

CHAPTER 445. OUTDOOR ADVERTISING DEVICES

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Authority

The provisions of this Chapter 445 issued under section 6 of the Outdoor Advertising Control Act of 1971 (36 P. S. § 2718.101), unless otherwise noted.

Source

The provisions of this Chapter 445 adopted May 12, 1972, effective May 13, 1972, 2 Pa.B. 845, unless otherwise noted.

Notes of Decisions

An assertion that a sign owner was improperly subjected to selective administrative enforcement of the Outdoor Advertising Control Act of 1971 (36 P. S. §§ 2718.101—2718.115) and its corresponding regulations found at this chapter may not be raised before the court if not raised and developed at a hearing before the Department which petitioners failed to attend and communicated to the Department their intention to abandon the matter. *Fritz v. Department of Transportation*, 468 A.2d 538 (Pa. Cmwlth. 1983).

§ 445.1. Purpose.

This chapter is promulgated for the purpose of establishing standards, including criteria for size, spacing and lighting, of outdoor advertising devices consistent with the act, and 23 U.S.C.A. (relating to highways) and the Federal regulations promulgated thereunder; and to establish a system for the issuing of permits for the outdoor advertising devices, as required by the act.

Source

The provisions of this § 445.1 adopted May 12, 1972, effective May 13, 1972, 2 Pa.B. 845; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534.

Notes of Decisions*Highway Ramps*

Even though the advertising device was not visible from the entrance/exit ramps, because it was located within 500 feet of a ramp, it was prohibited and the Department of Transportation appropriately denied the advertising permit. *Martin Media v. Department of Transportation*, 661 A.2d 479 (Pa. Cmwlth. 1995); appeal denied 672 A.2d 312 (Pa. 1995).

§ 445.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Outdoor Advertising Control Act of 1971 (36 P. S. §§ 2718.101—2718.115).

Advertising device—A sign as defined in this chapter.

Area clearly established by law as industrial or commercial—A zoned commercial or industrial area.

Back to back sign—A single structure having two parallel and directly opposite faces, oriented in opposite directions and spaced no more than 10 feet apart.

Centerline of the highway—A line equidistant from the edges of the median separating the main-traveled ways of a divided highway, or the center-line of the main-traveled way of a nondivided highway.

Commercial or industrial activities—Those activities generally recognized as commercial or industrial by zoning laws in this Commonwealth, except that none of the following activities shall be considered commercial or industrial:

- (i) Outdoor advertising signs.
- (ii) Agricultural, forestry, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands.
- (iii) Activities not visible from the main-traveled way.
- (iv) Activities conducted in a building principally used as a residence.
- (v) Railroad tracks and minor sidings.

Department—The Department of Transportation of the Commonwealth.

Directional and official signs and notices—Only official signs and notices, public utility signs, service club and religious notices, public service signs and directional signs.

Directional informational signs—Signs which existed on June 1, 1972, and contained specific directional information of a nature not defined under the directional and official signs and notices or the directional signs categories. These signs shall be limited to those devices which provide specific directional information for the traveling public to the following facilities: food services, lodging, gasoline and automotive services, truck stops, campgrounds, resorts, tourist attractions, natural wonders, scenic and historical sites and areas of outdoor recreation.

Entrance roadway—A public road or turning roadway, including acceleration lanes, by which traffic may enter the main-traveled way of an interstate or primary highway from the general road system, irrespective of whether traffic may also leave the main-traveled way by the road or turning roadway.

Erect—To construct, build, assemble, place, affix, attach, create, paint, draw or bring into being or establish. The term does not include the foregoing activities when performed as an incident to the change of advertising message or

customary maintenance and repair of a sign or sign structure. Customary maintenance and repair does not include major physical changes such as increase in size or height or addition of or change in lighting.

Exit roadway—A public road or turning roadway including deceleration lanes, by which traffic may leave the main-traveled way of an interstate or primary highway to reach the general road system, irrespective of whether traffic may also enter the main-traveled way by the road or turning roadway.

Federal or State law—A Federal or State constitutional provision or statute, or an ordinance, rule or regulation enacted or adopted by a State or Federal agency or a political subdivision or school district under a Federal or State constitution or statute.

Freeway—A limited access highway.

Highway, road or street—A public right-of-way improved primarily for vehicles. Unimproved rights-of-way, private roads and drives are not to be regarded as highways, roads or streets.

Incorporated municipalities—Cities of all classes, boroughs, towns and first-class townships.

Information center—An area or site established for the purpose of informing the public of places of interest within this Commonwealth and providing other information that the Secretary may consider desirable.

Interstate system—That portion of the National system of interstate and defense highways located within this Commonwealth, as officially designated, or as may hereafter be so designated, by the Secretary and approved by the United States Secretary of Transportation, under 23 U.S.C.A. § 103 (relating to highways).

