
SECTION I

TYPICAL AGREEMENTS, LAWS, POLICIES TO BE DEVELOPED



The State of Texas

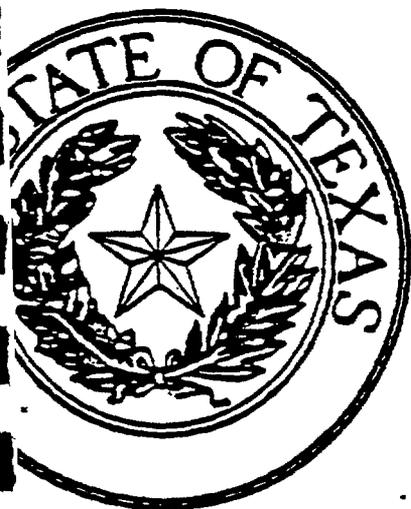
SECRETARY OF STATE

I, JOHN HANNAH, JR., Secretary of State of the State of Texas, DO HEREBY CERTIFY that the attached is a TRUE AND CORRECT copy of Senate Bill 312, passed by the 72nd Legislature, Regular Session, 1991, as signed by the Governor on May 22, 1991, and filed in this office on May 22, 1991.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this

27th day of May, A.D. 1991

John Hannah Jr
Secretary of State



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AN ACT

relating to the removal of obstructions from roadways and road rights-of-way.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1, Title 116, Revised Statutes, amended by adding Article 6673g to read as follows:

Art. 6673g. REMOVAL OF OBSTRUCTIONS. (a) The State Department of Highways and Public Transportation may, without the consent of the owner or carrier of spilled cargo or other person property on the right-of-way or any portion of roadway of the state highway system, remove the cargo or property from the right-of-way or portion of roadway of the state highway system in circumstance in which, as determined by the department, the cargo or property blocking the roadway or may otherwise be endangering public safety

(b) The department may, pursuant to Section (a) of the article, remove cargo or personal property that the department has reason to believe is a hazardous material, as defined by the Hazardous Materials Transportation Act (49 U.S.C. Sec. 1801 sec.) or a hazardous substance, as defined by the Texas Hazardous Substances Spill Prevention and Control Act (Subchapter G, Chapter 26, Water Code): provided that in doing so, the department may comply with applicable provisions of Section 411.018, Government Code, and the Texas Hazardous Substances Spill Prevention and Control Act.

1 (c) The department and its officers and employees are not
2 liable for any damages or claims of damages to removed cargo or
3 personal property that resulted from removal or disposal by the
4 department unless the removal or disposal was carried out
5 wrecklessly or in a grossly negligent manner.

6 (d) The department and its officers and employees are not
7 liable for any damages or claims of damages that may result from
8 the failure to exercise any authority granted under this article.

9 (e) The owner and, if any, the carrier of cargo or personal
10 property removed under the authority of this article shall
11 reimburse the department for the costs of the removal and
12 subsequent disposition.

13 SECTION 2. The importance of this legislation and the
14 crowded condition of the calendars in both houses create an
15 emergency and an imperative public necessity that the
16 constitutional rule requiring bills to be read on three several
17 days in each house be suspended, and this rule is hereby suspended,
18 and that this Act take effect and be in force from and after its
19 passage, and it is so enacted.

[Signature]
President of the Senate

[Signature]
Speaker of the House

I hereby certify that S.B. No. 312 passed the Senate April 23, 1991, by the following vote: Yeas 31, Nays 0.

[Signature]
Secretary of the Senate

I hereby certify that S.B. No. 312 passed the House May 14, 1991, by the following vote: Yeas 143, Nays 1, one present and voting.

[Signature]
Chief Clerk of the House

Approved:

5/22/91
Date
[Signature]
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

3:08 p.m. - OFFICE

MAY 22 1991

[Signature]
Secretary of State

POLICY STATEMENT FOR FORT WORTH DISTRICT OF
THE STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION (DEPARTMENT)
IN RESPONSE TO INCIDENTS WHICH CLOSE A SECTION OF THE STATE HIGHWAY SYSTEM

1. STATE LAW GIVES THE DEPARTMENT THE RIGHT TO CLEAR DEBRIS AND PROPERTY FROM THE STATE'S HIGHWAY SYSTEM AS QUICKLY AND EFFICIENTLY AS POSSIBLE UNDER EMERGENCY CONDITIONS TO ENSURE THE SAFETY AND WELL BEING OF OTHER TRAFFIC THAT HAS THE RIGHT TO USE THE ROADWAY. AFTER THE INJURED RECEIVED PROPER CARE (IF APPROPRIATE), AND AFTER THE AREA HAS BEEN DECLARED SAFE TO THE GENERAL PUBLIC BY THE APPROPRIATE HAZARDOUS RESPONSE, AGENCIES THE DEPARTMENT'S REPRESENTATIVE ON THE SCENE WILL TAKE ACTION TO CLEAR ROADWAY FOR USE BY OTHER MOTORISTS.

