

LIQUID FUELS FUNDS: Municipalities Rely on State Funding to Pay for Local Road and Bridge Expenses

Every year, municipalities depend on liquid fuels funding from the state Department of Transportation (PennDOT) to construct and repair roads and bridges and pay for related expenses. Accepting that allocation means knowing all the rules in place for municipalities and following them to the letter.

Municipalities receive their yearly allocation from the Liquid Fuels Tax Fund beginning the first business day of March each year. The money can only be used for certain expenses, and municipalities must follow strict reporting requirements or risk having to repay their Liquid Fuels Tax Fund account for any misused liquid fuels funds.

Reporting Requirements for Eligibility

Liquid fuels fund (LFF) allocations come from the state's oil franchise tax. Payments to municipalities are distributed based 50 percent on locally owned road miles and 50 percent on population from the latest decennial census. Beginning in 2014, municipalities saw the amount of liquid fuels money they receive rise, thanks to Act 89 of 2013, which provided a gradual increase in the monies over the next five years. PennDOT estimates that local government payments will have jumped by more than 60 percent by 2018, the end of that five-year period.

To be eligible to receive the annual liquid fuels allocation by March 1, a municipality must do the following:

- Submit all required annual reports to PennDOT, including MS-965 (Actual Use Report of State Funds), by **January 31**. MS-965 requires the following information be provided:
 - detailed reporting of how LFFs were spent during the preceding year;
 - documentation that major equipment purchases did not exceed 20 percent of the annual allocation and verification of any unused equipment carryover;
 - expenditures that the municipality has planned for the current year, including tax levies for roads and general municipal purposes; and
 - certification of bonding for the municipality's secretary/treasurer.
- Make deposits and payments in accordance with the Liquid Fuels Tax Act and its regulations.
- Ensure all reimbursements to your Liquid Fuels Tax Fund account, due to findings in either audit reports performed by the auditor general or monitoring reviews conducted by PennDOT's financial consultants, have been made, and proper documentation has been submitted to PennDOT.
- File the following annual reports with the Department of Community and Economic Development:
 - Report of Elected and Appointed Officials – due **January 31**.
 - Survey of Financial Condition – due by **early February** each year.



Liquid fuels funds may be used for maintaining and repairing roads as long as a municipality obtains project approval first from PennDOT.

Acceptable Expenditures

Municipalities must make sure the LFFs they receive are used only for allowable expenses. Publication 9, Chapter 2, provides examples of acceptable expenditures for LFFs. The Liquid Fuels Tax Act authorizes municipalities to use the funding for the following expenditures:

- Maintenance, repair, construction, or reconstruction of **public roads, streets, alleys, courts, and ways, including bridges, culverts, and drainage structures** for which townships are legally responsible.
- Maintenance, repair, or construction of **curb ramps or curb cuts** to provide access to individuals with disabilities.
- **Road materials** for the maintenance, repair, construction, or reconstruction of public roads, streets, alleys, courts, and ways that are approved by PennDOT and are in accordance with PennDOT Publications 408 and 447. This includes new products for low-volume roads with prior PennDOT approval.
- **Guiderail and pipe** in accordance with PennDOT specifications.
- Purchases of **surplus equipment** from municipal, state, and federal governments.

