



## 6-35.1 General

Section 84.20 of the Wisconsin Statutes requires the department to repair damages to county or local roads caused by use as a detour designated by the department or damages due to hauling materials used in the maintenance or construction of the state trunk highway system. The statutes require the department to maintain the roads while the hauling is in progress.

The department may arrange to have the necessary maintenance and repair work performed by county forces or as extra work under an existing contract or include it as part of the work to be performed under the contract for the improvement. As a matter of policy, when the volume of material to be hauled under a contract is large and/or local conditions and experience indicate that considerable haul road damage may result, the bid item Maintenance and Repair of Haul Roads will be included in the contract.

The department has no authority to designate which public roads may be used for hauling materials to a project, or to limit the hauling to a particular route. The contractor is free to haul on any route they choose, subject to restrictions imposed by the contract provisions on hauling on any roadway carrying traffic through the project.

If the haul road item was not in the contract, the contractor could potentially use one route until it was broken up or otherwise damaged, then switch to another route. The contractor would cause an unreasonable amount of damage to local roads that the department would be obligated to repair. This was often the situation before the repair of haul roads was made a part of the contract work, and it was the major factor in the department's decision to make the maintenance and repair of haul roads a bid item.

## 6-35.2 Administration

Before hauling begins the engineer should contact the local road authorities responsible for the roads anticipated to be used for hauling and explain the type, amount, frequency, and duration of the hauling, together with the routes tentatively chosen by the contractor. [Standard spec 107.2](#) requires the contractor to notify the engineer 3 business days in advance of hauling over any road off the state trunk highway system. This will allow the engineer adequate time to notify the local road authorities of the haul route location.

Under the provisions of [standard spec 107.1](#), the contractor must comply with all local laws, ordinances, and regulations. If the engineer becomes aware that the contractor has violated a limitation or condition on the use of a local road, such as a load limit, during hauling, the engineer will inform the contractor of the violation and require future conformance with the limitation or condition under the terms of the contract. The engineer should also notify the local road authority of the violation.

Regardless of whether the contract contains the item of Maintenance and Repair of Haul Roads, the condition of any haul roads for which the department is obligated to maintain and repair must be determined before the hauling begins. At the time the contractor gives the engineer 3 business days written notice of intent to haul materials over local roads as required by [standard spec 107.2](#), the engineer must make an inspection of the road, taking note of its pertinent features such as condition, width, and thickness of surfacing; condition of culverts and bridges; and similar information as necessary to subsequently determine the extent of the department's responsibility for damages. "Before" and "after" photographs and videos should be taken for the project records. The inspection should preferably be made in company with the local authority responsible for maintenance of the road and with a representative of the contractor.

Under the specifications, the contractor bids a price for the maintenance and repair of haul roads. The contractor knows the source of the material when they bid the job, and can anticipate the amount of damage that might occur on the various haul routes available. The contractor may then elect to stabilize, reinforce, or strengthen existing facilities in order to prevent or minimize damage; they may elect to haul over an alternate route that may be less vulnerable to damage; or they may elect to haul possibly farther distances on a state trunk highway on which the contractor would not be responsible for damages.

Payment is contingent solely upon the condition of the road being equal to or better than the condition before work under the contract began. The contractor incurs cost for whatever they do, or do not do, to ensure the final condition of the haul road. The department pays the full contract amount regardless of how much maintenance or repair work was done, or even if the contractor did not haul on the designated road at all.

During the course of hauling, the engineer has the authority to make periodic inspections of the haul roads. The engineer determines what maintenance and repair steps are necessary to prevent further damage or to restore the road to a satisfactory state of serviceability for other users of the road.

No work must be undertaken to maintain, strengthen, repair, or restore haul roads at the direction of the engineer, or by the contractor on the contractor's initiative, without reasonable notice to local officials having jurisdiction. Concurrence of the local authority in the adequacy of the maintenance and repairs should be solicited, but is not required. However, in the case of repair by a contractor under the bid item, it is the engineer solely who must decide the amount and quality of materials required and the type and amount of maintenance and repair work to be performed.

