



INDIANA DEPARTMENT OF TRANSPORTATION

Driving Indiana's Economic Growth

Memorandum

February 5, 2009

CONSTRUCTION MEMORANDUM
09-02

TO: District Deputy Commissioners
Technical Services Directors
District Construction Engineers
District Testing Engineers
District Area Engineers
Project Engineers/Supervisors

FROM: Mark A. Miller, Director *MM*
Division of Construction Management

SUBJECT: Potholes in Work Zones

The Office of the Attorney General (AG) recently requested a meeting with INDOT Construction Management to discuss potholes in work zones. The Special Investigations group of the AG's office stated that they receive approximately 2,500 claims against the State from the traveling public each year where their vehicle (tires, rims, etc.) was damaged because of hitting a pot hole on a road. They stated that the first thing they usually have to determine is whether the pot hole was inside a construction work zone or not. If inside a work zone, they then inform the plaintiff to deal with the Contractor's insurance company and also notify the Contractor that a damage claim has been filed. The problem or concern they seem to be having is that the contractor will inform the AG's office that they were never directed to patch or repair the pot hole by INDOT.

At the meeting, we discussed the different insurance policies that the Contractor must provide to perform INDOT work and we informed the AG's office of the various specifications in our construction contracts that deal with problems of this nature. Specifications such as: 104.04, 105.13, 105.14, 107.01, 107.17, 107.18, and 107.19. All these specification address in some manner that the Contractor is responsible for keeping the roadway being used by the traveling public maintained in a reasonably safe condition. The only reference to the word "directed" is in specification 105.13 which deals with special maintenance. That specification states, "Once construction operations have begun within the project limits, and through traffic is required to be maintained, the Contractor shall repair areas as directed which require special maintenance." Special maintenance was placed in our specifications several years ago to help reimburse the contractor for repairs to the pavement surface which were not the fault of the Contractor's operations.

If a Contractor's forces or equipment have touched the pavement in any manner other than driving over it, then the repair was to be not paid for separately but included in the Contractor's maintenance of traffic pay item. If the Contractor's forces or equipment had not performed work on the pavement where a pot hole developed, INDOT would then direct them to repair the hole and pay for it as extra work. In either case, the roadway MUST be properly repaired and maintained until the project is accepted.

Knowing all the above, this office agreed to send out this memorandum to the field to stress how important it is that the PE/PS drive their project daily to be sure that pot holes are not developing and if some are found, they must be repaired quickly. The Contractor should not have to wait for INDOT to direct them to repair a hole. The language of the contract specifications require the Contractor to keep the roadway maintained. The only discussion that should take place is how the repair costs are covered.

It probably would be a good thing to mention at the preconstruction conference of a project, the concern the AG's office has about pot holes and when the pot hole repairs are paid for separately and when they should have been part of the Contractor's maintenance of traffic item. It also should be noted here that specification 105.14 requires that the Contractor repair problems to the pavement within 24 hours once notified of the problem. This 24 hour time frame is the same time that our maintenance forces have to repair a problem and the AG's office relies on that time frame when considering reimbursement to a filed damage claim.

DAK:dak