

## DEPARTMENT OF TRANSPORTATION

### Transportation Commission

## HARVESTING OF NATIVE GRASSES WITHIN STATE HIGHWAY RIGHTS-OF-WAY

### 2 CCR 601-16

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

---

#### Statement of Basis and Purpose and Statutory Authority

The specific authority to promulgate these Rules is provided to the Department of Transportation by § 43-1-210.5, C.R.S. (2011). These Rules allow persons, firms or corporations that own land adjacent to State Highway Rights-of-Way to obtain a Permit from the Department so that such persons may use Rights-of-Way for Harvesting of native grasses and hay. The Rules Governing Harvesting of Native Grasses within State Highway Rights-of-Way were adopted in April 2003. The rationale for amending the Rules is based on the fact that very few permits were requested since the time the Rules went into effect. The Department, in keeping with the Governor's initiative to lessen regulations where possible, is amending the Rules to provide greater opportunity for Harvesting on Colorado's Rights-of-Way, by making the requirements less restrictive, and by expanding the area that may be harvested with a single Permit.

#### 1.00 Definitions

- 1.01 "Abutting" shall mean any land or portion thereof which adjoins a State Highway.
- 1.02 "Adjacent Landowner" shall mean the person or persons, firm or corporation entitled to the ownership and possession of real property abutting a State Highway.
- 1.03 "Agricultural Uses" shall mean the cutting, baling, and removal of hay and grasses only.
- 1.04 "Applicant" shall mean a person, firm, corporation or other entity which owns an interest in the property adjacent to the State Highway ROW for which the Harvesting Permit is sought.
- 1.05 "Department" or "CDOT" shall mean the Colorado Department of Transportation established pursuant to § 43-1-103, C.R.S.
- 1.06 "Environmentally Restricted Areas" shall mean areas where no Harvesting is allowed due to threatened and endangered species or their habitat, wetlands or other areas of concern that may exist.
- 1.07 "Expressway" shall mean a physically-divided highway with partial control of access generally having grade separations at major intersections.
- 1.08 "FHWA" shall mean the Federal Highway Administration, the U.S. Department of Transportation.
- 1.09 "Harvesting" shall mean cutting of native grasses and hay, through mechanical means only, removing them from the ground by baling, and removing the bales from the State Highway Right-of-Way.
- 1.10 "Interstate Highway" shall mean any highway included as a part of the National System of interstate and defense highways as authorized and designated in accordance with section 7 of the

"Federal-Aid Highway Act of 1944" and any other subsequent acts of Congress. For purposes of these Rules, no Permit shall be granted for ROW adjacent to an Interstate Highway.

- 1.11 "Local Authority" shall mean a county, city and county, or municipality.
- 1.12 "Median" shall mean the area of Right-of-Way from the inside shoulder of one lane of a divided highway to the inside shoulder of the opposite lane.
- 1.13 "Municipality" shall mean a city or town incorporated pursuant to Colorado law, and any city, town, or city and county which has chosen to adopt a home rule charter pursuant to the provisions of Article XX of the State Constitution.
- 1.14 "Permittee" shall mean a person, firm, corporation or other entity which owns an interest in property adjacent to the State Highway Rights-of-Way and has obtained a Permit from CDOT to harvest grasses on the ROW.
- 1.15 "Of Public Record" shall mean the Department's control of the Right-of-Way must be on record at the appropriate County Clerk and Recorder's Office.
- 1.16 "Parcel" shall mean the area of CDOT controlled Rights-of-Way which CDOT has granted a Permit to the Permittee to harvest native grasses. The Parcel shall not be greater than five segments of ten miles per segment.
- 1.17 "Right-of-Way" or "Rights-of-Way" or "ROW" shall mean the entire width between the boundary lines of every Right-of-Way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel or the entire width of every way declared to be a public highway by any law of this state.
- 1.18 "State Highway" shall mean a highway that is part of the State Highway system under the jurisdiction of the Department.
- 1.19 "Survey Monument" shall mean the object or physical structure installed in the ground, including witness posts, for the purpose of performing a land survey.