Limited access highway—A public highway to which owners or occupants of abutting property or the traveling public have no right of ingress or egress to, from or across the highway, except as may be provided by the authorities responsible therefore.

Maintain—To allow to exist.

Main-traveled way—The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. The term does not include such facilities as frontage roads, turning roadways or parking areas.

Nonconforming sign—A sign which was legally erected but which does not conform to the requirements of the act.

Official signs and notices—Signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal, State or local law for the purposes of carrying out an official duty or

responsibility. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

Parkland—A publicly-owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

Premises—The property upon which the activity is conducted as determined by physical facts rather than property lines. It is the land occupied by the buildings or other physical uses that are necessary or customarily incident to the activity, including such open spaces as are arranged and designed to be used in connection with the buildings or uses. The following are not considered to be a part of the premises on which the activity is conducted, and any signs located on the land are to be considered off-premise advertising:

(i) Land which is not used as an integral part of the principal activity, including land which is separated from the activity by a roadway, highway or other obstruction, and not used by the activity; and extensive undeveloped highway frontage contiguous to the land actually used by a commercial facility, even though it might be under the same ownership.

(ii) Land which is used for, or devoted to, a separate purpose unrelated to the advertised activity.

(iii) Land which is more than 100 feet from the principal activity, and in closer proximity to the highway than to the principal activity, and developed or used only in the area of the sign site or between the sign site and the principal activity and whose purpose is for advertising purposes only. In no event may a sign site be considered part of the premises on which the advertised activity is conducted if the site is located on a narrow strip of land which is nonbuildable land, or is a common or private roadway, or is held by easement or other lesser interest than the premises where the advertised activity is located.

Primary system—That portion of connected main highways located within this Commonwealth which now or hereafter may be designated officially by the Secretary and approved by the Secretary of Transportation of the United States under 23 U.S.C.A.

Public service signs—Signs located on school bus stop shelters, which signs:

(i) Identify the donor, sponsor or contributor of the shelters.

(ii) Contain public service safety slogans or messages, which shall occupy not less than 50% of the area of the sign.

(iii) Contain no other message.

(iv) Are located on school bus shelters which are authorized or approved by city, county or State law, regulation or ordinance and at places approved by the city, county, State or other agency controlling the highway involved.

(v) May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.

Public utility signs—Warning signs, informational signs, notices or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.

Route—Highway, or part thereof, or combination of highways designated by the same letter, name or number (for example, I-80, US 322, PA 309, Susquehanna Trail) under the provisions of section 204 of the State Highway Law (36 P. S. § 670-204), and commonly known as a numbered traffic route.

Rural area—An area not included in an urban area.

Safety rest area—An area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control, for the convenience of the traveling public.

Scenic area—An area of particular scenic beauty or historical significance as determined by the Federal, State or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation and enhancement of scenic beauty.

Secretary—The Secretary of the Department of Transportation of the Commonwealth.

Service club and religious notices—Signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs do not exceed 8 square feet in area.

Sign—An outdoor sign, display, light, figure, painting, drawings, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform. The word, “sign,” as used in this chapter is synonymous with the phrase, “outdoor advertising device,” as defined in the act.

Trade name—Brand name, trademark, distinctive symbol or other similar device or thing used to identify particular products or services.

Traveled way—The portion of a roadway for the movement of vehicles, exclusive of shoulders.

Turning roadway—A connecting roadway for traffic turning between two intersecting legs of an interchange.

Unzoned commercial or industrial area—An area which is not zoned by State or local law, regulation or ordinance and on which there is located one or more commercial or industrial activities and the area along the highway extending outward 800 feet from and beyond the edge of the activity. Unzoned commercial and industrial areas do not include land on the opposite side of the highway from the activities except that on two or three-lane noncontrolled access highways the unzoned commercial or industrial area may be located on the opposite side of the highway from the commercial or industrial activity, if, in the opinion of the Secretary, the topographical conditions on the same side of the highway as the activity are such that it is not reasonably usable, and provided that the land on the opposite side of the highway has not been designated scenic by the Department. In no event may the unzoned commercial or indus-

trial area be located on both sides of the highway. Measurements shall be from the outer edges of the regularly used building, parking lots, storage or processing areas of the commercial or industrial activities, not from the property lines of the activities, and shall be along or parallel to the edge of the pavement of the highway.

Urban area—An urbanized area or an urban place designated by the United States Bureau of Census as having a population of 5,000 or more and whose boundaries have been approved by the Secretary of the United States, Department of Transportation.

V-type sign—A single structure having two faces in the shape of the letter “V” when viewed from above, with the faces oriented in opposite directions.

Visible—Capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

Zoned commercial or industrial area—An area which is reserved for business, industry, commerce, trade or other business of any type or category under a State or local zoning law, ordinance or regulation.