2. THE DEPARTMENT'S REPRESENTATIVE WILL IMPLEMENT A TRAFFIC CONTROL PLAN FOR REROUTING TRAFFIC, USING ITS INCIDENT RESPONSE TEAM, THE COURT PATROL, MOTORIST AID PROGRAM VEHICLES, AND/OR MAINTENANCE PERSONNEL. AN APPROPRIATE, THE DEPARTMENT WILL USE SUCH FORCES TO SUPPLEMENT EXISTING TRAFFIC CONTROL PLANS BY POLICE AND/OR FIRE DEPARTMENTS WHO ARE ENGAGED SECURING AND DIRECTING TRAFFIC AT THE ACCIDENT SITE.

3. IF THE CLOSURE IS DUE TO A TRUCK TURNOVER, BUT WITH ITS CONTENT INTACT, THE DEPARTMENT WILL ATTEMPT TO COORDINATE REMOVAL OF THE TRUCK AND ITS CONTENTS WITH ITS OWNER. IF, HOWEVER, SUCH REMOVAL CANNOT BE ACCOMPLISHED SOON ENOUGH TO MEET ESTABLISHED TRAFFIC DELAY CRITERIA, THE DEPARTMENT WILL TAKE THE STEPS NECESSARY TO ACCOMPLISH TIMELY REMOVAL. TRUCK AND ITS CONTENTS WILL BE REMOVED FROM THE ROADWAY AND STORED ON SITE RIGHT-OF-WAY OR AT MAINTENANCE YARDS.

4. IF THE CLOSURE IS DUE TO A TRUCK WITH SPILLED CARGO, THE DEPARTMENT WILL REMOVE THE SPILLED CARGO AND CLEAN UP THE AREA WITH STATE-OWNED OR LEASED EQUIPMENT AS QUICKLY AS POSSIBLE TAKING PRECAUTIONS APPROPRIATE TO SITE CONDITIONS. REMOVAL OF THE TRUCK AND ANY UNSPILLED CARGO WILL BE HANDLED AS SPECIFIED IN PARAGRAPH 3 ABOVE.

5. IN CASES WHERE LIQUIDS ARE SPILLED, THE DEPARTMENT WILL PROVIDE TO ABSORB THE LIQUID AND WILL CLEAN UP THE ROADWAY BY SWEEPERS, LOADERS, ETC. THE SAND WILL BE DISPATCHED TO THE SCENE AS SOON AS IT IS EVIDENT. THE SPILLAGE WILL REQUIRE THIS TREATMENT.

6. IF THE SPILL IS HAZARDOUS, THE DEPARTMENT WILL ATTEMPT TO PROVIDE ALL OF THE ABOVE SERVICES UPON THE DIRECTION OF ANY FIRE DEPARTMENT HAZARDOUS MATERIALS RESPONSE TEAM, OR OTHER EMERGENCY RESPONSE AGENCIES.

7. ALTHOUGH THE DEPARTMENT WILL HAVE THE FINAL AUTHORITY IN DETERMINING WHEN THE CLOSED ROADWAY WILL BE OPENED, THE ON-SITE REPRESENTATIVES FOR DEPARTMENT WILL CONFER WITH THE OTHER EMERGENCY RESPONSE AGENCIES TO ENSURE THAT THEIR ACTIVITIES HAVE BEEN COMPLETED.

8. IT IS THE INTENT OF THE DEPARTMENT TO PROVIDE THESE SERVICES TO THE OTHER EMERGENCY RESPONSE AGENCIES, SO THAT THE MOTORING PUBLIC WILL NOT BE UNDULY DELAYED AND THAT THE ROADWAY WILL BE REOPENED AS QUITE AS POSSIBLE IN A SAFE MANNER.

INTERAGENCY AGREEMENT
MD/SHA-MSP
REMOVAL OF VEHICLES FROM ROADWAY

This agreement made this _____ day of _____, 1990, by and between the Maryland State Highway Administration (SHA) and the Maryland State Police (MSP) is to provide guidance for State Police, and State Highway personnel in removing vehicles from roadways in certain situations to maintain a safe and orderly flow of traffic.

WITNESSETH: Whereas, the SHA is proposing to remove certain vehicles from the roadway on an urgent basis following collisions or where vehicles are abandoned and are causing a hazardous situation to exist.