- Purchase of **materials and equipment from state contracts, councils of governments, or other purchasing consortia.**
- **Advertising costs** to comply with bidding requirements for liquid fuels projects, materials, and equipment purchases.
- **Legal and engineering fees** required for road and bridge projects and traffic and engineering studies in accordance with PennDOT Publication 212. (*Engineering fees in excess of 10 percent of the total project cost must be documented and justified to PennDOT.*)
- Acquisition, maintenance, repairs, and operation of **traffic signs, street signs, traffic signals and control systems, and lane and crosswalk paintings and markings.**
- **Electricity for traffic signals and streetlights.** (*If the municipality levies a tax for street lighting, liquid fuels funds can only be used to cover costs exceeding this revenue.*)
- **Debris removal** from the roadway and its gutters and shoulders and brush removal to improve sight distance.
- **Salary and benefit costs for road crews** or employees performing work on municipal roads, which **MUST** be documented with daily time records (MS-907 or its equivalent).
- **Construction of salt storage buildings**, not including plumbing, heating, or electricity. This includes multimunicipal salt storage sheds.
- **Bank loans and bond issues** exclusively for highway/bridge purposes, including payment of interest and sinking fund charges.
- **Computer hardware, software, and related training**, up to \$1,000 per year.
- The purchase, repair, and maintenance of **major equipment, such as road machinery**, that requires price quotes or bids according to the municipal codes. No more than 20 percent of a municipality's total annual liquid fuels tax allocation may be used for the purchase of road equipment.
- **Minor equipment** that does not require price quotes or bids, equipment rentals, and repair parts for road maintenance equipment.

Approved Products

Municipalities may use liquid fuels funding to purchase products listed in Publication 447, *Approved Products for Lower-Volume Local Roads*, and Bulletin 15, *Qualified Products List for Construction*. Such products have been approved by PennDOT and are in accordance with PennDOT Publications 447 and 408, *Construction Specifications*.

Publication 447 – Products and processes listed as approved for lower-volume local roads (this includes municipal or county-owned roads with light to moderate traffic and local-access highways or Type E roads) have met the Bureau of Municipal Services' specification requirements and are eligible for liquid fuels funds on use of municipal maintenance and construction projects.

To obtain approval for a paving or construction project using LFFs, a municipality must contact its district Municipal Services representative, who will evaluate the project and complete an MS-329, Project Approval Form.

Bulletin 15 – This publication provides a listing of prequalified materials that are eligible for use on PennDOT construction projects as well as a listing of producers who are certified as able to comply with a material's specifications, which are provided in Publication 408. Although Bulletin 15 covers qualified products approved for major roadways, such as interstates, materials and manufacturers listed in this document may also apply to municipal roads.

A product listed in this document is accepted by certification on PennDOT construction projects and may only be used in its intended application. Some products may have been given provision or conditional approval, which means they are undergoing further monitoring and the manufacturer must contact PennDOT before using such a product on a project. PennDOT reserves the right to immediately remove such products from Bulletin 15.

When seeking bids, municipalities should include the requirement that products and materials used in a project must meet LFF criteria. Upon delivery of the product, the supplier must provide a certificate of compliance (CS-4171) vouching that the material has met PennDOT specification requirements. Municipalities should keep this certificate on file so that it's accessible during a LFF audit.

Qualifying New Roads

Whenever a municipality's road mileage increases, the municipality may be able to increase the LFFs it receives from PennDOT as long as the new road meets certain eligibility requirements.

Here are the steps for qualifying a new road and adding it to a municipality's liquid fuels inventory:

1. The municipality **adopts an ordinance or resolution** that designates the new road as a public highway and must file this document, along with a plot plan or survey showing the road location, in county court.
2. The municipality **sends a written request** to its PennDOT district office by **September 1** of each year to add the new mileage to its liquid fuels inventory. The municipality must include two copies of the following documents:
 - a deed of dedication of roads;
 - a plot plan or survey showing the exact location of the road; and
 - the ordinance or resolution enacted by the municipality's governing body accepting the road along with proof that the ordinance or resolution was recorded in the county courthouse. Proof should include the court seal, page, and document number.
3. PennDOT **reviews the request** to qualify a road for LFFs. To qualify, a road must meet the following criteria:
 - have the capacity to be traveled safely at 15 miles per hour;
 - have a minimum 33-foot right-of-way and a 16-foot cartway width (*the cartway is the traveled portion of the road, not including the shoulder*);
 - have a minimum length of 250 feet;
 - be connected to an existing liquid fuels road or state highway; and
 - be a type-10 road, unimproved road, prepared-earth road, type-20 road, hard-surface road, prepared-earth road with a stabilized

