

CR 92-111

CERTIFICATE

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, CHARLES H. THOMPSON, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to **Utility Facilities Relocation**, was duly approved and adopted by this Department on January 7, 1994.

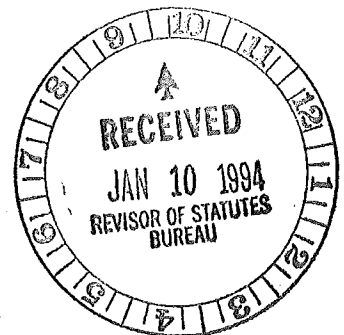
I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 7th day of **January**, 1994.

Charles H. Thompson

CHARLES H. THOMPSON
Secretary



3-1-94

IN THE MATTER OF a rule CREATING
Chapter Trans 220, Wisconsin Administra-
tive Code, relating to Utility Facilities Relo-
cation.

ORDER ADOPTING RULE

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: s. 84.063, Stats.

STATUTES INTERPRETED: s. 84.063, Stats.

General Summary of Rule. This rule implements s. 84.063, Stats., as created by 1991 Wisconsin Act 39. The objective of the law and rule is to prevent highway contractor delay due to uncertain schedule of utility relocations by utility facility owners. It prescribes the method by which the Department will notify utility facility owners of proposed highway improvements as well as the method by which owners will advise the Department of facilities located in the area of the improvement project. After the Department furnishes its improvement plans to the owners, the owners furnish work plans for altering or relocating their facilities to the Department. The Department reviews and approves a work plan for utility facility relocation or alteration. Thus, a defined process and scheduling procedure is established to deal with utility conflicts and arrange for their resolution. The following is a brief, sequential outline of the law and rule:

- I. SCOPE:**
- State Trunk Highways Only (STH, USH, & I System) -- about 12,000 route miles. [Not CTH, Town Road, City or Village Streets, not connecting highways (marked routes of STH and USH through City or Village)].
 - Utilities -- All utilities, including cable services. (Not railroads.)
- II. DOT NOTIFY:** DOT identifies & notifies owner of utility facility affected by highway project.
- III. OWNER LOCATE:** Owner provides DOT with description and location of facilities in vicinity. (60 calendar days)
- IV. DOT HIGHWAY PLAN:** DOT sends owner DOT highway plan including location of owner's facility and others.
- V. OWNER WORK PLAN:** Owner provides DOT with work plan for its relocation that (1) verifies utility location on highway plan, (2) proposes relocation position, (3) provides plan & number of working days to do it, (4) cost estimate if compensable. (60

resurfacing, 90 reconditioning, 120 calendar days major reconditioning, reconstruction or new construction, plus 30 for utility conflict coordination & meeting or if the work is compensable.)

- VI. DOT APPROVAL:** DOT reviews and approves work plan. Calls meeting to resolve conflict between utilities. Owner still needs permit and other government approvals. (Owner revisions within 30 calendar days.)
- VII. START DATE:** DOT provides start date to owner. (30 calendar days; if DOT contractor dependent, 14 to 16 calendar days notice too, and 3 working days second contractor notice.) Owner provides start and completion confirmation to DOT.
- VIII. CONSEQUENCES:** Owner failure = owner liable to contractor or DOT for delay and other damages; no liability for damage to utility. Contractor failure = contractor liable to utility.
- IX. WHEN:** Probable legal effective date = 3/1/94 for highway contracts for which bids are opened after that date. May start process before then by sending out notice and plans.

Fiscal Impact. The Department estimates that there will be no direct fiscal impact from this rule making upon the state and anticipates no effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education school district or sewerage district.

Final Regulatory Flexibility Analysis. This rule will have no significant adverse impact on small businesses.

Copies of Rule and Contact Person. Copies of this rule are available at no cost upon request to the Division of Highways, Department of Transportation, P. O. Box 7916, Room 651, Madison, WI 53707-7916, telephone (608) 266-0233.

TEXT OF RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 84.063, Stats., as created by 1991 Wisconsin Act 39, the department of transportation hereby creates a rule interpreting s. 84.063, Stats., relating to utility facilities relocation.

SECTION 1. Chapter Trans 220 is created to read:

CHAPTER TRANS 220

UTILITY FACILITIES RELOCATION

TRANS 220.01 PURPOSE AND SCOPE. The purpose of this chapter is:

(1) To establish the administrative procedures for implementing s. 84.063, Stats., and to prevent delays to proposed state trunk highway improvement projects and contractor delay and expense due to uncertain scheduling of utility relocations.

(2) To define a process and scheduling procedure to deal with utility conflicts with state trunk highway construction and arrange for their timely resolution.

