
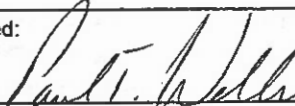


<p>To:</p> <p style="text-align: center;">SUPERSEDED</p> <p>BY EB 96-027 EFFECTIVE 6/18/96</p>		<p>ENGINEERING INSTRUCTION <i>New York State Department of Transportation</i></p>	<p>95-007</p> <p>Supersedes: EI 75-91 EI 94-022 MURK pgs A19-A22 EB 74-008 EB 89-010 EB 91-003</p>
<p>Title: REVISION TO CONSTRUCTION SUPERVISION MANUAL SECTION 109-04 - PARTIAL PAYMENTS</p>			
<p>Distribution:</p> <p>XMain Office(30) <input type="checkbox"/> Local Gov.(31) XRegions(32) <input type="checkbox"/> Contractors/AGC(39) XConsultants(34) <input type="checkbox"/> _____</p>	<p>Approved:  <u>1/23/95</u> P.T. Wells Deputy Chief Engineer Construction Division Date</p>		

EFFECTIVE DATE. This instruction shall be effective on all Department contracts let on or after April 13, 1995. The attached processes and forms may be used for new Partial Payment requests on existing contracts.

PURPOSE. This instruction issues a revised section of the Construction Supervision Manual. CSM Section 109-04 - PARTIAL PAYMENTS, is intended to be effective with revised specification for Section 109-04, which is being issued under a separate Engineering Instruction. The attached section will be incorporated into the new Construction Supervision Manual which is currently being prepared.

TRANSMITTED MATERIALS. The text of Section 109-04 of the Construction Supervision Manual including:

- Form for request and approval of Partial Payment
- Instructions for computing and entering Partial Payments in progress payment estimates.
- Required form and context of 'CERTIFICATION OF TITLE'.
- Sample form for release and waiver

FIELD INFORMATION. Holders of the current Construction Supervision Manual shall insert this section into the current manual. Field staff shall follow the instructions and guidance included in the attached CSM Section 109-04. Copies of the forms included in CSM 109-04 shall be made available to Contractors for use in requesting and complying with the requirements of Partial Payments.

ACTIONS OF THE MAIN OFFICE. The Construction Division shall include this material in the new Construction Supervision Manual.

CONTACT PERSON. John Brizzell at (518) 457-4412 (Construction)

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SECTION 109-04 PARTIAL PAYMENTS

GENERAL. This section allows the Department to make payments to Contractors for the cost of acceptable stored materials, prior to incorporation of such materials into the work. Such payments may be made on any progress payment following application by the contractor and approval by the Regional Director. Partial Payments are adjusted in future progress payments as the stored materials are used. This section is intended to reimburse the contractors costs to secure those manufactured, fabricated or processed materials which must be secured substantially before incorporation into the work. Specification Section 109-04 contains a listing of materials which may be eligible for Partial Payments.

APPLICATION AND APPROVAL OF PARTIAL PAYMENT. The contractors request for Partial Payment under any contract item shall be made using the attached 'REQUEST FOR PARTIAL PAYMENT OF STORED MATERIALS' (Attachment 1). Section A of this form is to be completed by the contractor and submitted to the Engineer along with the following required documentation:

1. Bill(s) of Sale or Vouchers indicating materials costs.
2. Certification of Title (see Attachment 2).
3. Evidence of acceptability of the materials.
4. Proper release and waiver if stored on private property. (see attachment 4)

The EIC shall verify that the materials for which partial payments are requested conform with the requirements of Section 109-04. The EIC shall also verify the information and documentation submitted with the request, and complete Section B of the Request Form. With the Engineers recommendation, the Request Form and copies of all supporting documentation shall be sent to the Regional Office for review and approval by the Regional Director or his designee. If approved, the Partial Payment Request shall be returned to the Field Office and an informational copy sent to the Construction Division.

The contractor may initiate a request for Partial Payment prior to actual storage of the materials. In such cases, the Departments review shall be based upon the information provided by the contractor, and any approvals shall be considered to be informal until all requirements of Section 109-04 are met.

In situations where the materials are claimed to be in short supply, where the materials are claimed to be unique to the project, or the materials are to be stored at a location outside of the DOT Region administering the contract, the contractor may be required to provide documentation, evidence or rational in support of the request. Responsibility for all decisions regarding partial payments rests with the Regional Office. The Region is encouraged to seek the assistance of Main Office (Construction Division, Structures Division, Materials Bureau, etc.) in making judgements regarding materials availability and storage. The Regional Construction Engineer is responsible to assure that all materials are acceptable and stored in accord with the Standard Specifications prior to making any payments.

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INVENTORY CONTROL, PAYMENT COMPUTATION AND LISTING. All partial payment transactions are calculated on Form CONR 314(a) ANALYSIS RECORD FOR PARTIAL PAYMENTS (see Attachment -3). A Separate CONR314(a) is to be prepared for each fiscal share in which a Partial Payment is to be made. The total partial payment made for any contract item is adjusted on each progress estimate to reflect the value of materials stored at the end of the estimate period, subject to the restrictions contained in the specification. The initial partial payment for stored materials must be a positive dollar amount. Partial payment adjustments made in subsequent progress estimates may be a positive or negative dollar amount equal to the value of material added to or withdrawn from storage.

