PART 134

VEGETATION CONTROL PERMITS FOR ADVERTISING SIGNS

(Statutory Authority: Highway Law, §52, §88; Transportation Law, §14; Vehicle and Traffic Law, §1220-a)

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PART 134

VEGETATION CONTROL PERMITS FOR ADVERTISING SIGNS

(Statutory Authority: Highway Law, §52, §88; Transportation Law, §14; Vehicle and Traffic Law, §1220-a)

§134.1 Applicability. This Part applies to entry onto and work upon the right of way of state highways under the jurisdiction of the Commissioner of Transportation to control, maintain, or otherwise affect vegetation located upon such right of way for the purpose of enhancing the visibility of advertising signs.

§134.2 Definitions. As used in this Part, the following words and phrases are defined:

(a) "Advertising sign" means any outdoor sign, display, device, or billboard registered with the Department pursuant to Part 150 of this Title. Multiple signs located on a common structure shall be treated as a single sign for purposes of §134.11 of this Part and §126.5(V)(d)(7) of this Title.

(b) "Department" means the New York State Department of Transportation.

(c) "Clear zone" means the area, starting at the edge of the traveled way, available for safe use by errant vehicles, as determined by the Department.

(d) "Right of way" means the entire width between the boundary lines of all property on the State highway system.

(e) "State highway" means a highway under the jurisdiction of the Commissioner of Transportation.

(f) "Topping" means cutting the main leader or leaders of a tree.

(g) "Trunk diameter" means the diameter of a tree, measured outside the bark at a height of four feet (1.2m) above ground level.

(h) "Vegetation" means plant life of any kind, including, but not limited to trees, shrubs and ground cover.
(i) "Vegetation control" means any activity intended to limit or regulate the growth or survival of vegetation, including, but not limited to, cutting, excavating, pruning, removing, trimming or mowing.

(j) "Viewing zone" means the triangular shaped area bounded by a line perpendicular to the highway center line and starting at the point on an advertising sign furthest from the highway center line and a line continuing along the highway center line for a distance of 500 feet (152.5m) in the direction the sign is facing, to a third point on the highway center line, and then closing by a hypotenuse between the first and third points. An example of a viewing zone is depicted in Appendix A of this Part. A sign structure may have two viewing zones if signs on the common structure face in substantially different directions.

§134.3 Permits. (a) Any person, institution, corporation, or other entity desiring access to the right of way of a State highway for the purposes of conducting vegetation control on such right of way so as to enhance the visibility of, an advertising sign shall first obtain a work permit from the Department.

(b) Written application for such permit shall be made to the Department and shall be accompanied by site plans, prepared in accordance with the criteria in Section 134.6(a) of this Part, indicating the vegetation control proposed and photographs demonstrating the existing condition of vegetation in the State highway right of way that may be affected, relative to the advertising sign. Such application shall also be provided, for informational purposes, to the town, village or city in which the vegetation proposed for control is located.

(c) The Department may require a meeting at the site of the proposed vegetation control or elsewhere to facilitate the Department's review of a permit application under this Part.

(d) The application shall include the applicant's certification that it is the owner of the advertising sign for which the permit is sought and that such sign is in full compliance with the provisions of Part 150 of this Title.

(e) On approval of the application by the Department, a work permit shall be issued stipulating the conditions under which the vegetation control may be performed.

(f) If work is performed in a manner which does not comply with the terms of a permit, or vegetation control is performed without a permit, the Department may halt the work until adequate corrections have been made. Costs incurred by the Department in correcting failure to comply with the provisions of this Part or a permit issued pursuant to this Part shall be borne by the permittee or entity undertaking the activity.

§134.4 Permit Conditions and Limitations. (a) Work must be started and completed within the
times specified in the permit.

(b) All work and materials used within the right of way shall meet the requirements of this Part and all permit conditions or stipulations. If alterations of the permitted work are sought after work commences, written approval from the Department shall be required before any alterations are undertaken.

(c) The Department shall not be liable to the permittee, its employees or any person acting under the permit for any claim arising from work covered by a permit issued pursuant to this Part or resulting from the conditions on the site covered by the permit. Protective liability insurance to cover the Department, as set forth in Part 127 and Section 125.2(g)(3) of this Title, is mandatory. The permittee shall agree to defend and indemnify this Department in any claim concerning or arising out of the permittee's work. Failure to maintain insurance immediately terminates a permit issued pursuant to this Part.

