



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
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COMMISSIONER

C. F. GEE
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May 31, 2000

Memorandum

Subject : Guidance in the Use of Plan and Contract General Notes

To: Mr. J. T. Mills, Location and Design Engineer
Mr. M.T. Kerley, Structure & Bridge Engineer
Ms. Ilona Kastenhofer, Traffic Engineering
Mr. Dan Liston, Maintenance Division
Mr. E. T. Robb, Environmental Division
Mr. S. A. Waymack, Right of Way Division
District Maintenance Engineers
District Construction Engineers

It has recently come to the Construction Division's attention that certain contract and plan general notes have been challenged by the contracting industry as lacking clarity in their intended scope and application. To be more specific, the application and resulting interpretation of the expression "*such as*" in VDOT contract documents has been argued. Listed below is one such example of a standard plan note used routinely by the Location and Design Division.

The cost of removal of concrete items *such as* those listed below shall be included in the cost of regular excavation: existing curb and gutter, existing drop inlets, existing concrete pipes;

It has been argued that the term "*such as*" clearly limits the work to the list that follows, based on the principle that when general and specific words are grouped together, the general words will be limited by the specific and when "*such as*" is used, the included items are limited to only the items listed.

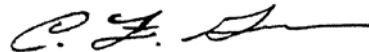
After consultation with the Attorney General's Office concerning this matter, I offer the following comments concerning this matter for your future guidance.

The term "*such as*" may be safely used, followed by a list of items, without limiting the pay items to the specific items listed, if the language of the standard note is modified somewhat. Additional language is needed to clarify the type or class of item intended, either in the introductory phrase provided, or in the

list that follows, by adding a more general, descriptive item as the last item in the list. The problem with the example listed above is that it does not provide enough guidance as to the nature of the type or class of items listed. The introductory phrase refers to "concrete items" (very broad), then lists three specific items of "existing" concrete (pretty specific). There is not enough guidance to generalize and determine what other items are in the type or class intended. If a fourth item said, " all other existing concrete items located in the area to be graded," there would be sufficient indication as to what other items may be included. The intent should be to use a general, catch-all phrase to make the list more inclusive, not to limit the list to the specific items preceding it. Another possible alternative would be to modify the initial phrase and eliminate "such as". For example: " The cost of removal of all existing concrete items located in the area to be graded, including but not limited to, the following: (then list the three items).

In summary, individuals involved in the development of plans and other contract documents should use care to insure when using the term "such as", be sure to use a catch-all clause to clearly establish descriptive parameters as to the type and nature of any other items intended. If this is not possible, then the term "such as" should not be used, and alternate wording similar to that illustrated in the above example should be used.

I will be happy to entertain any comments or questions that you may have concerning this memo. I would ask that this memorandum be forwarded to all District contract administrators.



C. F. Gee
Construction Engineer

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C:

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