

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

VEGETATION MANAGEMENT AT OUTDOOR ADVERTISING SIGNS

RESTORE SIGN VISIBILITY POLICY (RSVP)

1) AHTD changes are in **Red**

2) The Arkansas Outdoor Advertising Association comments/changes are in **Green**

PURPOSE

The purpose of this policy is to establish procedures whereby sign owners may obtain permits from the Arkansas Highway and Transportation Department to restore the visibility to their signs from adjacent State Highways.

DEFINITIONS

Conforming Sign is a lawfully erected sign that complies with all **current** local and State laws and regulations pertaining to the erection and maintenance of signs, **regardless of whether the sign has a Class A or Class B permit.**

Legal Nonconforming Sign is a lawfully erected sign that does not comply with all **current** local or State laws and regulations pertaining to the erection and maintenance of signs effective after the lawful erection of the sign, **regardless of whether the sign has a Class A or Class B permit.**

Illegal Sign is a sign that was erected, or is being maintained, in violation of local or State law or regulations pertaining to the erection and maintenance of signs, and which does not qualify as a legal nonconforming sign.

On-Premise Sign is a sign advertising those products or services available at the sign site, including "for sale or lease" signs located at the property they advertise.

Off-premise Sign is a sign advertising those products or services not available at the sign site.

Vegetation Control is the mowing, "bush hogging", cutting, trimming, pruning, and/or selective removal of vegetation on State Highway rights of way.

POLICY

It is the policy of the Arkansas State Highway and Transportation Department to allow, by Restore Sign Visibility Policy (RSVP) permits, the mowing, bush hogging, cutting, trimming, pruning, and/or selective removal of vegetation on State Highway rights of way to restore the visibility of signs from State Highways where such visibility has been diminished from the original erection of the signs. This policy applies to the visibility of legal, permitted, on-premise and legal, permitted, off-premise signs, both conforming and nonconforming, and not to illegal signs. RSVP permits will not be issued in relation to illegal signs, for signs erected ~~with limited no, visibility. or to sign owners with other illegal or abandoned signs.~~ See Comment 1.

1. RSVP permits authorize vegetation control only on that portion of State Highway right of way that abuts the tract of land on which the Permittee's sign is located and/or abuts tracts where owners agree to such control.

2. RSVP permits shall only be considered for legal, ~~currently~~ permitted signs that have ~~had a valid permit for the last five (5) consecutive years.~~ a minimum of 12 months.

~~3. RSVP permits authorize vegetation control only when the city or county with jurisdiction concurs with the RSVP policy.~~ See Comment 2.

4. RSVP permits must be obtained for each sign location at which vegetation control will occur, and ~~must be renewed in a two-year~~ five-year cycle in July of even numbered years.

5. The vegetation control area shall not exceed more than ~~400 feet~~ 500 feet along the highway from the viewable face(s) of the advertising device and be cleared to along the line of sight. See Comment 3.

6. RSVP permits authorize vegetation control only in accordance with accepted landscaping and horticultural principles. All work will be performed in a professional manner, and cuttings and other debris are to be removed at the time the work is performed.

7. RSVP permits may authorize the removal of dead or diseased trees. Trees that cannot be mowed or bush hogged may be trimmed or pruned in accordance with paragraph 6 provided the work will not permanently damage or destroy the trees, or weaken the condition of the trees so that they are susceptible to disease or insect infestation. Only in those cases, where the owner of the sign is also the owner of the tract of land on which the sign is located, or if the area referenced in paragraph 6 extends in front of adjacent property under different ownership and the owners of other abutting tracts agree, may living, non-diseased trees which cannot be mowed or bush hogged be considered for removal. In these cases,

mitigating landscaping may be required to compensate for the tree removal. In no case will historic trees, or trees of significant landscaping and aesthetic value be removed, including those that were planted as a part of public or private highway beautification or transportation enhancement project.