(3) To integrate the utility facility relocation process under s. 84.063, Stats., with several pre-existing statutes and regulations, including the following:

(a) The obligations of utilities and highway planners and contractors under s. 182.0175, Stats.;

(b) The obligations of utilities to pay the cost of protection or changes to utility facilities to accommodate highway work under s. 66.047, Stats.; and

(c) The obligations of utilities to comply with the conditions of permits issued for the location of utilities within highways under s. 86.07(2), Stats., and 23 CFR part 645 (April 1, 1993).

(4) To comply with federal law regarding utility accommodation when the project is on any right of way of any federal-aid highway and funded in whole or in part with federal funds (23 U.S.C. § 109(l) (1993)).

(5) To make it clear that this chapter is not applicable to railroad facility relocations or adjustments.

TRANS 220.02 APPLICABILITY. (1) This chapter applies to state trunk highway improvement projects which have utility facilities located on them and are let for construction after this chapter has been published and for which the department has mailed the notification and plans prescribed in ss. Trans 220.04 and 220.05.

(2) The department shall begin sending the notification and plans prescribed in ss. Trans 220.04 and 220.05 for all state trunk highway improvement projects for which the design process is initiated after this chapter is published. The department will not be required to resend the notification and plans if it has already done so prior to this chapter being published.

(3) This chapter does not apply to the alteration or relocation of railroad facilities.

TRANS 220.03 DEFINITIONS. The definition of words and phrases in s. 84.063, Stats., apply to this chapter. In this chapter:

(1) "Business day" means any calendar day of the year exclusive of Saturdays, Sundays and legal holidays.

(2) "Calendar day" means any day of the year; if more than one day, it means any consecutive days of any year or years.

(3) "Compensable work" means utility facility alteration or relocation work for which the department will reimburse the utility facility owner under programs or policies of the department, including s. 84.295(4m), Stats.

(4) "Contractor" means the person or entity that enters into an improvement project contract with the department under s. 84.06, Stats., and subcontractors or suppliers to the contractor.

(5) "Department" means the department of transportation or its agent.

(6) "Highway" has the meaning given in s. 340.01(22), Stats.

(7) "Improvement" has the meaning given in s. 84.06(1), Stats.

(8) "Letting date" means the date the department receives and opens bids for an improvement.

(9) "Mail" means a written transmittal, currently dated and sent to the addressee by regular or certified, return receipt requested United States postal service mail or other means.

(10) "Major reconditioning" means an improvement project which includes pavement resurfacing or minor reconditioning plus shoulder widening, ditch restoration, reduction of curvature or grades and intersection improvements.

(11) "Minor reconditioning" means an improvement project which includes pavement resurfacing, pavement widening, shoulder paving and intersection improvements.

(12) "Noncompensable work" means utility facility alteration or relocation work which the owner must carry out without cost to the department.

(13) "Owner" means the owner of a utility facility.

(14) "Project plan" means a plan for a highway improvement suitable for the design of utility facility alterations or relocations which the department sends to the owner.

(15) "Reconstruction" means an improvement project which rebuilds an existing facility and may include reducing curvature or grades and widening pavement and shoulders.

(16) "Resurfacing" means an improvement project which provides a new roadway surface on an existing pavement and may include minor base patching, intersection paving, shoulder gravel and selective beam guard.

(17) "State trunk highway" means any highway designated as part of the state trunk highway system pursuant to s. 84.02 or 84.29, Stats., exclusive of connecting highways.

(18) "Utility facility" includes cable services.

(19) "Work plan" means a plan of the owner to carry out utility facility alteration or relocation work to accommodate an improvement project of the department.

(20) "Working day" means a business day on which weather and other conditions not under the control of the owner will permit utility facility alteration and relocation work to proceed for at least 8 hours of the day with the normal working force of the owner engaged in performing the controlling item of work in accordance with the owner's approved work plan. In determining the normal working force of the owner, consideration shall be given for any diversion of the owner's working force that is required to respond to an emergency involving restoration of critical utility service.

TRANS 220.04 NOTIFICATION. (1) The department shall make a reasonable effort to determine what utility facilities are located within the right of way of a proposed improvement project by researching permit files, reviewing map files maintained by the department, field investigation or contact with one call locating services, and through contacts with local governmental units.

(2) The department shall identify the owner of facilities determined in sub. (1) by name.

(3) The department shall notify the owner of the proposed improvement by mail. The department may include a receipt of mailing form with the notification, in which case the owner shall complete the form and mail it back to the department within 7 calendar days of receipt.

(4) The notification shall include the name or route number, or both, of the highway, the geographical limits of the improvement, general description of the work to be done, desired date for completion of utility coordination and anticipated year of construction of the improvement.

(5) Within 60 calendar days of mailing the notification referred to in sub. (3), the owner shall provide the information specified in s. 84.063(2)(b), Stats., by mail; that is, a description

and the general location of each utility facility in the vicinity of the improvement. The utility shall reply whether or not it has facilities in the vicinity.