New Product Evaluation Process

To evaluate and approve new products or processes for Publication 447, *Approved Products for Lower-Volume Local Roads*, PennDOT uses the following process:

1. A manufacturer submits an **application** (CS-4170) through the PennDOT website.
2. PennDOT's Bureau of Project Delivery reviews the application and determines if a specification for the product or process exists. If not, it surveys the Bureau of Municipal Services and PennDOT districts for **interest in the product's use**.
3. PennDOT's **New Products Selection Committee**, which is comprised of municipal stakeholders and local government representatives, also reviews the product application for "interest and appropriateness scoring."
4. A product that the committee believes would be of interest and use to municipalities is turned over to **Pennsylvania State University for testing**. PennDOT, which retains Penn State to test potential products for use on lower-volume local roads, covers the cost of the testing.
5. **Testing results are reviewed** by the Bureau of Municipal Services, other PennDOT subject matter experts, and the New Products Selection Committee, and PennDOT either grants or denies approval of the product or process.
6. A fully approved product or process will be listed in **Publication 447**, which means municipalities may purchase it with their LFFs.
7. Penn State continues to perform **quality assurance and quality control** reviews on all Pub 447 products or processes on a rotating basis to ensure the specifications are up-to-date and materials, products, and processes remain available for use by municipalities.
8. An approved product or process will be **removed from Pub 447** if one of the following occurs: it fails to meet specification requirements; the operation is inactive for two years; the manufacturer fails to notify PennDOT of major changes in equipment or procedures that may affect the quality of the product; PennDOT revokes approved status of the product; a plant or facility is removed from approved status; a safety-related issue occurs; or the product shows poor performance, results in hazardous conditions, or is not used.

base, or type-30 road constructed with prepared earth and a stabilized base with a bituminous or concrete surface.

If the additional mileage is a dead-end road, the road must meet the requirements of turnarounds/cul-de-sacs. If the recorded subdivision or plan of lots was constructed *after* January 1, 1980, the road must have a minimum 40-foot radius turnaround/cul-de-sac. If it was constructed *before* January 1, 1980, it may be eligible for LFFs without a minimum 40-foot turnaround although PennDOT prefers that the municipality acquire permanent or temporary turnaround space to enhance safety. If the necessary space for a turnaround cannot be acquired, the municipality must verify that it was unable to do so and must submit a letter to PennDOT accepting responsibility for the lack of a turnaround.

LFF Audits

The state Office of the Auditor General conducts liquid fuels fund audits on a rolling basis about every two years. Each audit is preceded by a letter to the municipality explaining the process. Auditors submit their findings to PennDOT, which determines if the municipality needs to reimburse its Liquid Fuels Tax Fund account for any LFFs that were misused.

Here are some frequent issues that arise in a liquid fuels audit, according to PennDOT, and some steps to avoid them:

- **Failure to properly prepare liquid fuels reports** — The MS-965 serves as the basis of the liquid fuels audit. Prepare it correctly.
- **Non-permissible expenditures** — Refer to PennDOT Publication 9, Chapter 2, for permissible and non-permissible liquid fuels expenditures. Some examples of non-permissible expenditures include parks, playgrounds, and municipal buildings; police and fire departments; sewer and water lines; administrative expenses; and construction projects without prior PennDOT approval. (*See box on next page for other non-permissible expenditures.*)
- **Liquid fuels money overexpended on projects** — If there are variations in the project expenses on the MS-329 project approval form (*completed by a PennDOT Municipal Services representative prior to a project*) and the actual expenses on the MS-999 (*completed by the municipality at the close of a project*), these must be explained, properly documented, and signed off on by the Municipal Services representative.
- **Purchases not in compliance with advertising and bidding requirements or documentation for price quotations not available for examination** — If you follow the requirements of your municipal codebook, this shouldn't be a problem. The minimum purchase amount that requires legal advertisements and sealed bids for municipalities is currently \$19,400. The minimum purchase amount for telephone quotes is currently \$10,500.
- **Electronic images of canceled checks that do not include the back of the checks** — Electronic images are acceptable, but they must show both sides of the checks.
- **Failure to obtain project approval** — Remember to contact your

