

28.46-05 - EASEMENT FOR THE USE OF STATE LANDS (ISSUED: 07/11/2005)

Supersedes

- DNR Department Procedure 4605.5 - EASEMENT FOR THE USE OF STATE LANDS, Issued December 08, 1994.

NOTE: The content of this document has not been revised since Issued December 08, 1994. The only change involves the conversion and numbering to the current DNR Policies & Procedures Manual Structure.

<< Supersedes >>

Number 4605.5 Dated: October 14, 1977

<< General Procedures >>

1. The Land Manager is the Department representative in charge of all easements on stateowned lands in Regions I and II, and III.
2. All requests for easements, assignments of or amendments to easements, must be submitted directly to the Real Estate Division by the applicant. Requests should be submitted on the Departments application form or by letter as appropriate and include the following: (1) legal property descriptions, (2) nine copies of a sketch showing the alignment of the right-of-way or location of the proposed installation (3) an environmental assessment report, biological study, or an archaeological study, as needed. The need for an environmental assessment report, biological study, or archaeological study, will be determined by the Department. The applicant must also submit the appropriate application and review fee as specified in the Department's fee schedule.
3. When an application for an easement is received, Real Estate Division will process the application and submit it to the land managing division for review. Easement requests will be forwarded directly to the Land Manager responsible for examining the proposed route. A copy of the transmittal letter will be sent to the Lansing office and the District Office of the managing division. The Land Manager shall consult with other divisional representatives directly concerned with the land or the proposed installation before making recommendations. Other departments and governmental agencies will be consulted as appropriate and necessary including the Secretary of State, Bureau of History. Real Estate Division will also submit the application and its review request to all parties routinely involved in the review process. This would include the District Land and Water Management Supervisor, the Department's Endangered and Threatened Species Coordinator and the Natural Rivers Program.
4. Public utilities and public agency representatives are to contact the managing division office and secure permit(s) before any preliminary linear field survey is made for major highways, major pipelines (eight inches or greater), or utility transmission lines. The Land Manager is authorized to issue the permit(s) using form PR-4152 (Right to Enter for Survey Purposes) for electric distribution lines and for pipelines less than eight inches in diameter.
5. The Land Managers review report and recommendations using form R-4068 (Right-Of-Way Easement Report) should cover (1) a statement that the right-of-way or installation is properly located, or if it is not properly located, the desired alignment/location; if such location is identifiable; (2) reason for denial if denial is recommended; (3) aesthetic considerations, endangered species, or unusual values involved; (4) cover types impacted; and (5) any special construction, maintenance and operating conditions recommended. Consideration

should be given that the Department, as steward of the State lands, may usually require additional or more stringent construction, restoration and maintenance conditions and mitigation measure than may be required under the individual regulatory permits, orders, and licenses for a project.

6. The Land Manager's report is submitted through District and Region to the Division's Lansing office. In the case of Divisional differences or where there is potential for adverse public reaction, the Regional Deputy Director shall be provided an opportunity for input. Any comments or recommendations by the Regional Deputy Director would be included with the Regional report to the Division.
7. The division submits its recommendations for easements to the Real Estate Division. Real Estate Division prepares the easement if issuance was recommended by Division. Then, by authority of the Director, the Real Estate Division Chief grants the easement to the applicant. If Division recommends denial, Real Estate Division so notifies the applicant.
8. Upon issuance of an easement, Real Estate Division sends to the Division and unit a copy of the letter of transmittal to the applicant, and a copy of the easement.
9. No operations are to be conducted on state lands until the approved easement is received by the grantee, together with the letter of transmittal which indicates the name, address and telephone number of the Grantor's representative in charge. Normally, the Grantors representative is the Land Manager. Additional representative(s) can be designated where special circumstances such as geographic location, type of use, site features, and construction specifications warrant it.
10. It is the responsibility of the Grantors representative to check grantee's compliance with the conditions listed on the easement, especially relative to construction conditions.