Source

The provisions of this § 445.2 adopted May 12, 1972, effective May 13, 1972, 2 Pa.B. 845; amended May 21, 1976, effective May 22, 1976, 6 Pa.B. 1135; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534; amended January 19, 1979, effective January 20, 1979, 9 Pa.B. 267.

Notes of Decisions

Construction

The Department of Transportation’s interpretation of what constitutes an “on-premises” sign is clearly erroneous, as it is inconsistent with the express provisions of the definition of “premises.” A regulation must be construed, if possible, to give effect to all of its provisions, and every word is to be given meaning and not treated as surplusage. *Highway News, Inc. v. Department of Transportation*, 789 A.2d 802 (Pa. Cmwlth. 2002).

Nonconforming

In determining whether less than 50% of the storm damaged nonconforming sign remained “intact,” thus precluding the sign owner from repairing or rebuilding the sign located in the residentially zoned area, the Department improperly expanded the meaning of “intact” to include the concept of “upright” and “in place.” *Martin Media v. Department of Transportation*, 641 A.2d 630 (Pa. Cmwlth. 1994).

Presumption of Validity

Defining “zoned commercial or industrial area” as an area clearly established as industrial or commercial was not abuse of discretion by the Department of Transportation. Generally, in the absence of such abuse of discretion, a regulation promulgated by a State agency is presumed valid. *Kasha v. Department of Transportation*, 782 A.2d 15 (Pa. Cmwlth. 2001).

§ 445.3. Directional and official signs.

- (a) *Application.* This section applies to directional and official signs and

notices which are erected and maintained within 660 feet of the nearest edge of the right-of-way of the interstate and Federal aid primary system and which are visible from the main-traveled way of the system and those signs located more than 660 feet from the nearest edge of the right-of-way and visible as aforesaid if located outside of an urban area and erected with the purpose of its message being read from the main traveled way.

(b) *Standards for directional signs.* The following apply only to directional signs:

(1) *General.* The following signs are prohibited:

- (i) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of those activities.
 - (ii) Signs which obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device, or obstruct or interfere with the driver's view of approaching, merging or intersecting traffic.
 - (iii) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.
 - (iv) Obsolete signs.
 - (v) Signs which are structurally unsafe or in disrepair.
 - (vi) Signs which move or have any animated or moving parts.
 - (vii) Signs located in parklands or scenic areas.
- (2) *Size.* Size of the sign shall conform with the following:
- (i) A sign may not exceed the following limits:
 - (A) Maximum area—150 square feet.
 - (B) Maximum height—20 feet.
 - (C) Maximum length—20 feet.
 - (ii) Dimensions include border and trim, but exclude supports.
- (3) *Lighting.* Signs may be illuminated, subject to the following:
- (i) Signs which contain, include or are illuminated by a flashing, intermittent or moving light are prohibited.
 - (ii) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at a portion of the traveled way or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle is prohibited.
 - (iii) A sign may not be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device or signal.
- (4) *Spacing.* Requirements for spacing shall be as follows:
- (i) Each location of a directional sign shall be approved by the Department.
 - (ii) A directional sign may not be located within 2,000 feet of an interchange, or intersection at grade along the interstate system or other freeways (measured along the interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).
 - (iii) A directional sign may not be located within 2,000 feet of a safety rest area, parkland or scenic area.
 - (iv) Two directional signs facing the same direction of travel may not be spaced less than 1 mile apart.
 - (v) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity.

(vi) Signs located adjacent to the interstate system shall be within 75 air miles of the activity.

(vii) Signs located adjacent to the primary system shall be within 50 air miles of the activity.

(5) *Message content.* The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route number or exit number. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs is prohibited.

(6) *Selection methods and criteria.* Selection methods and criteria shall include:

(i) Privately-owned activities or attractions eligible for directional signing are limited to the following: natural phenomena, scenic attractions; historic, educational, cultural, scientific and religious sites; and outdoor recreational areas.

(ii) To be eligible, privately owned attractions or activities shall be nationally or regionally known, and of outstanding interest to the traveling public.

Source

The provisions of this § 445.3 adopted May 12, 1972, effective May 13, 1972, 2 Pa.B. 845; amended May 21, 1976, effective May 22, 1976, 6 Pa.B. 1135; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534.

Cross References

This section cited in 67 Pa. Code § 445.6 (relating to permits).

§ 445.4. Signs in zoned or unzoned commercial or industrial areas.

(a) *Application.* This section applies to signs erected on or after December 15, 1971, as follows:

(1) In zoned or unzoned commercial or industrial areas along those portions of the interstate system constructed on right-of-way any part of the width of which was acquired on or before July 1, 1956.

(2) In areas zoned commercial or industrial along the interstate system and lying within the boundaries of an incorporated municipality as such boundaries existed on September 21, 1959, or in another area along the interstate system which, as of September 21, 1959, was clearly established by law as industrial or commercial.