Prohibited Expenses

Municipalities are not permitted to use liquid fuels funds for the following expenditures:

- Purchases made in violation of the municipal codes.
- Private roads or driveways or any roads, alleys, courts, or ways that are not on the municipality's approved inventory.
- Purchases of rights-of-way.
- Construction projects without prior PennDOT district office approval.
- Construction, maintenance, or repair of a municipal or maintenance building or police or fire department.
- Curbs and sidewalks except for those needed to comply with ADA requirements.
- Parks or playgrounds.
- Sanitary sewers, water lines, or utility costs.
- Undocumented fuel usage or gasoline used in vehicles of other departments.
- Heating oil and other building utilities.
- Payrolls that are undocumented or do not clearly identify the nature and location of work and meeting pay.
- Apparel (*i.e.*, uniforms) except when required by an employment agreement.
- Administrative expenses, such as office supplies, furniture, and telephones.
- Retroactive expenditures or repayment of other funds for prior-period expenditures.
- Purchase of automobiles and repairs to non-road maintenance equipment and vehicles.

Please note that this list is only a guideline and is not all-inclusive. PennDOT Publication 9 provides more information on spending LFFs properly. Contact your PennDOT district office with any questions.

Municipal Services representative before starting any work involving roads, bridges, traffic signals, lighting, guiderail, or pipe and for which you plan to use liquid fuels funds. The representative will determine if the project requires approval and, if so, will complete the MS-329 project approval form.

- **Duplicate transfer or payment of invoice** — Establish an audit trail by maintaining documentation on each payment from the liquid fuels fund and marking all invoices as “paid.”
- **Inadequate internal control over the facsimile signature stamp** — Ensure that any signature stamp is used on checks only by the person whose name is represented.

- **Use of a brand name in a bid** — Municipalities should not write brand names into the specifications for a bid. Use a generic term instead.
- **Late receipt of liquid fuels allocation** — To avoid this, submit the required reports correctly and on time. Allocations will also be delayed if the municipality has an outstanding reimbursement due to PennDOT or has not resolved any contractor responsibility holds placed by the Department of Revenue or the Department of Labor and Industry.

Compliance with the LFF requirements and regulations comes down to knowing the rules and following them to the letter — and asking for help when any component is unclear. To head off problems during an audit, municipalities should contact their PennDOT Municipal Services representatives when a liquid fuels question comes up.

PennDOT also has six financial consultants, who each spend about three days a week in municipalities conducting monitoring reviews of previously submitted MS-965 reports. Their visit may stem from the results of previous audits, as part of a random selection, or through a municipality's request. Their goal is to make sure liquid fuels funds are used correctly, to verify that balances are accurate, and to suggest remedial action that might be needed before an auditor comes through the door. To request a review, townships should contact the financial consultant for their region.

Questions about LFFs?

Here are some resources:

- Contact your regional **PennDOT Municipal Services representative**. Find this person by going to www.penndot.gov, clicking on the “Local Government” link under Doing Business, and selecting the “Municipal Services Representative” box.
- PennDOT **Publication 9, Chapter 2**, is the go-to resource for information on LFF requirements, including what the funds can and cannot be used for. Access this guidebook by going to www.penndot.gov, searching “Publication 9,” and clicking on “Pub 9.” Scroll down to Chapter 2, Liquid Fuels Tax Funds for Municipalities.
- To obtain a **LFF monitoring review** or receive help with preparing year-end reports and liquid fuels forms, contact the PennDOT financial consultant for your county. To find this person, go to www.penndot.gov. Click “Local Government” under Doing business and then on the “Liquid Fuels” box. Toward the bottom of the page, click on the link for “Financial Consultants.”