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DIVISION OF WATER POLICY MEMORANDUM 84-001

TO: City and County Officials
Environmental Quality Commission

FROM: Richard T. Shogren, Director *R. Shogren*
Division of Water
Department for Environmental Protection

DATE: May 18, 1984

SUBJECT: Emergency Replacement of City and County
Roadway Drainage Structures

The purpose of this policy memorandum is to describe how the Department will implement the requirements of KRS 151.250 concerning stream construction permits during emergency situations and when the replacement of city or county roadway drainage structures which have been damaged or destroyed is required. "Roadway drainage structure" as used in this policy statement includes bridges, culverts, and pipes under a city or county road along with decks, pavement, piers, and associated fill.

The provisions of this memorandum do not relieve any city or county from the provisions of any other state or federal law or regulation which may apply to this type of work. In addition, these provisions apply only to work at the project site. The actions of a contractor or city or county workers away from the site of the existing roadway drainage facility are not exempted from the provisions of KRS 151.250 under any circumstances.

A. Reconstruction

The Activities described below may be performed by a city or county without prior approval by the Cabinet. In some cases, notification that such work has been done is requested.

1. Any roadway drainage structure for which a KRS 151.250 permit has been obtained since January 1, 1974, may be repaired or replaced without prior approval, provided the city or county certifies in writing that all work conformed to the original

approved plans. Such certification should be provided to the Division of Water within thirty (30) calendar days of beginning of this work.

2. Any city or county may repair or replace any portion of an existing roadway drainage structure constructed prior to 1974 provided this activity creates no significant obstruction to the stream or floodplain. As examples of "no significant obstruction," the city or county may replace to the previous or a less obstructive condition any bridge deck, pavement, piers, and related fill if less than one-third of the total amount of fill has been lost. Fill of as much as one-half of the total may be exempted with approval by the director of the Division of Water.
3. As provided by regulation 401 KAR 4:050, all construction (except for dams or where such construction will endanger life or cause severe damage to residential or commercial property) on watersheds of less than one square mile is exempted from the provisions of KRS 151.250.

B. Emergency Provisions

The activities discussed below may be taken by a city or county without prior written approval where an emergency exists. "Emergency" here means that a roadway drainage facility has been so damaged by an act of nature or by an accident that it is unsafe for normal transportation uses and that the roadway forms an essential transportation source so that it must be repaired without delay. An "essential transportation source" is defined as one which provides a sole means of access to one or more residential, commercial, industrial, or public facilities or one where alternate sources of access to such facilities would cause substantial delays or hardships.

1. In an emergency, a city or county may construct a low-water crossing as defined in Attachment 1 at the site of a damaged or destroyed roadway drainage facility without prior approval. Within thirty (30) calendar days of the completion of the project, the city or county should provide the Division of Water a letter from the city's or county's engineer (along with photographs of the construction and a location map) certifying that the crossing was built in compliance with these criteria. Upon certification, the Division will issue a stream construction permit for the construction for a period of up to five (5) years. (Such permits may be renewed.)
2. In case of an emergency, a roadway drainage structure for which a stream construction permit was obtained may be repaired or reconstructed to a configuration other than that provided on the approved permit provided the altered configurations cause less obstruction to flood flows than did the originally permitted structure. Within thirty (30) calendar days of the completion of the project, the city or county should provide

May 18, 1984

Page Three

the Division of Water a letter from the city's or county's engineer (along with photographs of the construction and a location map) explaining how the new construction differs from the original permit. Upon receipt of this letter, the Division will issue a revised stream construction permit.

3. In an emergency, a city or county may begin replacement of a damaged or destroyed roadway drainage structure if the Transportation Cabinet's Division of Design certifies that the construction will not create a significant flood obstruction. Design certification should be provided to the Division of Water within thirty (30) calendar days of the completion of the project. The Division of Water will then issue a construction permit based on information provided by the Transportation Cabinet.
4. In case of an emergency and where options 1, 2, and 3 in this section are not feasible, the city or county may construct and maintain in place a temporary roadway drainage facility for a period of up to 90 calendar days (the period may be extended to as much as 180 calendar days upon approval by the director of the Division of Water). If such a drainage facility is not stable enough to withstand flooding without becoming dislodged or if it poses a hazard of any sort during a flood, the city or county must provide some means of safely removing the drainage structure and any related construction which would or could cause any significant increase in flooding at any time when flooding appears likely. Written notice of this construction should be provided to the Division of Water within fifteen (15) days after the beginning of construction.

C. Technical Assistance

For those cities or counties which experience the types of problems discussed above and do not have technical personnel to perform hydrologic and hydraulic calculations required for the proper replacement of roadway drainage structures (and for all cities and counties in cases of emergency), the Division of Water will make its technical staff available to expedite the processing of needed permits or in developing solutions to the city's or county's problem. Such technical assistance will take priority over any other activities related to KRS 151.250.