

Potential Changes to Regulations Proposed Oct 1st

2nd DDOT/Major Utility Roundtable

December 22, 2010



Discussion Purposes Only: Official DDOT Regulations, and Proposed Regulations, are posted to the dcregs.dc.gov website.

Agenda

☐ Background

☐ Discussion of Potential Changes

☐ Next Steps

DDOT Proposed New Excavation Regs on Oct 1st

- ☐ Published to DC Register
 - 30 Day Comment Period
- ☐ All major utilities, and a few others, commented
- ☐ Input was sorted and considered in cooperation with DDOT GC
- ☐ Roundtable discussion on Nov 30th

Agenda

☐ Background

☐ Discussion of Potential Changes

☐ Next Steps

Structure of this overview

☐ For each major heading in the regs...

■ ***Concerns***

☐ Representation of issues raised by one or more utilities

■ ***Response***

☐ DDOT's take on each issue

■ ***Potential Changes***

☐ Description of changes DDOT may consider making

3401 - Scheduling & Coordination of Excavation

☐ Concerns:

- “tool specified by the Department” too vague

☐ Response:

- Avoided, intentionally, brand names

☐ Potential Changes:

- None; DDOT will communicate requirements, ahead of time, with updates as needed

3403.1 – Permit Duration

☐ Concerns:

- No standard duration for permits

☐ Response:

- DDOT wants permit duration to match the underlying work
 - ☐ Apply for the time you need

☐ Potential Changes:

- None

3403.2 – Permits void if start/end dates missed

☐ Concerns:

- Weather, and other issues, may cause delays; beyond utility control

☐ Response:

- DDOT would consider grace for *Start Date*, but extending *Expiration [end] Date* would require new permit or Renewal
- ☐ Other users waiting for *their* turn in the ROW

3403.2 [cont'd]

☐ Potential Changes:

- Add: "Work to begin w/in five business days of Effective Date"
- Add: "...not including days during which work cannot be performed because of inclement weather, or acts of God"

3403.2 [cont'd]

☐ Potential Changes:

- Clarify nomenclature, for consistency w/TOPS
 - ☐ Replace references to Start Date/End Date with
 - *Issue Date* [date permit is released to applicant]
 - *Effective Date* [date permitted activity may begin]
 - *Expiration Date* [date permitted activity must end]

3403.3 – Director's Discretion; change start/end dates

d.

☐ Concerns:

- No criteria given for the exercise of discretion

☐ Response:

- This discretion is consistent w/Director's stewardship of public space

☐ Potential Changes:

- None

3404.1 – Permanent Restoration vs Temporary

☐ Concerns:

- Asphalt plants not open in winter

☐ Response:

- DDOT encourages winter restoration

☐ Potential Changes:

- Add: "...not including days during which work cannot be performed because of inclement weather, acts of God"

3404.1 – Permanent Restoration vs Temp [cont'd]

☐ Concerns:

- Temporary patches are unavoidable

☐ Response:

- DDOT does not want temp restoration to be an end in itself

☐ Potential Changes:

- Add: Temporary restorations allowed as part of a continuous process, culminating in permanent restoration.

3404.3 – Perm restoration begins w/in 24 hours

☐ Concerns:

- Restoration cannot begin w/in 24 hours

☐ Response:

- DDOT wants continuous process leading to permanent restoration

☐ Potential Changes:

- Begin permanent restoration w/in 5 business days of final work
 - ☐ “Final Work” to be defined

3404.3 – Branding Cuts

- ☐ Concerns:
 - Branding requirements not known
- ☐ Response:
 - We want utilities to brand their cuts
 - Branding pushed back to 2011
 - ☐ Details to follow
 - ☐ We will make sure that utilities can use tags already purchased
- ☐ Potential Changes
 - None

3404.3 – Winter Moratorium

☐ Concerns:

- Concept of winter restoration conflicts with Blue Book

☐ Response:

- DDOT encourages winter restoration

☐ Potential Changes:

- Blue Book will be edited for consistency

3404.4 – Safe and rideable condition

☐ Concerns:

- Safe and rideable is too vague

☐ Response:

- Language is in DDOT's existing regulations
- Rideable="suitable for travel over or on"

☐ Potential Changes:

- None

3404.7 – Restoration in 6 hours

☐ Concerns

- Impossible to satisfy this time requirement

☐ Response

- Language is in current regulations
- 3404.7 sets out exceptions for weather and unforeseen circumstances

☐ Potential Changes

- None

3404.9 – If permittee fails to act, DDOT may repair

☐ Concerns

- Director has too much discretion in determining what is appropriate

☐ Response

- Consistent with Director's duty as steward of public space
- Text is also in current regulations

☐ Potential Changes

- None

3404.10 – Permittee must pay ^{d.} Cost + 3X penalty

- ☐ Concerns
 - Costs poorly defined
 - DDOT filling government coffers
 - Lack of due process
- ☐ Response
 - Not new; Text is in current regulations
 - Change here was to indicate that delay \$ may be included among direct/indirect costs
- ☐ Potential Changes
 - None

3404.11/12 – Utility liable for DDOT restoration

d.