(3) In zoned or unzoned commercial or industrial areas along the primary system.

(b) *Maintenance.* A sign may not be erected or maintained inconsistent with the following criteria:

(1) *Size of signs.* Size of signs shall include:

(i) The maximum area for one sign shall be 1200 square feet with a maximum height of 30 feet and maximum length of 60 feet, inclusive of a border and trim but excluding the base or apron, supports and other structural members.

(ii) The area shall be measured by the smallest square, rectangle, triangle, circle or combination thereof which will encompass the entire sign.

(iii) A sign structure may contain one or two signs per facing and may be placed double-faced, back to back or V-type.

(iv) Signs which exceed 600 square feet in area may not be double-faced (abutting and facing the same direction).

(2) *Spacing of signs.* Spacing of signs shall include the following:

(i) Along the interstate system and limited access highways on the primary system, no two sign structures may be spaced less than 500 feet apart; and outside the boundaries of cities of all classes and boroughs, no structure may be erected adjacent to or within 500 feet of an interchange or safety rest area, measured along the interstate or limited access primary from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

(ii) Along nonlimited access highways on the primary system, no two structures shall be spaced less than 300 feet apart if outside cities of all classes and boroughs, nor less than 100 feet apart if within the cities and boroughs.

(iii) These spacing provisions do not apply to sign structures separated by a building or other obstruction in such a manner that only one sign facing located within these spacing distances is visible from the highway at any one time.

(iv) Official and on-premise signs may not be counted nor may measurements be made from them for purposes of determining spacing requirements.

(v) The distance between sign structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along the same side of the traveled way.

(3) *Lighting of signs.* The lighting of signs includes the following:

(i) A sign may not be permitted which is not effectively shielded so as to prevent beams or rays of light from being directed at a portion of the traveled ways of the interstate or primary systems or which is of such intensity or brilliance as to cause glare or to impair the vision of the driver of a vehicle, or which interferes with a driver's operation of a motor vehicle.

(ii) A sign may not be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device or signal.

(iii) Lighting of signs shall be subject to other provisions relating to lighting of signs along highways under the jurisdiction of the Department.

(iv) Signs which contain, include or are illuminated by a flashing, intermittent or moving light or lights shall be prohibited, except those giving public service information such as time, date, temperature, weather or similar information.

(4) *General provisions.* General provisions shall comply with the following:

(i) Signs may not be erected or maintained in such a manner as to obscure or otherwise physically interfere with an official traffic sign, signal or device or to obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic.

(ii) Signs may not be erected or maintained which imitate or resemble any official traffic sign, signal or device.

(iii) Signs may not be erected or maintained upon trees or painted or drawn upon rocks or natural features.

(iv) Signs which are structurally unsafe may not be erected or maintained. If a sign is determined by the Department to be structurally unsafe, a reasonable time will be accorded the owner to make necessary repairs. If necessary repairs are not made within a reasonable time following notice given by the Department, the signs will be subject to removal by the Department under section 10 of the act (36 P. S. § 2718.110).

Source

The provisions of this § 445.4 adopted May 12, 1972, effective May 18, 1972, 2 Pa.B. 845; amended May 21, 1976, effective May 22, 1976, 6 Pa.B. 1135; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534.

Notes of Decisions

Exceptions

Advertiser's double-faced sign advertising off-premises activity within 500 feet of an interchange was not exempted from the prohibition of sign under this section because it was only visible to a motorist on one side of the road. *George Washington Motor Lodge Co. v. Department of Transportation*, 545 A.2d 493 (Pa. Cmwlth. 1988).

Advertiser's sign structure on its property advertising on-premise activity was within the exception of prohibiting the advertisement of off-premise activity within 500 feet of an interchange. *George Washington Motor Lodge Co. v. Department of Transportation*, 545 A.2d 493 (Pa. Cmwlth. 1988).

The Department's interpretation of "the exit or entrance," in this section to mean all entrances or exits from the sign was upheld because the petitioner could not prove the interpretation to be plainly erroneous. *George Washington Motor Lodge Co. v. Department of Transportation*, 545 A.2d 493 (Pa. Cmwlth. 1988).

Petitioner's sign structure on its property advertising on-premise activity was found to be within the exception of prohibiting the advertisement of off-premises activity within 500 feet of an interchange. *George Washington Motor Lodge Co. v. Department of Transportation*, 545 A.2d 493 (Pa. Cmwlth. 1988).

Petitioner's assertion that its double-faced sign advertising off-premises activity within 500 feet of an interchange should be exempted from the prohibition of sign under this section because it was only

visible to a motorist on one side of the road was denied as the petitioner failed to prove that the Department's interpretation was plainly erroneous. *George Washington Motor Lodge Co. v. Department of Transportation*, 545 A.2d 493 (Pa. Cmwlth. 1988).