SPECIFIC PROCEDURES AND INSTRUCTIONS

1. Road Easements (Public Roads)

- A. Easements for public roads rights-of-way are granted to duly authorized public agencies. Public Act 283 of 1909 indicates that a public highway right-of-way is four rods (66 FEET) in width even though there is no recorded instrument of conveyance. However, subsequent decisions by the appellate courts have indicated that the limits of any such highway are to be ascertained by reference to the width to which such highway has actually been used. See *Edgar v. Department of Transportation*, Supreme Court Opinion, 376 Mich 148 (1956), and cases therein cited. Therefore any proposed improvement beyond the used portion of a designated public road traversing state land, for which there is no conveyance of record, must be authorized by an easement.
- B. New right-of-way width shall normally be granted for 66 feet but may be wider if necessary. The burden of proving the necessity for wider than 66 feet is on the applicant. Documented safety and maintenance needs are examples of reasons to consider granting a wider right-of-way than 66 feet. Impact on the resource as determined by the Department will still be the primary factor in determining the width to be granted. State highways will be considered for the minimum width needed as documented by the Department of Transportation.
- C. The public agency (such as a County Road Commission) controlling a road right-of-way under Act 368, P.A. 1925, may authorize the placement of utilities along the road if construction is confined entirely within the historically cleared and maintained right-of-way. If the road is subject to the terms of a written easement from the Department, the public agency does not have such authority, unless so specified in the easement document.
- D. If the state owns the surface rights to the land traversed by a road right-of-way, and an easement of record exists, the agency holding the easement may authorize the cutting of timber within the right-of-way. This can occur upon payment to the Department of a timber consideration fee for the area to be cleared. This is a one time payment to be paid at the time the easement is granted.
- E. Wherever feasible, the R-O-W centerline for public roads should be on the legal subdivision line(s). If a R-O-W parallels private property, but lies entirely on state land,

the R-O-W edge should be on the legal subdivision line.

- F. At this time, an easement consideration fee is not charged for most county road rights-of-way which benefit the general public. There may be an easement consideration fee charged for some road R-O-Ws, especially those across certain types of purchased lands. Such determinations shall be made by Real Estate Division based on how the lands to be crossed were acquired and on the recommendations of the land managing division.

2. Electric Power and Telecommunications Line Easements

The department strongly disapproves of any encroachment of utility lines into wilderness, wild, and natural areas, state parks and recreation areas, game areas, or the travel or water influence zones in state forests, particularly where such lines would be offensive to the view of the public in otherwise aesthetically pleasing surroundings.

A. Electric distribution and telecommunication lines:

1. Electric distribution and telecommunication lines usually serve private landowners. Therefore, they should be located as much as possible on private lands.
2. All electric and telecommunication lines requested on state land having high aesthetic, scenic, natural or historic value shall be buried. On all other State land, telecommunication lines and all lines up to 34.5 K.V. should be buried whenever feasible. The Department shall make the final determination of feasibility. All lines shall be buried to a minimum depth of 3' (feet).
3. Fees for electric and telecommunication lines shall be based on the Department easement fee schedule or upon individual appraisal at the option of the Department.
4. Right-of-way clearings should be kept to the minimum width necessary for construction. The permanent right-of-way needs to be wide enough to prevent potential damage from adjacent trees and to afford safety to utility workers. A temporary right-of-way for construction purposes may be granted based on documented need. The Department shall make the final determination of the additional width to be granted.
 - a. Overhead lines:
 1. Permanent rights-of-way (R-O-W) for electric distribution lines will be 30 (thirty) feet wide. When a line is placed parallel to an existing cleared R-O-W, the additional R-O-W will be reduced by ten feet.
 2. Additional clearing may be permitted where needed during construction for placement of temporary guy lines and for the temporary storage of equipment and materials. This will normally be handled as a temporary right-of-way under the Easement. A separate Use Permit can be issued by the Land manager if unforeseen, temporary construction needs arise. The Use Permit would be issued subject to restoration requirements and other special conditions as needed.
 3. Maintenance tree removal or trimming along an existing R-O-W may be allowed under permit from the Land Manager. Such permits allow the cutting or trimming of trees outside of the R-O-W which could strike the line in falling. Such trees include weak, leaning or dead trees. A timber consideration fee or timber fee should be charged for most such removals or trimming.
 4. Low-growing trees and shrubs which do not interfere with the operation or safety of the line should not be removed.