## **2.00 Submitting, Approving, and Reapproving a Permit Application**

### 2.01 Who May Apply for a Permit.

- 2.01.1 The Department may issue a Permit to an Applicant if the Permittee has an ownership interest in real property, at least a portion of which adjoins a portion of the ROW for which the Applicant is seeking a Permit.
- 2.01.2 The Permittee may apply for a Parcel that may include up to five (5) ten (10) mile segments, one of which must be adjacent to a portion of the Permittee's property.
- 2.01.3 The Permittee must provide written notice thirty (30) days prior to the commencement of Harvesting under the Permit to those landowners who own property adjacent to Rights-of-Way within the Parcel subject to the Permit. CDOT may request to review proof of adequate notice.
- 2.01.4 The Permittee must have obtained rights to an existing legal access to Harvest the Parcel. No new access shall be granted by CDOT specifically for Harvesting operations.

### 2.02 Parcel(s) for which Permits May be Issued.

- 2.02.1 The control of the State Highway Right-of-Way must be Of Public Record as established by CDOT prior to issuing the Permit.
- 2.02.2 The area of the State Highway Right-of-Way which may be Harvested by Permit is limited to the area from the Right-of-Way line/fence no less than fifteen (15) feet from the edge of the paved roadway shoulder. All Harvesting operations must be conducted at least fifteen (15) feet from the paved roadway shoulder.

### 2.03 Parcel(s) for which Permits May Not Be Issued.

- 2.03.1 Newly seeded areas (within the past two growing seasons), or newly constructed sections of State Highway.
- 2.03.2 Rights-of-Way where adequate vegetation is not yet established.
- 2.03.3 Rights-of-Way with sparse or marginal vegetative cover.
- 2.03.4 Rights-of Way with highly-erosive slopes or waterways.
- 2.03.5 Rights-of-Way with a slope greater than 3ft. horizontal (run) to 1 ft. vertical (rise).
- 2.03.6 Areas requiring environmental restrictions as identified during the environmental clearance conducted prior to approval of the Harvesting Permit.
- 2.03.7 Rest areas, or other locations designated by the Department.
- 2.03.8 Any Median separating traffic lanes on a State Highway.
- 2.03.9 Areas under construction.
  - 2.03.9.1 Permits in existence at the time that construction begins shall be suspended during the term of the construction with appropriate notice given to the Permittees.
  - 2.03.9.2 Permits will automatically be reinstated for the remaining period on the original Permit upon completion of the construction and corresponding notice to given to the Permittees.
- 2.03.10 On any Interstate Highway Right-of-Way.
- 2.03.11 Land controlled by the federal government.

### 2.04 Time Frame for Harvesting and Permit Length.

- 2.04.1 Permits shall be valid for five (5) years commencing on the issuance date of the Permit and may be renewed for additional five (5) year periods or for shorter periods at the discretion of CDOT.
- 2.04.2 Operations will be permitted between 8 a.m. and 4 p.m. Work shall not be performed on Saturdays, Sundays, or holidays without prior authorization or unless otherwise specified in this Permit.
- 2.04.3 CDOT may restrict work within ROW during adverse weather conditions or during periods of high traffic volume.

- 2.04.4 Harvesting shall not occur between the first day of April and the 15th day of August, due to requirements of the Division of Wildlife memorialized in a Memorandum of Agreement.

#### 2.05 Submission and Contents of Permit Application.

- 2.05.1 The Department encourages the Permittee to apply at least 90 days prior to the actual time the Permittee may wish to conduct the Harvesting operation to avoid potential delays.
- 2.05.2 Application packages may be obtained from the Department at the appropriate Regional Traffic Section Permit Office or on CDOT's website.
- 2.05.3 The Permit application shall be submitted in a manner consistent with the directions in the Permit materials provided by the Department.
- 2.05.4 The Permit application shall include all information required by the Department as stated within the Permit application and instruction materials provided by the Department and in conformance with the Rules and the enabling statute.
- 2.05.5 The Permit application shall be submitted to the appropriate Department's Regional Office listed on the Harvesting Permit application.
- 2.05.6 The application must contain the acknowledgement that the Permittee is responsible to repair and mitigate any damage to existing utility and other installations that may be present on the State Highway ROW during the Harvesting operation.
- 2.05.7 The Permittee shall submit a non-refundable Application Fee of \$100.00 per mile of State Highway Right-of-Way. Payment shall be made by certified check made out to CDOT.
- 2.05.8 The Department will not pro-rate application fees based on Parcel(s) lengths of less than one mile of State Highway ROW.
- 2.05.9 The effective date of an application transmitted by U.S. mail, electronic mail or by hand delivery shall be the date and time of receipt stamped on the application by the Department.