I. General:

Whenever a road or lane is closed or partially blocked by an accident and traffic delays or safety problems may occur the Resident Maintenance Engineer or his Representative in cooperation with the police officer in charge should reopen the roadway as soon as possible ON AN URGENT BASIS. This recognizes that public safety is the highest priority and must be secured, especially if injuries or hazardous materials are involved. It is understood that damage to vehicles or cargo may occur as a result of clearing the road on an urgent basis. While reasonable attempts to avoid such damage should be taken, the highest priority is public safety.

II. Procedure/Requirements-SHA

A. General

The Resident Maintenance Engineer or his representative is to assign the necessary equipment and manpower to reopen the road or lane as soon as possible.

If materials being transported are involved, the SHA will make every effort to relocate the materials in the shortest possible time, using whatever equipment is necessary. All such materials will be relocated as short a distance as possible, but not be placed so as to present a traffic hazard.

The Resident Maintenance Engineer or his representative is to prepare a list of the personnel and equipment used and the work hours involved so that the owner of the vehicle and/or cargo can be billed for the work. Appropriate warning devices (barricades signs, arrowboards, etc.) are to be placed on the scene should either the damaged vehicles(s) or cargo remain adjacent to a lane or the shoulder.

B. Hazardous/Flammable/Exploding Materials

No attempt is to be made by State Highway Administration personnel/equipment to move any hazardous or flammable or explosive material for any reason. If SHA is first on the scene and cargo content is not readily identifiable, the Resident Maintenance Engineer or his representative will contact the proper authorities to ascertain if special measures should be taken.

As soon as the public safety has been secured then reopening of the roadway is to proceed as described under "General" in this agreement.

III. MSP Duties and Responsibilities

Members of the Maryland State Police who are the on-scene motor vehicle collision investigators will work in cooperation with other Emergency Service Personnel and members of the MD State Highway Administration who are at the scene.

Members of the State Police will conduct their required investigation in as expedient manner as possible, considering the severity of the collision and the quality of their investigation. Lengthy investigations will require investigators to work diligently in an attempt to minimize traffic delays. This may mean that certain "non-critical" portions of an investigation be conducted at a later time when traffic congestion is non-existent (i.e., non-peak periods).

It should be understood that as fire and rescue service personnel complete their required tasks of extrication, administration of medical assistance and removal of the injured, the Maryland State Police Office in Charge may choose to release them unless a HAZMAT situation exists.

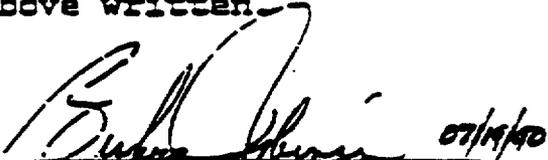
This will also hold true for allied police personnel, additional troopers and members of the State Highway Administration as each complete their required functions and it is determined that their services are no longer needed. It should be understood that as fire and rescue service personnel complete their required tasks of extrication, administration of medical assistance and removal of the injured, they are released from the scene unless a hazmat situation exists. This will be true also of state or county situation exists. This will be true also of state or county police personnel and members of the State Highway Administration as each complete their required functions. Returning the roadway to normal as soon as possible.

Members of the Maryland State Police shall not unnecessarily cause a delay in the reopening of a roadway in allowing a company to dispatch (an) additional truck(s) for immediate off-loading where this action will result in additional backups or hazardous circumstances during peak traffic periods.

III. Liability Issues

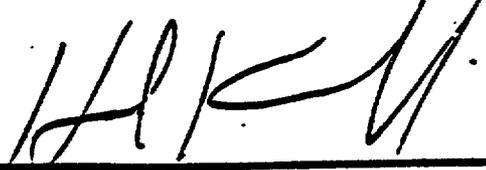
Maryland State Highway Administration's policy for the immediate removal of certain vehicles from roadway's on an URGENT BASIS, utilizing available resources, recognizes that public safety is of the highest priority. Furthermore SHA realizes that damage to vehicles or cargo contained therein may occur as the result of their clearing the roadway, and SHA assumes liability under these circumstances for said damage, should that become an issue. SHA's liability under these circumstances would be no greater than they might expect from negligence etc. on the part of snow equipment operations. As outlined in the "Limits of Liability" portion of the MD Tort Claims Act, SHA is only responsible for the first \$1,000.00 in damages and the Maryland State Treasurers office would cover any additional damages under the State's Self-Insurance Program. SHA would not automatically be liable for damages resulting from clearing the roadway unless there was clear evidence on the Administration's part, that negligence was used in said operation.

In Witness Whereof, each party hereto has caused this agreement to be executed in its name and on its behalf by its duly authorized officer or agent as of this day and year first above written.


Bishop L. Robinson
Secretary
Public Safety and
Correctional Services


Richard H. Trainor
Secretary
Maryland Department of
Transportation


Col. Elmer Tippet
Superintendent
Maryland State Police


Hal Kassoff, Administrator
MD State Highway Administration

SUBJECT: PROMPTLY REOPENING ROADWAY TO TRAFFIC
Road/Lane Blocked/Closed by Accident or Loads Falling from Trucks.