Such growth is aesthetically pleasing and is valuable as wildlife habitat.

b. Underground lines:

1. Rights-of-way should normally not exceed 15 (fifteen) feet, depending on soils, tree roots and rocks, and the type of equipment used.
2. Existing cleared rights-of-way should be used wherever possible.
3. Deviation from the staked centerline is allowed to 15 feet to avoid large trees, rocks or other obstructions when laying the line. Such corrections must be documented by the Grantee and a copy of the corrected map or survey description must be provided to the Department through Real Estate Division.
4. A permit may be issued to authorize removal of timber outside of the authorized R-O-W where it is necessary to overcome unusual construction difficulties. A timber consideration fee or timber charge should be collected for such removals.

B. Overhead electric transmission lines:

1. In reviewing proposed rights-of-way for electric transmission lines, visual impacts will be strongly considered. Rights-of-way for such lines should be concealed by natural terrain features, such as hills or ridges, or by planned layout as with appropriate deflections.
2. The right-of-way for an overhead electric transmission line will be up to 100 (one hundred) feet wide. Where the line is to parallel an existing cleared right-of-way except other overhead lines, the added right-of-way will be that which is necessary to accommodate the supporting towers or the width of cross arms used, plus 50 (fifty) feet laterally on one side.

In those cases where it is or becomes necessary to have paired towers and lines on the right-of-way, the combined right-of-way width will be 100 feet plus the width of one supporting structure plus 65 percent of the height of poles or towers used.
3. The area below and between the outermost limits of cross arms used, plus ten feet laterally on either side, may be cleared of trees and of shrubs, if necessary. Additional clearing may be permitted where needed during construction for placement of temporary guy lines and for the temporary storage of equipment and materials. This will normally be handled as a temporary right-of-way under the Easement. A separate Use Permit can be issued by the Land manager if unforeseen, temporary construction needs arise. The Use Permit would be issued subject to restoration requirements and other special conditions as needed.
4. Taper cutting will be allowed. This will be restricted to the removal or trimming of any tree the top of which grows above a line starting at the ground at a line beneath the outermost limits of cross arms used and extending upward and outward at 45 degrees from the horizontal. Where adjacent trees are tall, taper cutting may be extended outside of the R-O-W. Written permission for such cutting must be obtained by the Grantee either in the form of temporary easement rights or under a Use Permit. Initial preparation of a new R-O-W may take most trees from this area. Land managers are requested not to plant or encourage the growth of trees that would enter the zone of taper cutting. This does not preclude introduction of low-growing flowering or fruiting trees or shrubs for aesthetic and wildlife benefits.
5. Where an overhead line R-O-W traverses a hill at any angle across the direction of the slope, the zone of taper cutting on the upper slope should be limited to a horizontal distance equal to the height of adjacent trees.

6. In any area or situation where circumstances may require deviation from these guidelines to protect the lines and structures from danger of failing trees, a permit may be issued by the Land Manager allowing removal of such trees. (See section on Timber Disposal and Easement Fee Schedule.)
7. In those cases where it is or becomes necessary to have paired towers and lines on the R-O-W, the area between may be cleared of tree growth.

3. Pipeline and Flowline Easements

Definition - Flowlines are pipelines running between the well and a tank battery/facility site.