Pavement Defined

Although the word "pavement" is not defined in the Outdoor Advertising Control Act of 1971 or the Pennsylvania Administrative Code, the Department of Transportation properly relied upon "pavement" to be the paved portion of the roadway and exit, exclusive of the shoulder, as distinguished from the markings painted on the paved portion. *Media v. Department of Transportation*, 700 A.2d 563 (Pa. Cmwlth. 1997).

Rational Basis

The restriction which limits the use of flashing, intermittent or moving lights to public service information is consistent with the legislative intent to limit advertising along roadways. *Cortea v. Department of Transportation*, 821 A.2d 173 (Pa. Cmwlth. 2003).

Cross References

This section cited in 67 Pa. Code § 445.6 (relating to permits).

§ 445.5. On-premise signs.

(a) *Application.* This section applies to signs which:

- (1) Advertise the sale or lease of the premises on which they are located.
- (2) Advertise activities conducted on the premises on which they are located.

(b) *General provisions.* An on-premise sign may not be erected or maintained, in a manner inconsistent with the following criteria:

(1) A sign may not be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles an official traffic sign, signal or device.

(2) A sign may not be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

(3) A sign may not be permitted which contains, includes or is illuminated by a flashing, intermittent or moving light or lights.

(4) A lighting may not be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(5) A sign may not be permitted which moves or has any animated or moving parts.

(6) A sign may not be permitted to be erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(c) *Restrictions along interstate highways.*

(1) Not more than one sign advertising the sale or lease of the same premises may be permitted to be visible to traffic proceeding in any one direction on an interstate highway.

(2) Not more than one sign, visible to traffic proceeding in any one direction on any interstate highway and advertising activities being conducted upon the premises where the sign is located, may be permitted more than 50 feet from the advertised activity.

(3) A sign, except a sign not more than 50 feet from the advertised activity, that displays a trade name which refers to or identifies a service rendered or product sold, used or otherwise handled off the premises, may not be permitted unless the name of the activity conducted on the premises is displayed as conspicuously as the trade name; provided, however, that this section does not apply to trade names which identify or characterize:

- (i) Public places operated by Federal, State or local governments.
- (ii) Natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation.

- (iii) Places for camping, lodging, eating and vehicle service and repair.
- (iv) Vehicle service, equipment, parts, accessories, fuels, oils or lubrications being offered for sale at a place of the type listed in subparagraphs (i)—(iii).

(4) If a sign which has an area of 6 square feet or which is in excess of 3 feet in any dimension consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to the property owner, it shall be considered outdoor advertising and not an on-premise sign; except that this provision does not apply to trade names which identify or characterize public places operated by Federal, State or local governments; natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation; or places for camping, lodging, eating and vehicle service and repair; or to trade names which identify vehicle service, equipment, parts, accessories, fuels, oils and lubrications being offered for sale at such a place.

(5) A sign is not permitted to exceed 20 feet in length or height, or 150 square feet in area, including border and trim but excluding supports, except signs not more than 50 feet from, and advertising activities being conducted upon, the premises where the sign is located.

Source

The provisions of this § 445.5 adopted May 12, 1972, effective May 13, 1972, 2 Pa.B. 845; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534.

Cross References

This section cited in 67 Pa. Code § 445.6 (relating to permits).

§ 445.6. Permits.

(a) *Applicability.* An annual permit shall be required for signs regulated under the act and this section, including:

- (1) Directional and official signs. Reference should be made to § 445.3 (relating to directional and official signs).
- (2) Signs in zoned or unzoned commercial or industrial areas. Reference should be made to § 445.4 (relating to signs in zoned or unzoned commercial or industrial areas).
- (3) On premise signs along the interstate system. Reference should be made to § 445.5(c) (relating to on-premise signs).
- (4) Signs prohibited to be erected or maintained under section 4 of the act (36 P. S. § 2718.104), until such time as each sign has been removed; provided, however, that a permit may not be required for signs in commercial or industrial zones, certified by the Secretary to the Secretary of Transportation of the United States under section 5(b) and (d) of the act (36 P. S. § 2718.105(b))

and (d)), if the local political subdivision has a legally established and operating procedure for issuing the permits.

(b) *Permit applications.* Permit applications shall be completed as follows:

(1) Application for a permit for a sign shall be made at the Department district office having jurisdiction over the sign location.

(2) Application shall be made on a form to be provided by the Department, and shall contain the following information and documentation:

(i) The name and address of the sign owner and the land owner, together with an affidavit attesting that there is a valid lease agreement between them for the land on which the sign is to be located, or that the sign owner is also the land owner.

(ii) If the sign is an existing sign, the affidavit shall contain the date of erection of the sign or a statement that the sign was erected on or before October 22, 1965.

(iii) A drawing to scale, showing:

(A) the location of the sign with reference to the highway, indicating station and distance from center line, right of way line, fence or edge of pavement.