☐ Concerns

- Not fair for utility to be liable for work of DDOT contractor

☐ Response

- Liability/hold harmless are in current regulations

☐ Potential Changes

- TBD – Working w/OAG

3405.1 – Deposits; acceptable types

d.

☐ Concerns

- Lack of specificity on acceptable forms of surety

☐ Response

- “*Deposit*” is defined in 3499(2)
- DDOT encourages use of Bonds & LOCs; and they are affordable

☐ Potential Changes

- None

3405.2 – Deposits; amounts

☐ Concerns

- Deposit levels too high;
 - ☐ Unfair to small players
 - ☐ Securing major projects, particularly expensive

☐ Response

- DDOT's primary interest is in having 100% compliance w/deposit requirement

3405.2 – Deposit; amounts [cont'd]

☐ Potential Changes

- Keep modified version of current deposit schedule; for multiple excavations...
 - ☐ 1' to 300' = \$50,000
 - ☐ 301' to 600' = \$100,000
 - ☐ 601' to 1200' = \$200,000
 - ☐ 1201' and above = \$200,000/each excavation
- Restore language from existing regs...
 - ☐ *Utilities with a bond already in place will not be subject to new deposit requirements until that bond is depleted or expires.*

3405.3 – Deposits; seizing funds

☐ Concerns

- 7 day notice of intent to seize funds is too short

☐ Response

- 7 days is in current regs
 - ☐ Only edit was adding electronic notification
- Seizure would follow NOVs and other notification

☐ Potential Changes

- None

3405.3 – Deposits; seizing funds [cont'd]

☐ Concerns

- Notification “through other means” is too vague

☐ Response

- DDOT agrees

☐ Potential Changes

- Replace with, “or personally served to the Owner or their authorized representative.”

3405.3 – Deposits; seizing funds [cont'd]

☐ Concerns

- Due process questions re Director discretion on seizing funds

☐ Response

- This right is in current regs.
- Utilities have courts as remedy

☐ Potential Changes

- None

3405.4 – Restoration of Deposit

☐ Concerns

- Replenishing deposit w/in 3 days is onerous burden

☐ Response

- This is current law

☐ Potential Changes

- Replenish within 15 days
 - ☐ Note: Technically, ineligible for any new permits until surety is reestablished

3405.5/6 – Two-Year Retention Period ^{d.}

☐ Concerns

- 2 year deposit retention is too long

☐ Response

- 2 years is standard in current regs
- Moot point for major utilities with steady stream of projects in the ROW

☐ Potential Changes

- None

3406 – Abandonment of facilities

☐ Concerns

- Notification process should be clearly outlined and logistically sound

☐ Response

- DDOT agrees

☐ Potential Changes

- None

3407.1 – Stop Work Orders, Permit Mods/Revocations

☐ Concerns

- Those empowered to stop work should be adequately trained

☐ Response

- DDOT agrees

☐ Potential Changes

- None

3408 – Liability of Owner and Permittee

d.

☐ Concerns

- Utilities shouldn't be liable for DDOT work; also, excessively punitive

☐ Response

- TBD – working w/OAG

3499 – Definitions

☐ Concerns

- Major/Minor work redefined in terms of days as opposed to extent of excavation

☐ Response

- Extent of excavation may be more appropriate

☐ Potential Changes

- Minor work = 300' or less
- Major work = 301' or more

1380.4 – Infractions and Penalties

☐ Concerns

- 3 day corrective notice – unrealistic
- Fine should apply *after* failure to correct

☐ Response

- DDOT would consider change to be consistent with *3404.3 - Restoration*

☐ Potential Changes

- 7 day corrective notice

1380.4 – Infractions and Penalties [cont'd]

☐ Concerns

- Failure to “properly” schedule or coordinate—vague, impractical

☐ Response

- DDOT agrees

☐ Potential Changes

- Delete “properly” and revise to read:
“[f]ailure to schedule or coordinate excavation(s) in accordance with 24 DCMR 3401...”

Agenda

- ☐ Background
- ☐ Discussion of Potential Changes
- ☐ Next Steps

Next Steps

- ☐ Finalize revisions to the proposed rules – by mid January
- ☐ Guidance from new administration - tbd
- ☐ Publish revised rules for 30 days of public comment – Jan/Feb
- ☐ Adopt final rules – Not Before Feb/Mar

d.

END



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