A. Pipelines and flowlines under an existing lease:

State oil and gas leases provide that the lessee has the right to bury pipelines across the leased premises subject to all laws, rules and regulations. The lease gives the lessee the right to request an easement for pipelines which will be located across the surface description contained in the oil and gas lease and which will service oil and gas well(s) on that same leased premises. Easements are required and construction cannot begin until they have been issued. Currently, this type of easement is free of an easement consideration fee, but a timber consideration fee is assessed and collected. Only an easement will provide the Lessee with the written permission required under the State Land Rules for the cutting or removing of living trees or shrubs or other vegetation for the installation of their pipelines.

B. Pipelines and flowlines not under an existing lease:

This includes pipelines and flowlines which cross lease boundaries. Easements are required and construction cannot begin until they have been issued. Standard easement consideration fees are charged and a timber consideration fee is assessed and collected.

C. R-O-W WIDTH: Widths for pipeline and flowline rights-of-way should be held to a minimum. In some cases the width required during construction is greater than that needed for the completed pipeline. This wider construction R-O-W shall be written into the easement as a temporary right to clear for construction purposes. The following table contains recommended right-of-way widths for easements authorizing liquid, oil and gas pipelines.

Recommended R-O-W Widths for Liquid, Oil and Gas Pipeline:

<u>Pipeline Diameter</u>	<u>Easements</u>	
	<u>Permanent R-O-W Width</u>	<u>Maximum Combined Temporary & Permanent Right-Of-Way Width During Construction</u>
1 " to 4"	Up to 20'	Up to 20'
4" PLUS - 12"	20'	30'
12" Plus to 18"	30'	50'
18" Plus to 26"	30'	66'
26" Plus to 36"	30'	75'

- D. When a temporary clearing width is authorized, the pipe will be laid within 15 to 20 feet of one edge of the temporary right-of-way. This allows room for subsequent pipelines without additional clearing. The "as laid" pipeline then becomes the centerline of the permanent R-O-W. It is essential that the pipeline proposal show which side of the cleared area the pipeline is to be laid. This location shall also be staked on the ground.
- E. If a temporary clearing is authorized, companies will be encouraged to clear no more than necessary.
- F. If additional temporary width is requested for construction it may be considered

for certain circumstances such as swamp, hillsides, road crossings, piling of extra dirt or using larger equipment.

- G. Parallel pipelines are to use a common corridor or an existing right-of-way. In this case the width of the right-of-way to be cleared will be one-third less than the above recommended permanent and temporary widths. Pipelines added to a corridor or existing right-of-way shall be laid as close as feasible to those previously constructed within acceptable safety limits as prescribed by the Public Service Commission. In applying this guideline, its purpose to keep pipeline corridor rights-of-way to a minimum width should be kept in mind.
- H. At those locations on state land where pipelines cross wetlands, streams, lakes, or reservoirs, construction shall be as specified under separate regulatory permits issued by the Department under applicable statutes including but not limited to the Wetlands Protection Act, The Inland Lakes and Stream Act, The Soil Erosion and Sedimentation Control Act and The Natural Rivers Act. The Department shall require that all stream crossings be bored unless damage to the natural environment would be greater than if the crossing was done by some alternative, permitted (regulatory) method. The Department may require that crossings of some wetlands be done by boring, dependent on site circumstances and regulator statute and permit requirements.

4. Telecommunication Site

The Department shall reserve all telecommunication sites for the Department's use which may be needed for its current or future communication needs. Consideration will be given to granting other public agency use of its sites if the Departments current and future communication needs for the site are provided at no cost or inconvenience to the Department.

Granting of sites for private telecommunication sites will be considered only after the Department determines that the applicant has exhausted attempts to locate on private land; the Department has determined the use does not conflict with its or the State's telecommunications needs; and the applicant has agreed to provide for the Department's current and future communications needs at the site at no cost to the Department.

Existing leases and easements will be modified to include the above provisions as the opportunity arises primarily through assignments and amendments as noted in 6. A. and B.