(B) For a directional sign as provided in § 445.3 or a sign in a zoned or unzoned commercial or industrial area as provided in § 445.4, the distance along the highway in each direction to the nearest sign in the same classification.

(C) For a sign in an unzoned commercial or industrial area as provided in § 445.4(a)(1) and (3) or an on-premise sign along the interstate system as provided in § 445.5, the commercial or industrial activity and the distance from the nearest edge of such activity to the sign.

(iv) A drawing to scale, showing all dimensions of the sign. For a directional sign or an on-premise sign along the interstate system advertising activities being conducted on the real property and located more than 50 feet from the advertised activity, the drawing shall also contain an accurate representation of the advertising or informative contents of the sign.

(3) Each application shall be accompanied by the appropriate annual fee, as follows:

(i) Ten dollars if the sign area does not exceed 300 square feet.

(ii) Twenty dollars if the sign area exceeds 300 square feet but does not exceed 600 square feet.

(iii) Thirty dollars if the sign area exceeds 600 square feet.

(iv) The total fee for all on-premise signs along the interstate system advertising activities being conducted on the real property by a single person, partnership, corporation or other entity and located no more than 50 feet from the advertised activity shall be \$30.

(C) *Renewal of permits.* Renewal of permits shall be completed as follows:

- (1) If the information provided in the original application is still valid a renewal application need contain only the following information:
 - (i) Name and address of applicant.
 - (ii) Original permit number.
 - (iii) Brief indication of location of sign, including county, L.R. and station.
- (2) Renewal applications shall be accompanied by the appropriate annual fee.
- (3) If there is a change in ownership, leasing arrangement, location or dimensions of a sign, or in advertising or informative contents of a directional sign or an on-premise sign along the interstate system, advertising activities being conducted on the real property and located more than 50 feet from the advertising activity, a new permit shall be required. Unchanged information and documentation may be incorporated into the new application by reference to the original permit number.
- (4) Upon issuance of the permit the permittee shall:
 - (i) Attach the permit to the front of the structure on the side closest to highway or in lieu thereof, the permittee may paint, with materials of a permanent nature, the number of the permit issued by the Department in a minimum size of 2 inches. The painting shall be readily discernible. The permit issued shall be retained by the permittee and be made available for inspection by the Department during normal business hours.
 - (ii) Tags issued by the Department shall be of a permanent nature and when installed on the sign shall remain on the sign as long as the sign remains validly in existence. If the tag becomes illegible or is removed it shall be the responsibility of the permittee to apply for and procure a replacement and attach it to the sign within 15 days of notice by the Department of the existing condition.
 - (A) The cost of a replacement tag shall be equal to that of the cost of the original tag.
 - (B) Failure to obtain a replacement tag within the time period prescribed shall be considered abandonment of the sign.
- (d) *Priorities.* Priorities shall include the following:
 - (1) *Directional signs.* As provided in § 445.3, where issuance of permits for two or more directional signs would conflict with the applicable spacing provisions, permits will be issued in the following order of priority:
 - (i) An existing sign which is in conformance with Federal and State law and this chapter either upon application for an initial permit or for renewal of a previous permit.
 - (ii) A sign of the Department.
 - (iii) A sign of another Department or agency of the Commonwealth.
 - (iv) A sign of a local governmental unit or an agency thereof.
 - (v) A sign of the United States Government or an agency thereof.

- (vi) A sign of another public agency.
- (vii) A sign of a private nonprofit organization.
- (viii) A sign of a private profit-making organization or individual.

(2) *Signs in zoned or unzoned commercial or industrial areas.* As provided in § 445.4, where issuance of permits for two or more signs in zoned or unzoned commercial or industrial areas would conflict with the applicable spacing provisions, permits will be issued in the following order of priority:

(i) An existing sign which is in conformance with Federal and State law and this chapter, either upon application for an initial permit or for renewal of a previous permit.

(ii) A sign deemed by the Secretary to be in the specific interest of the traveling public, such as signs pertaining to public places owned or operated by Federal, State or local governments or their agencies, publicly or privately owned natural phenomena; historic, cultural, scientific, educational and religious sites; areas of natural scenic beauty or naturally suited for outdoor recreation; vehicle services, eating places or lodging.

(iii) Another sign which is in conformance with Federal and State law and this chapter.

(3) The priorities set forth in paragraphs (1) and (2) shall be based on the informative contents of the sign rather than the ownership thereof.

(4) In the case of a conflict among two or more signs with the same priority, a permit will be issued for the sign which the Secretary determines is most in the interest of the traveling public, or, at the option of the Secretary, the sign for which application was first received by the Department.

(e) *Revocation of permits.* Revocation of permits includes the following:

(1) Permits shall be subject to revocation upon 15 days written notice for violation of the act or this chapter, or upon change of information provided in the application.

