



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Janet T. Mills
GOVERNOR

Bruce A. Van Note
COMMISSIONER

Anthony Plante, Town Manager
Re: Town of Windham
8 School Street
Windham, ME 04062

3/16/2020

Subject: Crack Sealing
Project No.: 18995.13
Location: Town of Windham
Roadway: Route 115

Dear Mr. Plante:

The Maine Department of Transportation will soon solicit quotes for the subject project for construction, and pursuant to 29-A MRSA § 2382 (7) we have established a "Construction Area." A copy of 29-A § 2382 is enclosed for your information. Also included is an agreement, which requires signature by the municipal officers, and additional background documents.

The agreement stipulates that the municipality will issue a permit for a stated period of time to the MDOT contractor for transporting construction equipment (backhoes, bulldozers, etc.) that exceed legal weight limits, over municipal roads. The agreement acknowledges the municipality's right to require a bond from the contractor to "guarantee suitable repair or payment of damages" per 29-A MRSA.

29-A MRSA § 2382 (7) states that "*the suitability of repairs or the amount of damage is to be determined by the Department of Transportation on state-maintained ways and bridges, otherwise by the municipal officers.*" In other words, municipal officers determine the suitability of repairs on municipal ways and bridges.

The State cannot force municipalities to allow overweight vehicles to travel on posted municipal roads. Municipal postings supersede overweight permits. However, the agreement requires municipalities to make reasonable accommodations for overweight vehicles that are operated by contractors and the MDOT in connection with the construction project.

The specific municipal roads involved are not necessarily known at present, as the contractor's plan of operation won't be known until just prior to the start of work. If the municipality plans to require a bond; the amount of the bond should be determined prior to the start of work. If the project number administratively changes, you will be notified, and the agreement modified accordingly. Please return the completed agreement to my attention. Should you have any questions, please contact me at 207 624-3410.

Sincerely,

George M.A. Macdougall
Contracts & Specifications Engineer
Bureau of Project Development

Return this AGREEMENT, when completed, to:

Maine Department of Transportation
ATTN.: George Macdougall, Contracts & Specifications Engineer
#16 State House Station, Child Street
Augusta, Maine 04333-0016

Project No.: 18995.13
Location: Windham

Pursuant to 29-A MRSA § 2382, the undersigned municipal officers of the Town of Windham agree that a construction overlimit permit will be issued to the Contractor for the above-referenced project allowing the contractor to use overweight equipment and loads on municipal ways.

The municipality may require the contractor to obtain a satisfactory bond pursuant to 29-A MRSA § 2388 to cover the cost of any damage that might occur as a result of the overlimit loads. If a bond is required, the exact amount of said bond should be determined prior to the use of any municipal way. The MaineDOT will assist in determining the amount of the bond if requested. A suggested format for a general construction *overlimit bond* is attached. A suggested format for a construction *overlimit permit* is also attached. This construction overlimit permit does not supersede rules that restrict the use of public ways, such as posting of public ways, pursuant to 29-A MRSA § 2395.

The maximum speed limit for trucks on any municipal way will be 25 mph (40 km per hour) unless a higher speed limit is specifically agreed upon, in writing, by the Municipal Officers.

TOWN OF WINDHAM
By the Municipal Officials

SPECIAL PROVISION 105
CONSTRUCTION AREA

Construction Areas located in the City of Sanford & the Towns of Lebanon, South Berwick, North Berwick, Wells, Kennebunk, and Windham have been established by the Maine Department of Transportation (MDOT) in accordance with provisions of 29-A § 2382 Maine Revised Statutes Annotated (MRSA).

Project 18995.13: The sections of highway under construction in Cumberland and York Counties

- on US Route 202 beginning in Lebanon from the New Hampshire State Line, north to Ridgeway Street in Sanford;*
- on Route 4 in South Berwick from Agamenicus Road, north to the Mary Hurd School in North Berwick;*
- on US Route 1 in Wells from Route 9 East, north to Swan Street in Kennebunk; and*
- on Route 115 in Windham from Falmouth Road, north to US Route 202.*

Per 29-A § 2382 (7) MRSA, the MDOT may “issue permits for stated periods of time for loads and equipment employed on public way construction projects, United States Government projects or construction of private ways, when within construction areas established by the Department of Transportation. The permit:

- A. Must be procured from the municipal officers for a construction area within that municipality;*
- B. May require the contractor to be responsible for damage to ways used in the construction areas and may provide for:*
 - (1) Withholding by the agency contracting the work of final payment under contract; or*
 - (2) The furnishing of a bond by the contractor to guarantee suitable repair or payment of damages.*
- The suitability of repairs or the amount of damage is to be determined by the Department of Transportation on state-maintained ways and bridges, otherwise by the municipal officers;*
- C. May be granted by the Department of Transportation or by the state engineer in charge of the construction contract; and*
- D. For construction areas, carries no fee and does not come within the scope of this section.”*

The Municipal Officers for the City of Sanford & the Towns of Lebanon, South Berwick, North Berwick, Wells, Kennebunk, and Windham agreed that an Overlimit Permit will be issued to the Contractor for the purpose of using loads and equipment on municipal ways in excess of the limits as specified in 29-A MRSA, on the municipal ways as described in the “Construction Area.”