Telecommunication sites will be limited to the area necessary. This will include the actual area needed for access road, buildings, towers and required anchors for guy lines or other purposes. Land clearing will be permitted only to the extent required for safety, operation, and maintenance.

5. Timber Disposal, Timber Consideration Fee, Application and Review Fee, Easement Consideration Fee Schedule and Exchange:

A. Timber Disposal:

- 1. All timber involved on an easement for a right-of-way or installation site becomes the property of the grantee upon payment of a timber consideration fee. The grantee is then responsible for removal or disposal of the forest products. Real Estate Division will bill the applicant for the timber consideration fee at the time the easement is issued.
- 2. Trees, stumps and brush may not be disposed of on site unless specifically authorized under the terms of the easement or by separate written permission of the grantors representative.
- 3. Slash resulting from right-of-way clearing shall be disposed of as required by the State Slash Disposal Law.

B. Timber Consideration Fee and Collection:

- 1. A timber consideration fee shall be charged for all easements. The concept of the timber consideration fee recognizes the potential timber value of an average acre of land over the next three successive harvests which will not be realized due to issuance of an easement. Where a temporary right-of-way adjacent to the permanent right-of-way is needed for short-term construction purposes, one

half of the full timber consideration fee will be charged. The timber consideration fee schedule will be developed as follows, and updated annually:

- a. Determine separate fees for Region I and Region II and Region III.
 - b. For Regions I and II use as the base, actual historical data from state timber sales for the most recent fiscal year.
 - c. Determine average weighted price per cord for all products combined.
 - d. Multiply by the average cords per acre realized from all completed sales, to obtain the average value per acre for all commercial sites.
 - e. Multiply by a factor of 3.0, to get a future loss value equivalent to three successive harvests.
 - f. Multiply by the percent of commercial state-owned forest land, to get value per average state-owned acre (commercial and non-commercial combined) for three successive harvests.
2. The total timber consideration fee for Region I and II easement is computed by Real Estate Division based upon the easement acreage represented by its width and length, and is billed to the applicant at the time the easement is issued.
 3. Region III Land Managers will determine a timber value based on appraisal and the appraised amount will be multiplied by a factor of 3.0 to get a future loss value equivalent to three successive harvests. Individual tree or shrub value may be used for intensively used recreational sites.

C. Application and Review Fee:

A nonrefundable application and review fee shall accompany each formal request for an easement or other interest in land including assignments or amendments. This fee shall be paid in addition to the easement fee charged for the land rights desired from the state.

D. Easement Consideration Fee Charges:

Computations to arrive at the charge for the desired State land rights shall be computed within the following guidelines.

1. Easement consideration fee schedule:

The easement consideration fee schedule, as approved by the Director, shall be used as appropriate. Surface damages including the timber consideration fee for forest products will also be assessed in addition to the fixed easement consideration fee.

2. Need for appraisals:

Land appraisals will be made in cases where use of the easement fee schedule is considered to be inappropriate because of economic reasons or where total right-of-way width exceeds 50 feet.

3. Special use structures and installations:

a. Easements:

Sites for special use structures to serve utilities and/or for the production of oil, gas or other minerals may be conveyed by easement at fair market value. Fair market value estimates shall consider the proposed use and the probable duration of that use. Conveyance of sites for these uses may contain reversion clauses calling for removal of improvements and site renovation within six months from termination of the special use.

b. Lease of Easement Rights:

The land rights requested may be granted by leasing the easement rights for a set term. Payment for the lease shall be on an annual basis at the current fair market value as determined by the Department. Examples of land rights which could be leased include telecommunication facility or tower sites and oil and gas facility sites. Leases will provide for periodic review and adjustment of easement charges and allow for updating and revision of easement conditions.