#### **3.00 Environmental Clearance Required Prior to Issuance of Permit**

- 3.01 The Department shall conduct and prepare an environmental clearance for all areas of the State Highway Right-of-Way for which the Permittee is requesting a Permit.
- 3.02 In the process of clearing requested parcels, the Department may delineate areas designated as "No Harvesting Allowed" to preclude work or driving equipment through areas that may be Environmentally Restricted Areas. These areas will be delineated and marked by the Department before any Harvesting can take place and all environmental restrictions shall be delineated on the Permit.

#### **4.00 Ingress and Egress**

- 4.01 Access to the permitted State Highway Right-of-Way shall be from existing legal access only.
- 4.02 Under no circumstances may the Permittee or the Permittee's agent enter or leave the permitted Harvesting area using the main traveled-way of the State Highway.

- 4.03 It is the Permittee's obligation to obtain all necessary easements and permission, and any additional documents necessary by law to allow access to each segment within the permitted Parcel(s).
- 4.04 The removal of fences to facilitate ingress and egress to the State Highway Right-of-Way is strictly prohibited. If temporary removal of a private fence is necessary to access the ROW, the fence must be restored in its original location at the end of each day or as agreed to in an agreement with the property owner. The Permittee is responsible for any damages resulting from failure to restore the fence in its proper location and in its original condition.
- 4.05 The Department is not responsible for providing any access to the permitted Parcel aside from the existing accesses previously permitted by the Department.
- 4.06 Parking, loading and/or off-loading of equipment on the paved shoulders of the State Highway is prohibited.
- 4.07 All traffic laws shall be complied with during the Harvesting operation.
- 4.08 Permittees are not allowed to access the State Highway under any circumstances from the Harvest area.
- 4.09 The Permittee (including the Permittee's lessee or contractor) shall coordinate all Harvesting activity with the Department's local maintenance patrol. Traffic control devices in the form of "Shoulder Work Ahead" or "Mowing Operations Ahead" signs are required. The Department will provide and install such signs upon 48 hours notification to the appropriate maintenance patrol. The appropriate maintenance patrol contact information will be provided within the issued permit.

#### **5.00 General Terms and Conditions of Permit**

- 5.01 All Harvesting operations shall be done in accordance with these Rules, the terms set forth in the Permit and state and federal law.
- 5.02 Any agent, assign, employee, lessee or contractor of the Permittee, performing work under a Permit is subject to the all provisions of these Rules.
- 5.03 Harvesting by the Permittee is done with the full knowledge that the vegetation may contain chemical residue from vehicles and chemical herbicides used for vegetative control.
- 5.04 The Permittee shall cease Harvesting operations anytime that dust and debris are blowing onto the highway impairing visibility and traction for motorists until such conditions improve.
- 5.05 The Permittee is responsible to ensure no damage occurs to existing utility and other installations that may be present on the State Highway Right-of-Way during Harvesting.
- 5.06 The Department reserves the right to issue utility permits allowing installation of utilities in the State Highway Rights-of-Way.
- 5.07 The Permittee shall not interfere with utility installations which will take precedence over any Harvesting activity. Any utility installation may destroy significant portions of any individual year's crop. Neither the Department nor the utility company shall have any liability to the Permittee for such damage.
- 5.08 The Department shall not be liable for the quality of the Harvested hay or grasses obtained through this permit.