NOTE: Section 84.063(2)(b), Stats., reads as follows:

(2)(b) Within a specified period after the date the notice is received, the utility facility owner shall provide the department with a description and the general location of each utility facility in the proposed highway improvement right-of-way.

TRANS 220.05 PROJECT AND WORK PLANS. (1) After the owner responds with the information specified in s. 84.063(2)(b), Stats., the department shall mail the owner at least one set of the available project plan. The project plan shall show all existing utility facilities known to the department that are located in the right of way where they will conflict with the improvement.

(2) The department may include a receipt of mailing form. If a receipt of mailing form is sent, the owner shall complete the form and mail it back to the department within 7 calendar days of receipt.

(3) The project plan need only show those portions of the improvement which give the project location, the owner's existing utility facilities and how those facilities will be affected by the improvement. The department will also provide any additional and duplicate plan information needed by the owner to design and layout the removal, relocation or adjustment of existing utility facilities and the placement of relocated or additional facilities within the project limits.

(4) The owner shall provide the department with a work plan. The work plan shall be furnished within 60 calendar days after the date of mailing of the project plan by the department for resurfacing projects; within 90 calendar days for minor reconditioning projects; and within 120 calendar days for major reconditioning, reconstruction or new construction projects. Upon

owner request or its own initiative, when the department determines there is a potential for conflict between work plans, the department will schedule a meeting that the owners are required to attend to coordinate the work. An additional 30 calendar days will be allowed to furnish the work plan if coordination is required with other utility facility owners or if the work is compensable.

(5) For noncompensable work, the work plan shall include, in addition to the information required in s. 84.063(3)(b), Stats., a narrative description of what work will be done; whether the work is dependent on work by another owner; whether the work will be done prior to highway construction and which work will be necessary to coordinate with the work of the contractor; when the work will be started and the length of time in working days required to complete the work. A listing of approvals required by governmental agencies and the expected time schedule to obtain those approvals shall be provided. The project plan furnished by the department shall be reviewed by the owner to verify that the owner's utility facilities are shown. If the facilities are not shown, the owner shall mark their location and return the marked up project plan to the department with a dated transmittal. If the utility facilities are shown, the owner shall advise the department by mail and need not return the project plan. For noncompensable work, the owner may also submit a request for a utility alteration or relocation loan pursuant to s. 84.065, Stats., and ch. Trans 30. If the owner's proposed relocated or additional utility facilities will be relocated within the highway right-of-way, a permit application may be submitted at the same time in accordance with "The Policy for the Accommodation of Utilities Within Highway Right-of-Way" of the department.

NOTE: A copy of this policy may be obtained at no cost upon request to the Division of Highways, Department of Transportation, P.O. Box 7916, Room 651, Madison, WI 53707-7916, telephone (608) 266-0233.

NOTE: Section 84.063(3)(b), Stats., reads as follows:

(3)(b) Within a specified period after receiving the project plans, the owner shall provide the department with a work plan. The period of time within which the owner is required to provide the department with a work plan shall reflect whether the utility facility owner is required to coordinate its work plan with another utility facility owner. The work plan provided by the owner shall include all of the following:

1. A copy of the project plans that verifies the location of all of the owner's existing utility facilities specified on the plans by the department and that identifies the owner's proposed location of relocated or additional utility facilities within the right-of-way of the proposed improvement.

2. A plan and a schedule of working days necessary to obtain any approval required by a governmental agency and to accomplish any proposed relocation or adjustment required by the proposed improvement.

(6) For compensable work, in addition to the items specified in sub. (5), the work plan shall include an estimate of cost for utility facilities relocation including appropriate credits for betterments, used life and salvage. An executed conveyance of rights or quit-claim deed to the property occupied by the owner's facilities if one is required by the improvement project may be submitted at this time.

(7) The department shall review the work plan to ensure compatibility with permit requirements, the improvement plans and construction schedule, reasonableness of relocation scheme and reasonableness of cost for compensable work. If the work plan submitted by the owner is not compatible or reasonable, the department shall advise the owner by mail as soon as practicable. If sent through regular mail, the department may include a receipt of mailing form. If a receipt of mailing form is sent, the owner shall complete the form and mail it back to the department within 7 calendar days of receipt. The owner shall submit a revised work plan within 30 calendar days of receipt of advice by the department that the work plan is not compatible or reasonable. The department shall review the revised work plan and if the work plan is still not compatible or reasonable, the work plan revision process shall be repeated. When the work plan is compatible and reasonable, the department shall advise the owner by mail of its approval.

(8) The owner shall notify the department by mail within 15 calendar days of receiving all required approvals from government agencies.