8. Access to sites adjacent to Interstate and other controlled access highways must be gained without using the main travelway of the highway. If access to the site is restricted by a fence, then a gate may be installed to provide access **for right of way mowing only**. ~~Gates will only be permitted after notifying the Federal Highway Administration and if the restoration cannot be performed with the use of wheeled equipment. Cutting fences and leaving openings is not allowed, nor is the destruction of Department fences.~~ Any gate installed shall remain locked when the vegetation control is not underway. ~~The gate shall not be used for routine billboard maintenance such as changing sign messages. Using gates for sign maintenance or roadway access, or the destruction of AHTD fencing will result in RSVP permit revocation.~~

9. Vegetation control at legal, permitted signs will be allowed only at locations where the advertising sign installation preceded the obscuring growth. Vegetation control shall not be used to provide visibility where none existed at the time the sign was erected or where no visibility exists at a proposed sign location. Only minimum vegetation control necessary to retain visibility will be allowed.

10. Vegetation control will not be allowed at legal, nonconforming signs that are within 500 feet of National Parks, State Parks, County Parks or City Parks; Wildlife Management Areas or cemeteries.

11. The Department will grant **an RSVP** permit for legal, nonconforming sign located within the city limits of a municipality when the sign meets all State requirements but has become nonconforming only because of city or county zoning or sign code changes since the erection of the sign.

~~12. The Department will only grant **an RSVP** permit for a legal, nonconforming sign when the sign owner has designated a legal, nonconforming sign of at least 200 square feet, and surrendered its State Billboard Permit to the Department for cancellation. Department personnel will inspect the designated sign prior to its removal and, if accepted, the sign owner will be required to remove the designated sign at the sign owner's expense before vegetation control activities may begin. See Comment 4.~~

13. At locations which have no State-erected barrier between the State Highway right of way and the adjacent property and where mowing has been previously allowed by business owners or sign owners without **an RSVP** permit, mowing will be allowed to continue without **an RSVP** permit.

14. No vegetation control will be allowed within median areas of divided highways.

15. Loblolly Pine and all species of Oak Trees having outside bark diameter of more than six (6) inches , measured ~~one~~ six foot above ground level, shall not be removed, ~~nor shall any limbs with an outside bark diameter of more than six (6) inches be removed unless the Permittee mitigates the removal as set forth in Paragraph 18. Dead or diseased trees, as noted in Paragraph 7, may be removed if specified in the RSVP permit.~~

16. Vegetation control should not leave large, open spaces in the general outline of the tree.

17. No topping of trees will be allowed.

18. RSVP permits granted for vegetation removal may require mitigation in the form of replacement plantings. ~~as determined by the Department, at any time during the permit life. The initial cost and maintenance of these plantings shall be the responsibility of the Permittee.~~ Mitigation resulting from the removal of trees with a diameter greater than six (6) inches, as set forth Paragraph 15, will mandate the Permittee to plant three (3) trees with a diameter of at least two (2) inches at ground level in a state park or other area approved by the Department. See Comment 5.

19. Stumps shall be cut or ground flush with the ground and treated with an EPA-approved herbicide immediately after the stump is cut. ~~Only the stumps are to be treated. The use of herbicides or chemicals on the grass or ground cover is not allowed.~~

20. The permitted vegetation control shall result in a height of the remaining vegetation that is relatively consistent with that of adjacent areas along the highway right of way. ~~All mowing or cutting must be accomplished with hand tools or wheeled machinery—only~~ or tractors not exceeding (3) three tons. ~~No crawler to track equipped machines exceeding (3) tons are allowed.~~ Grass and weeds may be mowed, but surface growth of at least four (4) inches must be left for erosion control, Digging, scraping, bulldozing, clear cutting, or “scalping” the ground is not allowed.

21. The Permittee shall be required to carry liability insurance with a limit of at least \$ 1 million per occurrence.

22. A performance bond of at least \$ 1000 per site shall be required to ensure the restoration of highway right of way. In lieu of an individual performance bond for each site, sign owners may choose to post a standing performance bond in an amount of at least \$ 1000 per site up to a maximum of \$ 50,000.