(d) The permittee shall take necessary precautions to prevent injury to persons or damage to property from activities covered by the permit and shall avoid work within the highway travel lanes, shoulder and clear zone to the extent practicable. Whenever vehicles, equipment or work occupies a travel lane or shoulder, the permittee shall control traffic, including advance warning and regulatory signs, channelization and flaggers as appropriate, in accordance with the New York State Manual of Uniform Traffic Control Devices (Chapter V of this Title). The Department may require the permittee to submit, for Department approval, traffic control plans or typical traffic control device deployment schemes for any activities within travel lanes or the shoulder before issuance of the work permit. All work shall be performed in such a manner as to minimize hazards to the traveling public. No equipment, materials or work shall be located so as to interfere with highway use or the visibility of highway signs, intersections or interchanges and no materials shall be left overnight in the right of way.

(e) The permittee shall have a copy of the work permit, site plan and any traffic control plans available at the site during the performance of the work specified by the permit.

(f) The Department reserves the right of inspection of any work performed at any time.

(g) The permittee shall remove and properly dispose of all clippings, trimmings and debris to an area outside the right of way, unless otherwise specified by the permit.

(h) Permits pursuant to this Part shall not be issued to enhance the view of advertising signs erected on new sites after January 1, 1999, unless five years have passed since the construction of the sign. Permits shall not be issued for advertising signs that were erected with obscured visibility on new sites after January 1, 1999.
(i) Permits pursuant to this Part shall not be issued for work in the Adirondack Park, in the Catskill Park, or along highways designated as State parkways.

(j) Permits pursuant to this Part shall not be issued for work along highways designated as scenic byways pursuant to Article XII-C of the Highway Law if such designation was made on or before December 31, 1999. Permits issued for work along highways designated as scenic byways where such designation was made after December 31, 1999 shall be in accordance with the approved corridor management plan for the scenic byway.

§134.5 Performance Bonds and Deposits. The Department may require a performance bond and/or a deposit on an annual basis, or otherwise, if the failure of the permittee to complete the work specified by the permit would, in the Department’s discretion, necessitate completion of the work by the Department to restore the right of way to a condition, visual or otherwise, compatible with the condition pre-existing the issuance of the permit. Any deposit shall be returned when the work is satisfactorily completed. The performance amount or deposit shall be set by the Department, consistent with the scope and magnitude of the work involved. Failure to maintain a required performance bond immediately terminates a permit issued pursuant to this Part.

§134.6 Vegetation Control Requirements. The requirements set forth in this Section are intended to ensure that vegetation control is performed in a manner that is environmentally sensitive and, when completed, results in a highway right of way that is aesthetically pleasing to highway users. The Department reserves the right to impose additional requirements it determines are necessary to achieve these objectives or for public safety.

(a) All vegetation control performed pursuant to this Part shall be as specified on site plans accompanying the approved permit. Such site plans shall accompany the permit application and be approved by the Department and shall include such terms and conditions as deemed appropriate by the Department to preserve the scenic quality and conditions of the site of the vegetation control. The site plans shall conform to the following criteria:

(i) The scale shall be 1:250 (metric) or of greater detail.

(ii) Existing vegetation and vegetation to be controlled shall be identified, including size and species and condition.

(iii) Fixed structures, including, but not limited to, the roadway, utilities, the advertising sign structure, and drainage structures, shall be identified.

(iv) The topography, including drainage patterns, of the site shall be depicted, unless the proposed work is limited to pruning.
(v) Landscaping of the site, if necessary, shall be identified, including the size, location, number, and species names, as applicable.

(b) The permittee shall provide photographs demonstrating the condition of vegetation in the State highway right of way, relative to the advertising sign, following the completion of the permitted work.

(c) Any vegetation control performed shall be conducted in accordance with nationally recognized guidelines, such as the American National Standards Institute's *Pruning Standard, ANSI 300; the American National Standard for Tree Care Operations, ANSI Z133.1;* and the International Society of Arboriculture's *Tree Pruning Guidelines.* No tree may be controlled so as to result in the tree having an unnatural shape that is inconsistent with that of a well-landscaped or maintained example of its species. No topping of trees shall be conducted. The vegetation control of trees shall not include the removal of large branches or portions of the trunks of trees which would result in an unnatural character or balance of the tree.

(d) The use of chemical pesticides, herbicides or burning for vegetation control is prohibited.

(e) No vegetation control within the median of a divided highway may be permitted pursuant to this Part.

(f) No vegetation control shall be conducted that results in the exposure of an unvegetated area.