(9) The department shall notify the owner by mail not less than 30 calendar days before the owner is required to begin the work provided for in the approved work plan. The department may include a receipt of mailing form which the owner shall complete and return within 7 calendar days of receipt.

(10) If the owner's approved work plan is dependent on work by the contractor, the contractor shall provide the department and the owner a good faith notice 14 to 16 calendar days before the work is expected to be complete and ready for the owner to begin its work. The contractor shall follow up with a confirmation notice to the department and the owner not less than 3 working days before the work will be ready for the owner to begin its work.

(11) The owner shall notify the department when its work has started. The owner shall complete its work within the time frame described in its work plan. The owner shall notify the department when the work is complete. Notices of work start and work completion shall be sent by mail within 15 calendar days of starting and completing the work, respectively.

(12) If, prior to the letting date of the highway improvement project, the department's project plan is changed so that additional utility relocation or adjustment work is found necessary, the department shall furnish a revised project plan per subs. (1) to (3), and the owner shall provide the department with a revised work plan per subs. (4) and (5), except that the time allowed for the owner to submit the revised work plan after receipt of the revised project plan shall not exceed 60 calendar days. Revisions to the project plan shall be identified to the owner.

(13) If, after the letting date of the highway improvement project, additional utility relocation or adjustment work is found necessary, the department shall notify the owner. The department and the owner shall agree on a revised work plan.

(14) If additional utility relocation or adjustment work is found necessary after the owner has been notified per sub. (9), refer to s. Trans 220.06.

Trans 220.06 RESPONSIBILITIES. (1) If the department requires additional work to a utility facility after the facility has been relocated or adjusted in accordance with a work plan approved by the department, the department shall bear the reasonable cost of the additional work.

(2) If the department requires relocation or adjustment of a noncompensable utility facility that was originally determined, per the work plan, to not need relocation or adjustment, the owner shall bear the cost of the relocation or adjustment.

(3) If the department requires relocation or adjustment of a compensable utility facility that was originally determined, per the work plan, to not need relocation or adjustment, the department shall bear the reasonable cost of the relocation or adjustment.

(4) The owner shall bear the cost of additional work to any portion of its facilities after the facilities have been relocated or adjusted in accordance with a work plan approved by the department if the additional work is required by the department due to error by the owner in preparation of work plans for, field location of, or construction of the relocation or adjustment of its facilities.

(5) The contractor shall be responsible for compliance with s. 182.0175(2), Stats., with respect to precautions to be taken to avoid and prevent damage to utility facilities.

(6)(a) The owner shall complete alteration or relocation of its utility facilities in accordance with the work plan approved by the department.

(b) The work shall be completed by the owner within the time frame of the approved work plan.

(7)(a) If the owner has complied with ss. 66.047, 84.063 and 182.0175, Stats., and this chapter and the utility facilities are damaged by the contractor, the contractor shall be responsible to the owner for damages if the contractor has not complied with s. 182.0175(2), Stats.

(b) The contractor shall not be responsible for damage to utility facilities if it has complied with ss. 182.0175(2) and 66.047, Stats.

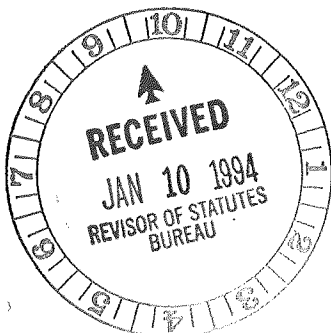
(c) If the owner fails to provide a work plan as provided in s. Trans 220.05, or fails to complete the alteration or relocation of its facilities in accordance with the work plan approved by the department as provided in s. Trans 220.05, the owner shall be liable to the contractor for all delay costs and liquidated damages incurred by the contractor which are caused by or which grow out of failure of the owner to carry out and complete its work in accordance with the approved work plan.

(8) If one year or more has passed since the department approved a work plan, the owner may submit a revised work plan that must be considered by the department if it is submitted prior to the letting date and does not affect the letting date.

(END OF RULE TEXT)

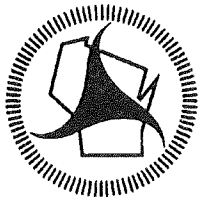
Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 7th day of
January, 1994.



Charles H. Thompson

CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation



Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

January 10, 1994

Mr. Gary Poulson
Deputy Revisor of Statutes
131 West Wilson Street, Suite 800
Madison, Wisconsin 53703


RE: **CLEARINGHOUSE RULE 92-111**

In the Matter of the Adoption of **TRANS 220**, Wisconsin Administrative Code, relating to **Utility Facilities Relocation**.

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 92-111**, an administrative rule relating to the above-mentioned matter. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,


Julie A. Johnson
Paralegal

Enclosures

cc: Tom Walker
Dorothy Kapke
Jim McDonnell
Fred Ross
Jim Bolitho