- 5.09 The Department does not guarantee any specific yield of hay or grasses in any given growing season whether impacted by utility installations, construction, drought or any other contributing factor.
- 5.10 No person, firm or corporation shall Harvest any portion of the State Highway Right-of-Way and keep the cuttings from such Harvesting without first obtaining a written Permit from the Department.
- 5.11 The Permittee shall notify the Department in writing if the Permittee intends to cease Harvesting operations and ceases performance under the Permit.
- 5.12 The granting of the Permit conveys no right, title, or interest to the Permittee in the State Highway Rights-of-Way.

#### **6.00 Conditions of Harvesting and Baling Requirements**

- 6.01 Harvesting through the use of mechanical means is the only agricultural use permitted by these Rules.
- 6.02 No animals shall be permitted on the State Highway Rights-of-Way. Fencing shall be maintained to prevent animals from gaining access to State Highway ROW.
- 6.03 The Permittee shall not allow any person onto the State Highway Right-of -Way who is not contributing to the actual Harvesting operation.
- 6.04 No plowing, tilling or disturbing the soil in any fashion, planting any seeds or seedlings, spraying any pesticides or herbicides or conducting any irrigation of any type shall be allowed by the Permit or Rules on the Department's State Highway Rights-of-Way.
- 6.05 Operations will be permitted only when soil is dry enough to prevent rutting to or damage to the Rights-of-Way.
- 6.06 While operating on State Highway Rights-of-Way, Harvesting equipment shall display flashing yellow lights and slow-moving vehicle placards.
- 6.07 The Permittee must cut the native grasses and weeds around signs, improvements, and appurtenances as closely as possible.
- 6.08 All hay to be removed shall be baled.
- 6.09 All bales within thirty (30) feet of the traveled-way shall be removed immediately.
- 6.10 All bales shall be removed within ten (10) days, or they will be removed by the Department without compensation to the Permittee.
- 6.11 Unattended equipment must be parked as near as possible to the Right-of-Way fence line, and may not be left unattended within thirty (30) feet of the traveled-way under any circumstances. All equipment shall be removed from the State Highway Right-of-Way at the end of each day of Harvesting. Equipment may not be stored overnight on the State Highway Right-of-Way.
- 6.12 Upon completion of operations, the Parcel subject to the Permit shall be left in a clean and neat condition.

#### **7.00 Insurance and Liability**

7.01 Each Permittee must provide General Liability Insurance for the Permittee. Permittee must also require that any and all lessees and/or contractors the Permittee may use for Harvesting hay maintain General Liability Insurance. Provisions for all required general liability policies are listed below:

7.01.1 Limits: \$1,000,000 per occurrence

\$2,000,000 aggregate

\$2,000,000 products/completed operations aggregate

7.02 The policy shall include the Department as an additional insured and contain a waiver of subrogation on behalf of the Department.

7.03 Where required by law, Permittee, any lessee and any contractor utilized by these parties shall carry statutory workers' compensation insurance, with a waiver of subrogation on behalf of the Department.

7.03.1 Certificates of Insurance are to be provided to the Department prior to issuance of a Permit.

7.03.2 Insured(s) shall provide 60 days' notice prior to cancellation of the required coverage. The required insurance must be in effect for the entire period of the Harvesting operation.

7.04 The Permittee is responsible for reimbursing the Department for the repair of any damage to fences, signs, delineators, guardrails, landscape plantings, or any other State Highway improvements resulting from Harvesting operations.

7.05 The Permittee, his successors, or assigns shall hold the Department, its officers, or employees harmless from all costs, liabilities, expenses, suits, judgments, claims or actions brought by any person against the Department, its officers, or employees as a result of, or in connection with the permit, or the operation and performance hereunder by the Permittee, his agents, or employees.

7.06 All risk of injury or damage to Permittee, property of Permittee or others which may result from debris, foreign objects, or chemical contamination resulting from handling or feeding of Harvested hay is assumed by the Permittee. The Department shall not be liable for the quality of the Harvested hay or grasses obtained through this Permit.

7.07 The Permittee is responsible for reimbursing the Department for the repair and re-survey of any damage and disturbance to any survey monuments resulting from Harvesting operations.

7.08 A copy of the Permit, any relevant documentation regarding access to the ROW and agreements with Local Authorities and proof of liability insurance in the amounts required herein shall be available on the work site at all times and shall be made available for inspection by the Department representatives at any time during the harvesting operation.