As noted above, a bond may be required by the municipality, the exact amount of said bond to be determined prior to use of any municipal way. The MDOT will assist in determining the bond amount if requested by the municipality.

The maximum speed limits for trucks on any town way will be 25 mph (40 km per hour) unless a higher legal limit is specifically agreed upon in writing by the Municipal Officers concerned.

GENERAL GUIDANCE

CONSTRUCTION OVERLIMIT PERMIT AND BONDING

The Maine Bureau of Motor Vehicles (BMV) establishes requirements and standards for the permitting of non-divisible over dimensional and overweight vehicles and loads (collectively overlimit loads) on state roads. These state motor vehicle permits are available on-line. 29-A MRSA and Secretary of State Administrative Rules Chapters 155-157 apply. Additionally, municipalities and county commissioners may issue overweight permits for travel on municipal and county ways maintained by that municipality or county. These permits are typically single trip permits requiring vehicle registration data, intended route etc.

However, in this case we're dealing with *Construction Permits* involving overlimit loads in support of construction projects. According to 29-A MRSA § 2382 (7), a Construction Permit is a permit *"for a stated period of time that may be issued for loads and equipment employed on public way construction projects, United States Government projects or construction of private ways, when within construction areas established by the Department of Transportation"*. According to 29-A § 2382 MRSA, the construction overlimit permit must be procured from the municipal officers for overweight loads on a municipal way in support of a construction project within that municipality.

By signing the attached agreement, the municipality agrees to issue construction overlimit permits to the MDOT construction contractor.

Frequently Asked Questions:

A. Why sign the document in advance of the actual construction contract?

Response: There are three primary reasons: First, to comply with 29-A § 2382. Second, to ensure that there are no surprises regarding the use of municipal roads by the Maine DOT contractor (to reasonably reduce risk and thus keep the cost of construction down) and third, to ensure the town is aware of its rights to control its own roads, and its rights to require a separate contractor's bond. (This is in addition to the Payment Bond and the Performance Bond the Maine DOT requires of the contractor).

B. Different roads may require different levels of scrutiny. How is a posted road handled?

Response: Despite the general construction overweight permit, the contractor cannot exceed the load limit on a posted municipal road without specific municipal permission. 29-A § 2395 MRSA notes that any ways requiring special protection (such as posted roads) will continue to be protected and overweight permits are superseded by such postings. In such a case the contractor would have to use an alternate route.

C. Is there any reason why the contractor cannot be held to indemnify and hold harmless the Municipality beyond the simple posting of a bond?

Response: The objective of our standard letter is to deal with overweight equipment and trucks on municipal ways during construction of a Maine DOT construction project. The bond merely provides a measure of protection against damage to municipal ways as a direct result of construction activity. Other areas of risk and indemnification are beyond the scope of our letter.

D. Are we required to obtain a bond?

Response: No. In fact, few municipalities have required a construction bond. It is a matter of risk management.

E. If used, what amount should be required on the bond?

Response: Previous MDOT letters used to speak about a maximum bond amount of \$14,000 / mile (\$9,000 / kilometer) of traveled length, however 29-A § 2382 sets no maximum. The amount of the bond (if any bond is required at all) is based on the individual situation. The MDOT will assist in providing a bond amount estimate if so requested.

F. Why the blanket approval?

Response: The blanket approval we seek is the reasonable accommodation by the municipality to allow the Maine DOT contractor to use town ways (if required) to haul overweight construction equipment and trucks. This theoretically gives the municipality and the MDOT time to discuss exceptions to a blanket approval. In general, this avoids unnecessary risks and saves money for all concerned in the long run.

G. Who determines the suitability of repairs?

Response: For municipal ways, the suitability of repairs may be determined by municipal officers. The MDOT will assist.

