road condition prior to use.

Local (township) permit.

Indemnification of Township

Subcontractor subject to RUMA

7.2. MITIGATION MEASURES

Require roads maintained in good condition during use.

Describe maintenance requirements of roads during use.

Repair damaged roads promptly.

Contractor warranty of repairs.

Require immediate notification of public safety concern.

Performance Assurance Bond – based on number of miles of designated roads.

Avoiding use during peak traffic hours, school bus hours, and community events.

Require advance notice of road closure.

Dust, debris, garbage control.

Traffic controls, such as signage, where hazard created.

Impose fee for traffic control costs, notifications, etc.

Close roads if not passable, safety concerns, and/or not repaired.

7.3. POST CONSTRUCTION MEASURES

Video or document road condition post use.

Post-Construction and Follow Up meetings.

Final repairs specific to road type.

Excessive damage coverage.

Require Notice of completion and proof of payment.

Timeframe for post-construction repairs.

If repairs are not done after well site complete, township can stop well.

Dispute Resolution.

--Mediation

--Limit jurisdiction

7.4. ADDITIONAL RECOMMENDED CLAUSES

Cooperation with Township Authorities.

Fines/fees for use of non-designated roads, violation of agreement?

Roads passable by end of day.

Establish overnight quiet periods.

Ensure adequate off-road parking and delivery areas at all sites to avoid lane/road blockage.

8. QUESTIONS?

