

# Maintenance Memorandum

**Date:** February 8, 1988

**Subject:** **Right of Way Fence**

The attached procedures are currently valid.

Since 1988 the direction of the Department has changed so that replacement of right-of-way (ROW) fence is included in most large reconstruction jobs. Before scheduling ROW fence replacement check to ensure that it is not scheduled for replacement through the construction process

**Attachments**

“Right of Way Fence” February 8, 1988; 1 pg.

“Limited Access Right of Way Fence Repair” January 6 1983; 2 pgs.

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**Subject:** **Right of Way Fence**

We have received complaints from our operations engineers and property owners regarding the condition of our right of way fence.

Interpretation of the purpose of limited access right of way fence was provided by the Attorney General, reference Donald E. Orne's memorandum to district maintenance engineers dated January 6, 1983. The basis for this interpretation is the AASHTO guidelines on Fencing Controlled Access Highways.

The AASHTO guide states that the purpose of the fence is 1) to keep animals from proceeding on the limited access right of way, 2) to keep persons from accessing the right of way, and 3) to keep vehicles from entering the right of way. Following the latest guidelines we must pay much more attention to the condition of the right of way fence.

Much of our right of way fence is approaching its useful life expectancy and in many cases need replacement rather than maintenance. In the face of rising maintenance costs for right of way fence, I am asking that you consider replacing right of way fence in your call for projects, especially on recycling projects. In other areas, I would recommend that Jay Bastian be contacted to see if funding might be available for fence replacement under his program.

Implementation of these two recommendations will improve the image of the department by reducing property owner complaints and at the same time increasing the safety of the traveling public.

Maurice E. Witteveen  
Engineer of Maintenance  
(Signature on file)

# Maintenance Memorandum

**Date:** January 6, 1983

**Subject:** **Limited Access Right of Way Fence Repair**

The following is a summary of events which have transpired within recent years regarding the repair of limited access fences.

1. In June 1969, the Assistant Attorney General stated in his opinion that "...no duty exists at common law nor by statutory mandate in this state to fence its highway. Construction of a fence along a limited access highway by the Department is only for the purpose of delineating the right of way limits." It was thus concluded that no duty exists on the part of the Highway Commission to construct a fence along the boundary of a limited access highway to restrain cattle.
2. In July 1973, reference was made to the correspondence in #1 above by the Assistant Attorney General. It was then stated that limited access highway fences are part of the highway facility belonging to the state of Michigan, Department of State Highways and should be maintained and repaired by the Department of State Highways and not by the adjoining landowner. It was not intended that the Department not maintain its limited access highway fences.
3. In August 1973, the Assistant Attorney General was advised by the Right of Way Officer that "...When the Department acquired property in farm areas for limited access highway purposes, the fencing would be erected and that it could be used to contain cattle." It was thus concluded by the Assistant Attorney General that the Department does have a legal obligation to maintain those fences not only for the purposes of delineating the right of way but also for the purpose of containing livestock.
4. In the cases of Jamieson versus Michigan Department of Transportation, Court of Claims #7103, a request for settlement was approved December 29, 1982 by John P. Woodford, Director, Department of Transportation. In the Request for Settlement Authority from the Assistant Attorney General it was stated that "In view of the fact that this office was working under the misapprehension that the boundary fence was for the purpose of delineation of right of way only, the fact that the actual reason is to bar animals, children, etc., from entering the right of way, exposes the Department of Transportation to a degree of negligence for failure to maintain the chain link fence".

The basis for this statement is found in the AASHTO Guidelines on Fencing Controlled Access Highways. Although the guidelines are stated as Planning and Design Policies of the American Association of State Highway Officials, it is the position of the Federal Highway Administration that we are bound to maintain right of way fence to those standards.

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Therefore, as part of your routine maintenance inspections for preparation of the Highway Condition Report, Form #415 (at least once each month) please assure yourselves that right of way fence is being maintained as an integral part of the trunkline system. Whenever necessary in the preparation of the Highway Condition Report, reference to right of way fence repair may be made under item 3G "Other miscellaneous maintenance items."

In the matter of maintenance priorities, limited access right of way fence must now be afforded priority along with items considered potentially hazardous on the state trunkline system. This is especially true in locations where it is obvious by the presence of a "well-worn path" etc., leading from one side of the right of way fence onto the freeway system.

Copies of pertinent background material are attached for your information. (No longer attached).

Donald E. Orne  
Engineer of Maintenance  
(Signature on file)