(2) Permits for signs which are prohibited to be erected or maintained under section 4 of the act (36 P. S. § 2718.104) shall be revocable upon 30 days written notice.

(3) Revocation of a permit shall not be grounds for refund of the permit fee.

Source

The provisions of this § 445.6 amended January 19, 1979, effective January 20, 1979, 9 Pa.B. 267; amended May 21, 1976, effective May 22, 1976, 6 Pa.B. 1135; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534; amended January 19, 1979, effective January 20, 1979, 9 Pa.B. 267.

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It is reasonable for the Department of Transportation to ask in the application form if signs will be in a Cotton or Kerr Area. *Philadelphia Outdoor Advertising v. Department of Transportation*, 690 A.2d 789 (Pa. Cmwlth. 1997).

Revocation of Permits

The changing of an exterior sign which was a nonconforming sign from a wooden frame supported by wooden stands to one with a metal frame and catwalk supported by a single steel post is a "structural improvement" and supported finding that signs had been erected after the effective date of the outdoor advertising control act and justified revocation of the sign permits. *Park Outdoor Advertising Co. v. Department of Transportation*, 485 A.2d 864 (Pa. Cmwlth. 1984).

Timing Sequence

The company's failure to challenge the Department of Transportation's time-stamping of the other company's application one minute earlier than its own application, even though representatives of both companies were present at the same time, until after its application for signage along the highway was denied constituted a waiver of its right to challenge the timing sequence which adversely affected its application. *Morgan Signs, Inc. v. Department of Transportation*, 676 A.2d 1284 (Pa. Cmwlth. 1996).

§ 445.7. Restoration of damaged or partially destroyed nonconforming signs.

(a) *Application.* This section applies to signs erected or controlled under this chapter or the act.

(b) *Nonconforming signs.* Nonconforming signs shall conform with the following:

- (1) If a sign is damaged or destroyed as a result of tortious conduct such as vandalism, the sign may be repaired or replaced by the sign owner.
- (2) If a sign is damaged as a result of natural disaster or nontortious conduct so that 50% or more of its value remains intact, the sign may be repaired by the sign owner.
- (3) The following apply to signs damaged or destroyed as provided in paragraphs (1) and (2):
 - (i) Determination of the value of the sign and the damage shall be made by the Department.
 - (ii) Replaced or repaired signs shall be of equal or lesser dimensions and constructed of the same or less durable material than the sign being replaced or repaired and shall contain no improvements or additions.
 - (iii) If a sign is replaced the replacement sign shall remain at the same location.
 - (iv) If a sign is destroyed or damaged as a result of natural disaster or other nontortious conduct so that less than 50% of the sign remains intact, the sign may be repaired or replaced only in compliance with the provisions

of this chapter. Determination of the value of the sign and the damage shall be made by the Department.

(v) Damaged or destroyed signs not replaced or repaired within 60 days of notice from the Department shall be considered abandoned.

Source

The provisions of this § 445.7 adopted May 12, 1972, effective May 13, 1972, 2 Pa.B. 845; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534.

Notes of Decisions

Natural Disaster

In determining whether less than 50% of the storm damaged nonconforming sign remained “intact”, thus precluding the sign owner from repairing or rebuilding the sign located in the residentially zoned area, the Department of Transportation improperly expanded the meaning of “intact” to include the concept of “upright” and “in place.” *Martin Media v. Department of Transportation*, 641 A.2d 630 (Pa. Cmwlth. 1994).

The hearing officer properly interpreted this section to provide that a nonconforming outdoor sign damaged in excess of 50% of its value may not be replaced unless the replacement sign is in compliance with this chapter, that is, be conforming. *Miller’s Smorgasbord v. Department of Transportation*, 590 A.2d 854 (Pa. Cmwlth. 1991).

Nonconforming Use

Sign owners violated the nonconforming use requirement of this section, that repaired signs must be of equal or lesser dimensions, by completely removing an old sign and replacing it with one constructed out of steel, not wood, and by adding halogen lighting. *Keystone Outdoor Advertising v. Department of Transportation*, 687 A.2d 47 (Pa. Cmwlth. 1996).

Owner’s Duty

Where a sign owner failed to provide the Department of Transportation with repair invoices or billings, the Department was unable to make a determination as to replacement cost under subsection (b)(2); therefore, the Department’s determination that the sign had been abandoned was justified. *Kasha v. Department of Transportation*, 782 A.2d 15 (Pa. Cmwlth. 2001).

Repairing Signs

By completely removing the old nonconforming sign following storm damage and replacing it with one constructed out of steel, not wood, and by adding halogen lighting, Appellants violated this regulation’s requirement that repaired signs must be of equal or lesser dimensions, constructed of the same or less durable material than the sign being repaired and contain no improvements or additions. *Keystone Outdoor Advertising v. Department of Transportation*, 687 A.2d 47 (Pa. Cmwlth. 1996); appeal denied 698 A.2d 597 (Pa. 1997).