PURPOSE: Whenever a roadway or travel lane is closed or partially blocked by an accident and traffic delays or safety problems may occur, the RME or his representative in cooperation with the police officer in charge should reopen the roadway as soon as possible **ON AN URGENT BASIS**. This policy recognizes that public safety is the highest priority and must be secured, especially if injuries or hazardous materials are involved. It is understood that damage to vehicles or cargo may occur as a result of clearing the roadway on an urgent basis. While reasonable attempts to avoid such damage should be taken, the highest priority is public safety.

PROCEDURE: Type of Occurrence

GENERAL

The RME or his representative is to assign the necessary equipment and manpower to reopen the road or lane as soon as possible.

If the incident involves any truck (other than a pick-up) or removal of debris (safe spilled cargo), a rubber-tired Front End Loader shall be dispatched to the scene as soon as possible in the event it could be needed to assist a tow truck in righting/relocating the vehicle(s) involved, or assisting in debris removal/relocation.

If commercial help does not arrive within a reasonable period of time, SHA forces shall begin the removal of vehicle(s)/spilled safe cargo.

If the commercial help is unable to correct the situation, the SHA shall assist by using the Front End Loader as needed

If materials being transported are spilled, the SHA will make every effort to relocate the materials in the shortest possible time, using whatever equipment is necessary. All such materials shall be relocated as short a distance as possible, but not be placed so as to present a traffic hazard.

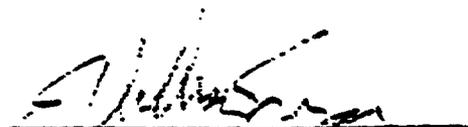
The RME or his representative shall prepare a list of the personnel and equipment used and the work hours involved so that the owner of the vehicle and/or cargo can be billed for the cleanup. The SHA's towing response form shall also be completed for every incident involving the SHA.

Appropriate warning devices (signs, barricades, arrowboards, etc.) are to be placed on the scene should either the damaged vehicle(s) or cargo remain adjacent to a shoulder.

HAZARDOUS/FLAMMABLE/EXPLODING MATERIALS

No attempt is to be made by SHA personnel/equipment to remove any hazardous or flammable explosive material for any reason. If the SHA is first on the scene and the cargo content is not readily identifiable, the RME or his representative will contact the proper authorities to ascertain if special measures should be taken.

As soon as the public safety has been secured, then reopening the roadway is to proceed as described under "GENERAL" in this memorandum.


E. William Ensor, Jr.
Deputy Chief Engineer - Maintenance

OFFICES OF

J. JOSEPH CLERK, JR.
ATTORNEY GENERAL

JUDSON P. GARRETT, JR.
DENNIS M. SWEENEY
DEPUTY ATTORNEYS GENERAL



ROBERT N. McDONALD
ASSISTANT ATTORNEY GENERAL
COUNSEL TO THE DEPARTMENT OF TRANSPORTATION

EDWARD S. HARRIS
ASSISTANT ATTORNEY GENERAL
CHIEF COUNSEL
STATE HIGHWAY ADMINISTRATION
301 333-1400

THE ATTORNEY GENERAL

Department of Transportation

State Highway Administration
707 NORTH CALVERT STREET
BALTIMORE, MARYLAND 21202

MEMORANDUM

January 4, 1990

TO: Hal Kassoff
Administrator

FROM: Edward S. Harris. *dlr*
Assistant Attorney General
Chief Counsel

SUBJECT: Removal of Vehicles from State Highways
By State Highway Administration Personnel
(LEG-49; LEG 51)

I have reviewed this issue and have discussed the matter with the Assistant Attorney General representing the Maryland State Police. Both MSP's counsel and I agree that SHA's liability for injuries or damage resulting from our removal of a vehicle from a State road is no greater and no less than our potential for liability in any other area. For example, if one of our snow removal equipment operators is negligent and causes injury to persons or property, the State is liable under the Maryland Tort Claims Act. Similarly, the Tort Claims Act would apply to the removal of vehicles from a State road.

The limits of liability under the Tort Claims Act are \$50,000.00 per person and \$100,000.00 per occurrence. SHA is responsible for the first \$1,000.00 in damages and the Treasurer's Office would cover any additional damages under our self-insurance program.

Please keep in mind that just because a vehicle is damaged as a result of being removed from a State road, it does not mean that the State is responsible for that damage. The State will only be responsible if we acted negligently (i.e. we did not act reasonably under the circumstances). Under certain circumstances, I would envision that it would be reasonable to damage on a vehicle if the only other alternative is to permit an unsafe highway condition to remain uncorrected.

Please let me know if I can provide you with any other information.