(g) Trees or other vegetation may only be removed as expressly authorized in a permit issued pursuant to this Part. Trees may only be removed:

(i) If the tree is dead or dying; or

(ii) If: 1) the tree has a trunk diameter of eight inches (204 mm) or less or the Department determines that removal of the tree would have no undesirable or adverse effect; 2) the Department determines that the tree directly and significantly interferes with the view of the advertising sign in the advertising sign's viewing zone; and 3) the Department determines that the removal of the tree or trees would not result in a significant change in the scenic quality of the view of the State highway right of way from the main traveled way, relative to the advertising sign. No more than six live trees with trunk diameters over six inches (152 mm) may be removed from the viewing zone of a sign (or multiple signs located on a common structure and facing in the same direction) pursuant to a permit issued pursuant to this Part. Stumps and roots shall be cut flush with the ground, except that stumps and roots in lawn areas shall be removed to at least six inches (152 mm) below ground level. Stump holes shall be backfilled.
(h) Damage caused by the permittee to any structure, landscaping, pavement, drainage facility, slope, shoulder or vegetation (planted or natural), unless expressly permitted by the Department, shall be promptly corrected by the permittee at no cost to the Department.

§134.7 Federal Requirements. Permitees are advised that Federal regulations, consents, notifications and/or approvals may be applicable for vegetation control in the State highway right of way. The Department may preclude or limit vegetation control if the Department determines that such control may interfere with the State's participation in Federal programs or receipt of Federal funding.

§134.8 Scenic and Environmental Preservation. (a) The Department may preclude or limit vegetation removal from the State highway right of way based upon environmental, soil and erosion control, soil stability, safety, scenic or historical concerns in order to promote compliance with Federal or State law or regulations or executive orders, including, but not limited to, the Environmental Conservation Law, the rules and regulations of the New York State Department of Environmental Conservation, the rules and regulations of the Office of Parks, Recreation and Historic Preservation, and regulations and policies protecting wetlands, park lands and scenic or recreational lands or areas.

(b) If the Department determines the vegetation displays outstanding features, such as a species in need of protection, exceptional age, landmark or historic status or value, unusual value due to appearance, or location, or special desirability to the State, a municipality, or community, such vegetation may be excluded from control pursuant to this Part.

§134.9 Final Approval. Upon the completion of work authorized pursuant to this Part, the permittee shall submit the photographs required by Section 134.6(b) of this Part. If the work has been performed in accordance with the permit and this Part, the permit shall be closed and any excess deposits shall be returned. Permittee shall be advised of deficiencies for immediate correction. Unfinished or unsatisfactory work which permittee refuses to correct may be completed by the Department or by permittee's bonding company. Permittee's obligation to defend and indemnify the Department as described in Section 134.4(c) of this Part shall survive final approval of the work.

§134.10 Violations. The control of vegetation on the State highway right of way not in accordance with a permit issued pursuant to this Part, or such vegetation control performed without a permit, shall constitute a violation of Section 52 of the Highway Law and shall subject the violator to such fines as provided therein and to liability for any damages, including but not limited to, the obligation to restore the site to an appropriately landscaped condition. Such violation shall be grounds for the denial of the violator's applications for permits under this Part and for permits for the affected
advertising sign under Part 150 of this Title.

§134.11 Permit Issuance Annual Limitation. (a) The Department may issue a maximum of 250 permits annually for advertising sign structures pursuant to this Part, unless an acute need for additional permits is identified by the Commissioner of Transportation pursuant to subdivision (b) of this Section.

(b) The annual limitation may be increased upon a determination by the Department that the additional annual permits for vegetation should be issued on an individual basis upon demonstration of acute need.

Subparagraph (d), entitled "Miscellaneous Construction", of paragraph (V), entitled "NONUTILITY WORK", of subdivision 5 of Section 126 of Title 17 of the Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new clause 7 to read as follows:

7. Vegetation Control for Advertising Signs

<table>
<thead>
<tr>
<th>Base Fees</th>
<th>Insurance Fee</th>
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<tbody>
<tr>
<td>$150.00 per advertising sign structure</td>
<td>$75.00</td>
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Subparagraphs (7) and (8) of paragraph (e) of subdivision 15 of Section 150 of Title 17 of the Compilation of Codes, Rules and Regulations of the State of New York are amended and a new subparagraph (9) is added to read as follows:

(7) whenever the sign structure is being maintained without the consent of the owner of the property or [his] the owner's duly authorized agent; [or]

(8) whenever a sign status has changed under the provisions of the outdoor advertising control statutes or the provisions of this Part; or

(9) whenever the Commissioner of Transportation determines that a permittee authorized or conducted vegetation control, as defined in Part 134 of this Title, without a permit issued pursuant to Part 134 of this Title or in violation of the conditions or stipulations of such a permit.

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