23. The Permittee fully agrees to hold harmless the Arkansas State Highway Commission and the Arkansas State Highway and Transportation Department, and their officers, agents, and employees from any and all damages of any nature to any person or property due to any performance or non-performance of any work authorized by the permit.

24. The Arkansas State Highway and Transportation Department may, with good cause, deny, revoke, or amend any RSVP permit. If a permit is revoked the permit holder has a right to request an Administrative Hearing.

25. All RSVP permits must be renewed in ~~two-year~~ five-year cycles beginning in July 2011. All RSVP permits must be renewed at the same time regardless of the original date of issue. The permits will allow cutting twice per year, with a maximum of four times in a two-year period. The Permittee must notify the Department's Beautification Section a minimum of three working days before beginning work. The Department, at its option, may arrange to have an inspector on site while work is being performed.

VIOLATION OF PERMIT

~~State Billboard Permits may be revoked or a~~ A fine not to exceed \$1000.00 may be levied, subject to the right to an Administrative Hearing, if RSVP permit provisions are violated, or if vegetation control activities are performed before issuance of an RSVP permit. In addition, ~~to the revocation of State Billboard permits,~~ mitigating landscaping and/or vegetation restoration may be required by the Department. All costs of any damages to State property and/or right of way shall be paid by the Permittee. Violation of RSVP permit policy may result in denial of future requests for RSVP permits. A second violation within twelve (12) months of the first violation shall result in a fine not to exceed \$5000.00.

~~The sign owner must also provide a statement, signed and dated, agreeing to abide by the terms of the RSVP permit. The sign owner must also agree to remove the sign at no cost to the Department if the terms of the RSVP permit are violated by either the sign owner, landowner, or third parties contracted to carry out vegetation control activities. See Comment 6.~~

PROCEDURES

1. RSVP permits are issued by the Arkansas State Highway and Transportation Department's Environmental Division in coordination with the District Engineer for the highway district in which the sign site is located.
2. Individual RSVP permits must be requested for each sign site and include:

- a. An application fee (non-refundable) made payable to the Arkansas State Highway and Transportation Department in the amount of \$ 10 per each 100 feet (or portion thereof) to be cleared along the highway.
- b. A performance bond in the amount of at least \$ 1000 per site issued or counter-signed by a resident Arkansas agent, or in the form of cash or cashier's check. In lieu of a performance bond for each site, a standing performance bond in the amount equal to at least \$ 1000 per site up to a maximum of \$ 50,000 may be posted.
- c. Proof of liability insurance with a limit of at least \$ 1 million.
- d. State Highway number.
- e. A specific written proposal of the vegetation control work to be performed on the right of way to restore the visibility of the sign, including the name, address, telephone number, and signature of the sign owner, and the location of the sign site and State Billboard Permit number.
- f. Type of vegetation control to be performed.
- g. 8" x 10" photograph(s) of the State Highway right of way vegetation interfering with the view of the sign and which is the subject of the RSVP permit request.
- h. A drawing of the right of way where the work is to be performed indicating the vegetation to be mowed, bush hogged, cut, trimmed, pruned, and/or removed on the right of way. The drawing shall also show the length of frontage along the right of way boundary of tract of land on which the sign is located.
- ~~i. A signed statement(s) by the owner(s) of the land at the sign site or the owner(s) of other abutting tract(s) of land indicating concurrence with the proposed work on that portion of the right of way abutting the landowner's tract(s).~~
- ~~j. A signed statement, from the city or county official with jurisdiction, indicating no objection to the proposed vegetation control work.~~
- ~~k. A signed and dated statement, from the billboard sign owner or agent, agreeing to abide by the terms of the RSVP permit. The sign owner will also agree to remove the sign at no cost to the Department if the terms of the RSVP permit are violated by the sign owner, landowner, or third parties contracted to carry out vegetation control activities. See Comment 7.~~

3. For requests that meet the terms of this policy, the Environmental Division will notify the District Engineer to issue **an RSVP** permit. For requests that do not meet the terms of this policy, the Environmental Division will respond accordingly. A permit application must be issued or denied within 45 days.