§ 445.8. Abandoned signs.

(a) *Application.* This section applies to signs erected or controlled under this chapter or the act.

(b) *Abandoned sign defined.* The following signs shall be presumed to be abandoned:

(1) A sign which has remained without bona fide advertising for 12 months or which has been without a current lease or license from the landowner for more than 90 days.

(2) A sign other than a nonconforming sign which requires maintenance or repair in excess of 25% of the replacement cost of the sign. Determination of

the replacement cost of the sign and of the amount of required maintenance or repair shall be made by the Department after consultation with the sign owner.

(3) A sign for which a valid tag permit under § 445.6(b) and (c) (relating to permits) was not issued.

(4) A sign considered abandoned under § 445.7(b) (relating to restoration of damaged or partially destroyed nonconforming signs).

(5) A nonconforming sign, otherwise compensable under section 9 of the act (36 P. S. § 2718.109), which since the date on which the sign became eligible for compensation, has been enlarged, illuminated or structurally improved in any manner (except normal repairs) or the location of which has been changed.

(6) A sign, the permit for which has been revoked under the act or its amendments or this chapter.

(c) *Removal of abandoned signs.* Signs that are abandoned shall be removed by the persons responsible for the erection or maintenance thereof within 30 days after notice by the Department of the abandonment. Upon 30 days notice the Department may remove signs that are abandoned at the expense of those responsible for the erection or maintenance of the signs.

Source

The provisions of this § 445.8 adopted May 21, 1976, effective May 22, 1976, 6 Pa.B. 845; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534; amended January 19, 1979, effective January 20, 1979, 9 Pa.B. 267.

Notes of Decisions

The changing of an exterior sign which was a nonconforming sign from a wooden frame supported by wooden stands to one with a metal frame and catwalk supported by a single steel post is a "structural improvement" justifying the Department's determination that the conforming sign has been abandoned according to subsection (b)(5). *Park Outdoor Advertising Co. v. Department of Transportation*, 485 A.2d 864 (Pa. Cmwlth. 1984).

Cross References

This section cited in 67 Pa. Code § 445.9 (relating to erection, maintenance and repair of signs).

§ 445.9. Erection, maintenance and repair of signs.

(a) *Application.* This section applies to signs erected or controlled under this chapter or the act.

(b) *Use of limited access highway right-of-way prohibited.* A sign may not be erected, maintained or repaired from a portion of a limited access highway right-of-way. Sign owners or others responsible for the erection, maintenance or repair of a sign shall be required to perform these functions from areas maintained or controlled by them; nor may a vehicle be used in conjunction with an activity, be parked or stood within the limited access highway right-of-way.

(c) *Preservation of vegetation.* Vegetation located in the highway right-of-way may not be destroyed, damaged, removed or disturbed in maintaining, repairing or erecting a sign.

(d) *Penalty for violation of section.* Penalty for violation of this section shall comply with the following:

(1) *Penalty.* Penalty shall be as follows:

(i) Except as provided in paragraph (2), if a landowner or sign owner or their employees or agents violate a provision of this section, the permit for the sign shall be revoked and the sign owner shall be required to remove the sign in the manner set forth in § 445.8(c) (relating to abandoned signs).

(ii) If a sign permit is revoked under this section, a permit will not be issued to the sign owner for a sign within 500 feet of the original sign; nor will a permit be issued to another person for a sign within 500 feet of the original sign for 1 year from the removal of the original sign.

(2) *Payment in lieu of removal.* Payment in lieu of removal shall include:

(i) In the case of a first offense, the Department will, in lieu of removal of the sign under paragraph (1), accept payment of \$100 for a violation of subsection (b) or double the value of the vegetation for a violation of subsection (c).

(ii) If the Department accepts payment in lieu of removal under subparagraph (i), the owner of the sign will be required to post a bond, in a form acceptable to the Department, to guarantee payment of removal costs of the sign in the event of a subsequent violation of this section with reference to the sign.

(e) *Grounds for denial of permit.* The Department will deny a permit for an outdoor advertising device if it determines that the device cannot be serviced in a feasible manner except from the right-of-way of a limited access highway, or that the device would not be visible from the highway without destruction, damage, removal or disturbance of vegetation in the highway right-of-way.

(f) *Hearing.* A person notified of the revocation or denial of a permit under this section shall be granted a hearing by the Department hearing officer if a request is made within 30 days of the date of the notice revoking or denying the permit. A request for a hearing shall operate to stay the revocation of a permit pending disposition of the hearing.

Authority

The provisions of this § 445.9 amended under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 445.9 adopted May 21, 1976, effective May 22, 1976, 6 Pa.B. 1135; renumbered and amended September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534; amended November 10, 1978, effective November 11, 1978, 8 Pa.B. 3095; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial page (250453).

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