The engineer should not be influenced by the whims or desires of local officials in the determination of the nature and extent of the contractor's obligation under the contract item, or when it has been satisfactorily fulfilled. The contractor should not be required to obtain written acknowledgement of satisfaction, or "releases," from local officials as a prerequisite to acceptance of the contract.

At the end of hauling, the engineer must again inspect the road, along with a representative of the local authority in charge of maintaining the road, and determine what work is necessary to restore the road to a condition equivalent to that which would have prevailed had hauling not occurred. If repairs or restoration are needed, the engineer will order the repairs to be performed by the contractor. If the contract does not contain the Maintenance and Repair of Haul Roads bid item, the engineer should write a change order to have the contractor do the required repairs or request approval from the region to have the local authority perform the work by service and supply agreement.

The haul road location must be shown in the project records together with the detailed records. The Item Daily Record will be the official accounting record to substantiate usage and justify payment.

### **6-35.3 Alternatives to Restoration of Haul Roads by the Contractor**

#### **6-35.3.1 Waive Obligation in Lieu of Payment to Local Maintaining Authority**

Under certain circumstances, when the contract contains the item of Maintenance and Repair of Haul Roads, and when considered advantageous, expedient, and agreeable to all concerned, the contractor may be relieved of the actual performance of haul road repairs. This arrangement would require a negotiated settlement between the contractor and the governing body in charge of the haul road, representing the contractor's obligation under the item.

The agreement must have the prior approval of the department and be formalized by contract change order. The change order must be accompanied by a resolution executed by the town board, county highway committee, or the appropriate governing body of a city or village, as the case may be, acknowledging receipt of payment from the contractor and specifically agreeing that the department has fulfilled its obligation under Section 84.20 of the Statutes.

The contract change order would require the municipality's release of the department, and would waive any further maintenance or repair of the haul road by the contractor in consideration of payment made to the municipality. The change order would provide no change in the amount to be paid to the contractor under the haul road item. It should be understood, and a definite statement to that effect should be made when requesting prior approval to enter into this arrangement, that the amount of the settlement between the contractor and the municipality, whether strictly monetary or in terms of materials or services, must be equitable and reasonably related to the cost which would otherwise be incurred by the contractor, and the amount bid for the haul road item is not a criterion or given any weight in this connection.

Conditions under which it may be expedient to relieve the contractor of repairs include the following:

- When the municipality is in a better position than the contractor to perform the specific work in a timely manner.
- When the responsibility for maintenance and repair or restoration of a particular road may be divided between two or more contractors.
- When immediate restoration would not be feasible because of the seasonal factors or because of anticipated further hauling under succeeding construction stages.
- When the municipality desires to provide a betterment incidental to needed restoration work.

#### **6-35.3.2 Service and Supply Basis from Maintaining Authority**

The contractor can arrange for equipment or services or can purchase materials on a service and supply basis from the municipality responsible for normal maintenance of the road. This is the only type of work under a private contract that may be performed by public forces or with publicly owned equipment. This work would not be considered subcontracting, since it is on the basis of actual cost, but any labor furnished to the contractor in this connection would be subject to all of the wage and hour provisions of the contract.

#### **6-35.3.3 Not Acceptable Alternative**

Private negotiations between the contractor and local officials in which a "release" is obtained and presented in order to secure acceptance of the contract without performing haul road repairs, thereby shortcutting any of the

steps outlined above, are not acceptable.

#### **6-35.4 Non-STH System Projects**

The specification does not limit the applicability to WisDOT-administered projects on the STH system or connecting routes. If the item is in the contract it is applicable.

If a contractor performing work on a local road uses another local road as a haul road, and the hauling damages the haul road, WisDOT as the project administrator has no responsibility to seek correction or restitution from the contractor on behalf of the local authority whose road has been damaged.