4. The RSVP Permittee will advise the Department's Beautification Section of planned vegetation control activities at least three (3) working days prior to beginning work. The Department, at its option, may arrange to have an inspector at the site while work is being performed.

Comments to the Restore Sign Visibility Policy (RSVP)
by the Arkansas Outdoor Advertising Association (AOAA)

Comment 1: The AOAA objects to the last clause in the opening paragraph of the Policy, which would deny RSVP permits “to sign owners with other illegal or abandoned signs”. The Association has no objection to a denial to cut vegetation in front of illegal signs but believes the review process should be based on the sign in question (i.e., the sign for which a vegetation cutting permit is requested), not on some “other” sign in the outdoor advertising company’s inventory of signs. The “other” sign may be subject to a dispute that is in process, either administratively or in the court system, and such “other” sign should not hold up an application for a RSVP permit for a sign that meets the criteria set forth in the Policy.

Comment 2: The AOAA objects to paragraph 3. There is no reason to involve a city or county in the RSVP process. The property at issue involves State right of way property. Involving the city and county will slow down the application process and will allow the city or county to have the final say if they object. There is no legitimate reason to involve either of them.

Comment 3: The suggested change from 400 feet to 500 feet simply reflects the spacing requirement between billboard signs on the interstate.

Comment 4: The AOAA objects to paragraph 12 in its entirety. The proposed paragraph results in a taking without just compensation. A company should not be forced to give up an asset it owns for a brush cutting permit, especially without receiving payment for the sign it is being forced to no longer lease and forced to remove. This proposal is particularly unfair for small business owners who do not have thousands of locations like the national outdoor advertising companies do. The Association is not familiar with any other vendor with which the Department deals or contracts with being forced to give up an asset in order to obtain some sort of permit or contract from the Department or the State. This unfair provision appears to be targeted in a discriminatory manner only against the outdoor advertising industry.

Comment 5: The AOAA’s suggested language in paragraphs 15 and 18 set forth a reasonable form of mitigation, improved business operation, and environmental enhancement. A viewable and functioning sign helps local businesses and results in additional revenues for the county. Replanting will result in more trees and improve safety for the traveling public by eliminating dangers when vehicles leave the roadway. Mitigation as outlined in the revised paragraphs 15 and 18 solves the issues of all parties concerned. The proposed wording is also quite similar to what the Department requires of utility companies in paragraph 2.3 (3) of its Utility Accommodation Policy.

Comment 6: The AOAA objects to the Department's plan to revoke "state billboard permits" if "RSVP permit provisions are violated". This draconian provision doesn't even limit itself to the billboard in question. It purportedly allows multiple permits to be revoked because the language refers to "state billboard permits" in the plural form. Further, the proposed penalty far exceeds the possible violation. To use an analogy, it is ridiculous to contend that a traffic violation, such as speeding, should result in the loss of the title to one's automobile. That, however, is precisely what is proposed in the section of the RSVP Policy entitled "violation of permit". In addition, the complete loss of a company's asset, without just compensation, would occur without due process – no hearing and no court procedure. This provision is patently unfair.

The problem is further compounded by the fact that an outdoor advertising company could lose an asset by the actions of other parties, specifically the landowner or third parties involved in vegetation cutting. Clearly, the outdoor advertising company has no control over those entities or individuals. If the Department believes those entities are involved in improper cutting, then the Department should fine those entities who are responsible. A reasonable fine for a violation is a better way to handle any problem that might arise rather than an unjust taking or forfeiture.

Comment 7: The Department's plan to "take" a company's asset without compensation is unfair and unjust. It is unimaginable that the Department or any of its personnel would be agreeable to the Department losing any of its assets or any personal assets of its employees because it ended up in a dispute with some vendor over a contract, or some property owner, or some other agency. Likewise, the Department's proposal is not fair here either. For additional discussion, see Comment 6.