## **8.00 Permit Denial, Revocation, Suspension and Appeal Process**

8.01 Notice and a hearing concerning such denials, revocation or immediate suspension will be provided as required by § 24-4-104, C.R.S.

8.02 Written notice of denial of a Permit application, or of denial of Permit renewal, or of Permit revocation, or of immediate suspension shall be sent to the Permittee by first class mail and shall specify the grounds for such denial or revocation, including which requirements, or criteria, of the Rules, state, federal or local law or § 43-1-210.5, C.R.S., the Permittee has failed to meet.

- 8.03 No Permit may be issued or renewed which, in the judgment of the Department, would not be in the best interests of the State or that would be detrimental to the public health, safety, welfare, or that would be in conflict with any applicable federal, state, or local law, or that allows any agricultural purpose other than Harvesting by mechanical means only.
- 8.04 The Department may deny, revoke or suspend a Permit or deny a renewal of a Permit under § 43-1-210.5, C.R.S. based on the rationale stated therein, including but not limited to:
- 8.04.1 The Permittee is no longer entitled to the Permit under these Rules and applicable state law;
  - 8.04.2 The Permittee has violated the terms or conditions of the Permit or of these Rules.
  - 8.04.3 The Department determines that the public health, safety or welfare is adversely affected by issuance or renewal of a Permit.
  - 8.04.4 The Permittee's proof of insurance indicates it has lapsed, or the Permittee is not able to produce evidence of sufficient insurance, the sufficiency of which to be determined by the CDOT Risk Management Office.
  - 8.04.5 Fire bans are put into effect by the proper fire authority. Such suspension shall occur automatically and without notice by the Department and shall exist for the duration of the fire ban. No reimbursement or refunds shall be paid by the state in the event the Permit is suspended.
- 8.05 Should a Permit be revoked or not renewed for any reason, the Permittee shall, at his/her own expense, restore the ROW to its original condition. If the Permittee does not accomplish this within thirty (30) days after notification has been sent by the Department, then the Department shall perform this task and bill the Permittee for the cost to do so.
- 8.06 When the Department has reasonable grounds to believe and finds that the Permittee has been guilty of willful and deliberate violation of the Rules, or the health, safety, or welfare of the public imperatively requires emergency action, a Permit may be immediately suspended as provided in § 24-4-104(4), C.R.S.
- 8.07 In such emergency situations, the Department may take immediate action prior to notice and hearing.
- 8.08 When the Department determines the Harvesting operation is creating an undue safety hazard, all operations will cease until further notice upon verbal notification to the Permittee. Such suspension shall not require any compensation, monetary or otherwise, to the Permittee.
- 8.09 Notice of Permit suspension shall be sent to the Permittee within one working day of the suspension of Harvesting by first class mail. Such notice shall set forth the basis for the emergency action.
- 8.10 In the event that the Permittee's insurance should lapse for any reason, this Permit shall immediately be null and void.
- 8.11 The Department reserves the right to order an immediate suspension of the Harvesting operations for any reason, based on non-compliance with the Rules and the Permit, or state, federal or local law.
- 8.12 The Department may temporarily suspend a Permit if:

- 8.12.1 The Department learns of environmentally sensitive, threatened or endangered species being present in the permitted area.
- 8.12.2 The Department learns of new species being identified, in which case the Department may suspend the Permit until the area can be cleared for the new species.
- 8.12.3 The Department determines that temporarily suspension of the Permit is in the best interests of the State, and Harvesting operations under the Permit would be detrimental to the public health, safety, welfare, or would be in conflict with any applicable federal, state, or local law.
- 8.13 The provisions of § 43-1-210.5, and § 24-4-104, C.R.S. and these Rules shall apply to the appeal from the Department's denial of a Permit application, denial of renewal, Permit revocation, or immediate suspension.
- 8.14 A request for a hearing shall be made in writing and must be received by the Department no later than sixty (60) days after notification is sent by the Department to the Permittee of such notice.

---

**Editor's Notes**

**History**

Entire rule eff. 08/16/2006.

Entire rule eff. 10/15/2012.