H. What is a non-divisible load?

Response: Per Chapter 157 (The Administration of Over-Dimension and Overweight Permits) under the Secretary of State administrative rules (See Rule Chapters for the Department of the Secretary of State on line), a non-divisible load is defined as: A load which, if separated into smaller loads or vehicles, would:

- 1) make it unable to perform the function for which it was intended;
- 2) destroy its value or;
- 3) require more than eight work hours to dismantle using appropriate equipment. Sealed oceangoing containers, spent nuclear materials in casks, and government-controlled military vehicles and their loads will be considered non-divisible

I. What is the standard for Overweight trucks and equipment?

Response: Overweight means a weight that exceeds the legal limits established in 29-A MRSA Chapter 21.

J. This is an unorganized township with no county or municipal roads. Why should I respond?

Response: Because of limited staff, we send out a standard letter to cover contingencies and minimize risk to the construction process. From time to time the letter may not have a practical application. In most cases of unorganized territories, the agreement is signed and returned as a matter of routine. This ensures that surprises will not be encountered after the start of construction regarding travel over municipal and county ways.

Additional tips:

False Information - Permit are invalidated by false information. A permit is invalidated by the violation of any condition specified by the terms of the permit or by false information given on the application. On evidence of such violation of falsification, the permittee may be denied additional permits.

Proper Registration - Overload permits do not relieve the registrants of vehicles from their obligations to properly register their vehicles in accordance with Motor Vehicle Laws.

Agent's Power of Attorney - If you do require a contractor's bond, make sure you have a copy of the Surety Agent's power of attorney authorizing the surety agent to sign for the surety. Keep the power of attorney with your duplicate original bond at the municipality. The contractor will also have a duplicate original.

Other bonds - The Maine DOT requires a payment bond and a performance bond of the contractor which is held against unsatisfactory performance on the part of the contractor for all construction projects over \$100,000. (The Miller Act (40 U.S.C. 270a-270f) normally requires performance and payment bonds for any federal aid construction contract exceeding \$100,000. 14 MRSA § 871 provides a similar requirement for state funded construction projects.) These bonds cover the proper performance of the contract and the payment of all employees, suppliers and subcontractors.

Title 29-A: MOTOR VEHICLES AND TRAFFIC
Chapter 21: WEIGHT, DIMENSION AND PROTECTION OF WAYS
Subchapter 2: DIMENSION
§2383

§2382. Overlimit movement permits

- 1. Overlimit movement permits issued by State.** The Secretary of State, acting under guidelines and advice of the Commissioner of Transportation, may grant permits to move nondivisible objects having a length, width, height or weight greater than specified in this Title over a way or bridge maintained by the Department of Transportation.
- 2. Permit fee.** The Secretary of State, with the advice of the Commissioner of Transportation, may set the fee for single trip permits, at not less than \$6, nor more than \$30, based on weight, height, length and width. The Secretary of State may, by rule, implement fees that have been set by the Commissioner of Transportation for multiple trip, long-term overweight movement permits. Rules established pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.
- 3. County and municipal permits.** A county commissioner or municipal officer may grant a permit, for a reasonable fee, for travel over a way or bridge maintained by that county or municipality.
- 4. Permits for weight.** A vehicle granted a permit for excess weight must first be registered for the maximum gross vehicle weight allowed for that vehicle.
- 5. Long-term permits.** The Secretary of State may grant permits for up to one year for trucks, truck tractors, semitrailers, heavy duty recovery vehicles and Class A special mobile equipment. Notwithstanding Title 5, section 8071, subsection 2, paragraph A, the Secretary of State, in consultation with the Commissioner of Transportation, shall establish the fee schedule by rule. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
- 6. Scope of permit** A permit is limited to the particular vehicle or object to be moved, the trailer or semitrailer hauling the overlimit object and particular ways and bridges.
- 7. Construction permits.** A permit for a stated period of time may be issued for loads and equipment employed on public way construction projects, United States Government projects or construction of private ways, when within construction areas established by the Department of Transportation. The permit:
 - A. Must be procured from the municipal officers for a construction area within that municipality;
 - B. May require the contractor to be responsible for damage to ways used in the construction areas and may provide for:
 1. Withholding by the agency contracting the work of final payment under contract; or
 2. The furnishing of a bond by the contractor to guarantee suitable repair or payment of damages.

The suitability of repairs or the amount of damage is to be determined by the Department of Transportation on state-maintained ways and bridges, otherwise by the municipal officers;

 - C. May be granted by the Department of Transportation or by the state engineer in charge of the construction contract; and
 - D. For construction areas, carries no fee and does not come within the scope of this section.