- c. Sites for some special use structures currently on an annual pay basis may be converted to a single fee payment subject to the terms and conditions above.
- d. Meter, Tap or Valve Sites:

Some special use structures such as meter, tap, or valve sites are necessary in conjunction with oil and gas pipelines. In the past, separate easements have been issued for these sites for the appurtenances to the pipelines. Such installations of 5,000 feet or less may be permitted within the existing right-of-way following field review and approval.
- e. Exchanges:

The land rights requested may be granted under the exchange authority to provide for replacement land. (Act 193, P.A. 1911 as amended, page 1 1 8, Laws Relating to State Land 1966 edition, or under Act 86, P.A. 1989, the Land Exchange Facilitation Act).

6. Assignments and Amendments:

A. Assignments:

Application for assignments must be made to the Department. Easements for special use structures and installations may be assigned by the Grantee if so approved by the Department and if the easements terms and conditions don't prevent such assignment. At the time of assignment, easement conditions may be revised and updated at the Department's option.

B. Easement and Lease Amendments:

Upon application by the Grantee, the Department may consider use amendments to the easement or lease. Such amendments would primarily be to provide for additional uses not covered in the original document. these new uses may include additional users on telecommunication sites. Fair market value charges will be assessed to the original Grantee for any new approved used.

7. Safety Precautions, Restrictions and Emergency Reporting:

A. Due to the risk involved and the danger accompanying a gas rupture, the following safety precautions and restrictions are to be followed on state-owned land traversed by a gas transmission pipeline:

1. Before any operations on the right-of-way commence, the gas transmission company should be given at least seventy-two (72) hours advance notice by telephone so that the centerline of the pipeline in the area of operations can be marked and if necessary, logical crossing points can be mutually agreed to.
2. If it is necessary for tracked or heavy equipment to cross the gas pipeline, construction of earthen ramp(s) may be necessary. Construction of such ramps will be done to the specification of the gas transmission company. Construction will be the responsibility of either the gas transmission company or the party crossing the pipeline. This is dependent on the conditions of the easement.
3. Skidding of logs on the permanent right-of-way will not be permitted.

B. In case of a break or leak in any liquid, gas, or electric power line, or an accident or spillage at connected structures or storage tanks, it is important that prompt action be taken to stop pollution, prevent subsequent damage, reduce resultant hazards, and restore service.

1. In order to accomplish this, anyone finding a leak, break, or accidental damage should notify first the company responsible for the operation of the utility, and second, the Department. Any company discovering such a break or disruption should notify the Department at the earliest possible time. If the break or disruption is discovered by a Department employee, the employee should notify the company involved and the District.
2. In case of breaks in gas lines, the District is required to notify the nearest State Police post so that the latter may notify the Public Service Commission, which is responsible for investigation of such accidents. (See Department Procedure 2307.7 dated January 1, 1977).

3. In all instances, the nature of the break and its location should be reported, as well as what action has been taken to correct it, if any. Districts are also required to report such matters to the Regional Deputy Director
- C. For the procedure governing investigation and reporting of damage to fish or wildlife, fish and wildlife habitat and recreational values by pollution or suspected pollution see Department Procedure 4505.5.

8. Right-of-Way Restoration:

The areas under consideration are all lands that have been disturbed during installation or construction of facilities on state-owned property. Control of erosion of these sites will reduce damages from sediment and runoff to downstream areas, improve fish and wildlife habitat, and enhance the natural beauty of the water and the land. These restoration specifications are subject to additional specifications of the enforcing agency, responsible for the Soil Erosion and Sedimentation Control Act. Region 11 has specific site and vegetation restoration specifications. The following specifications or similar variations can be used for easements granted in Region I and III until specific regional guidelines are developed. Note that if a natural river corridor is involved, under the Natural Rivers Act and its Administrative Rules, there are certain construction and maintenance requirements which would take precedence.

A. Seeding of opening:

Where feasible, on mineral soil, topsoil will be saved and replaced. On sloping ground, runoff water should be diverted away from disturbed areas. Steep areas should be worked across slope instead of up and down. Slash, stumps and debris shall not be pushed into adjacent stands of timber.