8. Gross vehicle weight permits. The following may grant permits to operate a vehicle having a gross vehicle weight exceeding the prescribed limit:

- A. The Secretary of State, with the consent of the Department of Transportation, for state and state aid highways and bridges within city or compact village limits;
- B. Municipal officers, for all other ways and bridges within that city and compact village limits; and
- C. The county commissioners, for county roads and bridges located in unorganized territory.

9. Pilot vehicles. The following restrictions apply to pilot vehicles.

- A. Pilot vehicles required by a permit must be equipped with warning lights and signs as required by the Secretary of State with the advice of the Department of Transportation.
- B. Warning lights may be operated and lettering on the signs may be visible on a pilot vehicle only while it is escorting a vehicle with a permit on a public way.

With the advice of the Commissioner of Transportation and the Chief of the State Police, the Secretary of State shall establish rules for the operation of pilot vehicles.

9-A. Police escort. A person may not operate a single vehicle or a combination of vehicles of 125 feet or more in length or 16 feet or more in width on a public way unless the vehicle or combination of vehicles is accompanied by a police escort. The Secretary of State, with the advice of the Commissioner of Transportation, may require a police escort for vehicles of lesser dimensions.

- A. The Bureau of State Police shall establish a fee for state police escorts to defray the costs of providing a police escort. A county sheriff or municipal police department may establish a fee to defray the costs of providing police escorts.
- B. The Bureau of State Police shall provide a police escort if a request is made by a permittee. A county sheriff or municipal police department may refuse a permittee's request for a police escort.
- C. A vehicle or combination of vehicles for which a police escort is required must be accompanied by a state police escort when operating on the interstate highway system.

10. Taxes paid. A permit for a mobile home may not be granted unless the applicant provides reasonable assurance that all property taxes, sewage disposal charges and drain and sewer assessments applicable to the mobile home, including those for the current tax year, have been paid or that the mobile home is exempt from those taxes. A municipality may waive the requirement that those taxes be paid before the issuance of a permit if the mobile home is to be moved from one location in the municipality to another location in the same municipality for purposes not related to the sale of the mobile home.

11. Violation. A person who moves an object over the public way in violation of this section commits a traffic infraction.

SECTION HISTORY:

PL 1993, c. 683, §A2 (NEW).
PL 1993, c. 683, §B5 (AFF).
PL 1997, c. 144, §§1,2 (AMD).
PL 1999, c. 117, §2 (AMD).
PL 1999, c. 125, §1 (AMD).
PL 1999, c. 580, §13 (AMD).
PL 2001, c. 671, §30 (AMD).

PL 2003, c. 166, §13 (AMD).
PL 2003, c. 452, §§Q73,74 (AMD).
PL 2003, c. 452, §X2 (AFF).
PL 2007, c. 703, §25 (AMD).
PL 2011, c. 356, §23 (AMD).
PL 2011, c. 556, §22 (AMD).
PL 2019, c. 335, §9 (AMD).

MUNICIPAL OVERLIMIT PERMIT FOR CONSTRUCTION

MUNICIPALITY: _____

Phone: 207-_____; fax: 207-_____

APPLICATION FOR OVERLIMIT PERMIT TO MOVE CONSTRUCTION EQUIPMENT AND LOADS IN EXCESS OF LEGAL LIMITS ON MUNICIPAL WAYS

Construction Time Period:

Per 29-A § 2382 (7) MRSA, application is hereby made to the MUNICIPALITY OF _____
for An Overlimit Permit to move construction equipment, material, objects or loads in excess of legal limits over
ways maintained by the MUNICIPALITY in support of construction operations for the following Maine DOT
project

Project Description:

Project Identification Number (PIN):

NAME OF PERMITTEE (Construction Company):

STREET/P.O. BOX:

CITY:

STATE/PROV:

ZIP / POSTAL CODE:

PHONE:

FAX:

This object or load cannot be readily reduced to the legal limits.

Signed by:

(name & title)

Permit is granted. A copy of this signed permit will be provided to the permittee as prove of permit. This permit
will automatically expire at the physical completion of the above construction project. The original permit will be
held on file at the municipality.

Signed:

Municipal Official

MUNICIPAL OVERLIMIT PERMIT FOR CONSTRUCTION

MUNICIPALITY: _____

Phone: 207-_____; fax: 207-_____

APPLICATION FOR OVERLIMIT PERMIT TO MOVE CONSTRUCTION EQUIPMENT AND LOADS IN EXCESS OF LEGAL LIMITS ON MUNICIPAL WAYS

Construction Time Period:

Per 29-A § 2382 (7) MRSA, application is hereby made to the MUNICIPALITY OF _____
for An Overlimit Permit to move construction equipment, material, objects or loads in excess of legal limits over
ways maintained by the MUNICIPALITY in support of construction operations for the following Maine DOT
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Project Description:

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NAME OF PERMITTEE (Construction Company):

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CITY:

STATE/PROV:

ZIP / POSTAL CODE:

PHONE:

FAX:

This object or load cannot be readily reduced to the legal limits.

Signed by:

(name & title)

Permit is granted. A copy of this signed permit will be provided to the permittee as prove of permit. This permit
will automatically expire at the physical completion of the above construction project. The original permit will be
held on file at the municipality.

Signed:

Municipal Official

BOND # _____

Date: _____

MUNICIPAL CONSTRUCTION BOND

KNOW ALL MEN BY THESE PRESENTS: That (name of construction firm) _____
_____ **and the Municipality of** _____, as
principal, and _____
, a corporation duly organized under the laws of the State of _____ and having a
usual place of business _____,
as Surety, are held and firmly bound unto the Treasurer of the Municipality of
_____ in the sum of
_____ **and 00/100 Dollars (\$** _____ **)**
to be paid said Treasurer of the Municipality of _____ or
her/his successors in office, for which payment well and truly to be made, Principal and
Surety bind themselves, their heirs, executors and administrators, successors and assigns,
jointly and severally by these presents.

The condition of this obligation is such that if the Principal designated as Contractor in
the Contract to construct Project Number _____ in the Municipality of
_____ promptly and faithfully performs the Contract,
without damage to the municipal ways, other than normal wear and tear; then this
obligation shall be null and void; otherwise it shall remain in full force and effect.

However, if the Principal designated as Contractor causes damage to any municipal way
beyond normal wear and tear, in the construction of the above project through the use of
legal weight, legal dimension trucks or equipment; or overweight or over-dimension
equipment or trucks (as defined in 29-A MRSA) on the municipal ways, then this bond
may be used to guarantee that the contractor either repairs or pays for the damage caused
by the use of its equipment or trucks. The degree of damage beyond normal wear and
tear will be determined by municipal officials with the assistance of the Maine
Department of Transportation.

The Surety hereby waives notice of any alteration or extension of time made by the Municipality.

Signed and sealed this day of, 20.....

WITNESS:

SIGNATURES:

CONTRACTOR:

Signature.....

.....

Print Name Legibly

Print Name Legibly

.....

.....

WITNESS:

SIGNATURES SURETY:

Signature.....

Signature.....

Print Name Legibly

Print Name Legibly

NAME OF LOCAL AGENCY:

ADDRESS

TELEPHONE

NAME OF SURETY

SURETY ADDRESS:.....

BOND # _____

BOND # _____

Date: _____

MUNICIPAL CONSTRUCTION BOND

KNOW ALL MEN BY THESE PRESENTS: That (name of construction firm) _____
_____ and the Municipality of _____, as
principal, and _____
, a corporation duly organized under the laws of the State of _____ and having a
usual place of business _____,
as Surety, are held and firmly bound unto the Treasurer of the Municipality of
_____ in the sum of
_____ and 00/100 Dollars (\$ _____)
to be paid said Treasurer of the Municipality of _____ or
her/his successors in office, for which payment well and truly to be made, Principal and
Surety bind themselves, their heirs, executors and administrators, successors and assigns,
jointly and severally by these presents.

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the Contract to construct Project Number _____ in the Municipality of
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without damage to the municipal ways, other than normal wear and tear; then this
obligation shall be null and void; otherwise it shall remain in full force and effect.

However, if the Principal designated as Contractor causes damage to any municipal way
beyond normal wear and tear, in the construction of the above project through the use of
legal weight, legal dimension trucks or equipment; or overweight or over-dimension
equipment or trucks (as defined in 29-A MRSA) on the municipal ways, then this bond
may be used to guarantee that the contractor either repairs or pays for the damage caused
by the use of its equipment or trucks. The degree of damage beyond normal wear and
tear will be determined by municipal officials with the assistance of the Maine
Department of Transportation.

The Surety hereby waives notice of any alteration or extension of time made by the Municipality.

Signed and sealed this day of, 20.....

WITNESS:

SIGNATURES:

CONTRACTOR:

Signature.....

.....

Print Name Legibly

Print Name Legibly

.....

.....

WITNESS:

SIGNATURES SURETY:

Signature.....

Signature.....

Print Name Legibly

Print Name Legibly

NAME OF LOCAL AGENCY:

ADDRESS

TELEPHONE

NAME OF SURETY

SURETY ADDRESS:.....

BOND # _____