B. Preparation of seedbed:

The entire area to be seeded shall be reasonably smooth. A friable, firm seedbed, free of large clods, rocks, tree roots or other material that would interfere with seeding operations, shall be prepared to a minimum depth of 3 inches. A springtooth drag, field tiller, disk, harrow or other suitable equipment may be used. The contractor shall suspend operations when good cultural operations cannot be followed.

C. Fertilizer:

The following minimum amount of fertilizer per acre will be applied uniformly over the areas to be seeded at or immediately before seeding time.

500 pounds of 12-12-12 mix fertilizer containing the following:

Nitrogen (N)	60 pounds
Phosphoric acid (P205)	60 pounds
Potash (K20)	60 pounds

D. Seed:

The seeding mixture shall be composed of seed certified as to purity and germination.

The seed mixture shall be furnished in durable bags. On each bag of seed the vendor shall attach a tag giving net weight of contents, seed name, percentage by weight, lot number, purity and germination, and date of test. All seed shall have been tested for germination within six months of date of seeding.

E. Mulch:

Mulch shall be required on all slopes 6% or over. Mulch will be applied within 24 hours of seeding.

Mulch shall consist of straw, wood chips, or other approved organic material. Generally, hay will not be considered a suitable mulching material because its application may result in the establishment of undesired plant species on the right-of-way.

Straw shall be spread over the surface to a uniform thickness at the rate of two tons per acre.

Other organic materials shall be spread at a rate specified by the division.

Spreading of mulch may be done by hand, blowers, or other mechanical method, providing a uniform covering is secured.

F. Applying seed:

Organic soil - shall be seeded and fertilized immediately after construction.

Mineral soil - seeding shall be done as early in the spring as conditions permit, or in Region I from May 1 to September 10; Region II - May 1 to June 10 or August 1 to September 20; and in Region III - April 20 to June 1 or August 10 to October 1. If seeding is done at times other than listed above, all areas will be mulched at the time of seeding.

Immediately following seedbed preparation, the seed and fertilizer shall be applied.

8. Right-of-Way Maintenance:

- A. Rights-of-way, yards, and areas surrounding installed facilities shall be kept clean and free of unused or discarded materials and equipment. The Land Manager is responsible for notifying companies involved to take corrective action. In cases of persistent disregard of this requirement by the company, a written report by the Land Manager will be submitted through District and Region to the Regional Deputy Director.
- B. Operation of above-ground facilities should conform to applicable air and water quality standards and to rules, regulations, and law pertaining to safety and fire hazards.
- C. Access roads and service roads should be maintained to avoid erosion and reduce any undesirable aesthetic effects.
- D. Control of woody vegetation should be done by mechanical means.
- E. The use of chemicals to control woody growth on state-owned lands is not allowed without specific permission. Application for permit to treat such rights-of-way chemically will be made to the responsible Region and the Regional Deputy Director may issue the permit. A copy of the permit will be sent to the Division, District, and Area. The Area will be responsible for inspecting and reporting compliance.

Conditions to be considered are:

1. The permit will cover only the calendar year in which it is issued.
2. Brush control will be selective rather than blanket. Areas containing shrubs such as dogwood, wild raisin, thornapple, juneberry, witch hazel, etc., which are beneficial to wildlife, will be treated on a selective basis to preserve these shrubs.
3. Use of all chemicals shall be in accordance with applicable state and federal regulations and the dosages shall not exceed the recommendations on the manufacturer's label.
4. All chemicals used shall be nontoxic to wildlife and fish at the rates applied.
5. When crossing department, county, state or federal roads, no chemical application will be allowed within 150 feet of the edge of the road right-of-way.
6. No chemical application will be allowed within 100 yards of any water or within 100 feet of any lowland, swampy or marshy area, unless the chemical has been specifically approved for this use and written approval is obtained from the department.
7. The utility company will be liable for any and all damages incurred outside the distribution line rights-of-way because of herbicide application.