The following example illustrates the calculation of partial payments on the CONR 314(a) ANALYSIS RECORD FOR PARTIAL PAYMENTS. Calculations for this example are shown on Attachment 3E. Refer to the CEES User Manual for instruction on entering a calculated partial payment into CEES.

a.) Initial Partial Payment Transaction

Materials for use in Contract Item 680.15 have been stockpiled in accordance with the provisions of Section 109-04 during Estimate Period No. 2. The first column of the Analysis Record is completed by the Engineer-in-Charge at the close of the estimate period.

- Lines 1 through 4 provide for calculation of the partial payment limit. This limit, which appears on line 4 is 85% of the contract item value remaining to be completed. When less than 100% of the materials are stored, this limit may be controlled by 85% of the Unit Price for the quantity stored.
- Line 5 is the net partial payment made to date, which in this case, is zero.
- Line 6 is the maximum partial payment for this estimate, which the 85% limit will allow.
- Line 7 is the actual cost of the stored materials as documented by invoices, the numbers of which are listed in the spaces at the top of the first column. For this example, \$3,000.00 of materials have been stored. The Engineer-in-Charge should add the following information to invoices:
 1. Item specification number.
 2. The estimated contract item quantity in which the material will be incorporated, if not the same as the invoice quantity.
 3. The adjusted invoice quantity and amount, if the original invoice quantity exceeds that necessary to complete the contract item.

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- Line 8 is the partial payment to be reported on Estimate No. 2. (Refer to CEES users manual.)
- Line 9 is the sum of the previous total partial payment and the payment calculated for the current period.
- Lines 10 and 11 are zero since no material was withdrawn from the stockpile.
- Line 12 is the total partial payment as of the close of the current reporting period (Est. No. 2).

This record is kept with the progress estimate information at the project office. It is also filed with the approval, releases, warrants and invoices pertaining to the partial payment.

b.) Second Partial Payment Transaction.

The updated CONR 22c, when returned to the Engineer-in-Charge, will contain the partial payment item printed below the contract item. The partial payment amount reported by the Engineer-in-Charge, will appear as the "Qty. Reported", and the net partial payment as the "Total Amount Completed". During Estimate Periods 3 through 7, the material storage remained unchanged, and no entries were posted to the partial payment item. The next transaction for the partial payment item occurred during Estimate Period No. 8, when additional deliveries to storage were made. The Engineer-in-Charge pulls his copy of the Analysis Record from his files and calculates the partial payment in the second column.

Note that the invoice cost of the additional deliveries (line 7) exceeds the maximum amount eligible (line 6), and has been limited to \$5500.00 on line 8. The amount on line 8 (+ \$5500.00) is added to the partial payment in CEES.

- Line 12 is the total partial payment made on the stored materials as of the close of Estimate Period No. 8. The Engineer-in-Charge signs and dates the Analysis Record, retaining it with the payment records.

c.) Third Partial Payment Transaction.

The third column on the Analysis Record is used to calculate the new partial payment resulting from incorporation of stored materials into the Contract Item during Estimate Period No. 9.

- The partial payment limit computed on line 4 has been reduced to \$1700.00 as a result of the completion of \$8000.00 worth of work during the estimate period.
- Lines 6 through 8 are used only when materials are added to storage.

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- Line 9 is the value of the stockpile prior to deducting the withdrawals of the current estimate period.
- Line 10 is the percent of stored materials withdrawn during the current estimate period. This percentage is not necessarily proportional to the amount of work completed. The flexibility provided by the use of a percent withdrawal rate, allows reporting reductions for any combination of unrelated material components with one simple entry. Documentation and/or computations to support the withdrawal rate must be retained by the Engineer-in-Charge with the project records. In this example, 90% of the stockpiled materials were used during Estimate Period 9.
- Line 11 is the dollar value of the withdrawn material and is the amount posted (- \$7,650.00) deduction to the partial payment item in CEES.
- Line 12 is the total partial payment made on stored material as of the close of Estimate Period No. 9. This amount cannot exceed the Partial Payment Limit appearing on Line 4 of the Analysis Record. If it does, the withdrawal rate must be adjusted so that Line 12 is equal to, or less than, the line 4 limit.

d.) Additional Partial Payment Transaction

The next partial payment transaction will utilize the first column of a fresh Analysis Record. Adjustments to the partial payment continue until the stored materials are exhausted or the contract item work is completed. The last partial payment transaction will be a reduction which brings the net partial payment on line 12 to zero.

Although the Analysis Record handles both additions and withdrawals from storage, avoid the situation where both types of transactions occur during the same estimate period. If possible, deduct the withdrawn material from the invoices prior to entering the material cost on line 7. If the withdrawn material is part of a previously reported delivery, use two columns on the Analysis Record to record the withdrawal and addition transactions separately.

It is important to remember:

1. Approval of the Regional Director is required before a partial payment for stored materials can be entered on a progress estimate. Not only must the Engineer-in-Charge (EIC) have a copy of the approval memo, but he/she should verify that the item numbers approved match those for which payment is to be made. A typographical error in an item number designation invalidates the approval for that item.

Manual

CONSTRUCTION SUPERVISION

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**REVISION TO CONSTRUCTION SUPERVISION MANUAL
SECTION 109-04; PARTIAL PAYMENTS**

2. The quantity of materials for which partial payment is made cannot exceed the authorized quantity for the payment item. As payment is made for completed work, the maximum partial payment quantity must be reduced to the remaining unpaid item quantity. The EIC must adjust the invoice quantity and amount, if the original invoice quantity exceeds that necessary to complete the contract item.
3. The unit cost of the stored materials cannot exceed 85% of the unit bid price for the item. Note that line 4 of the CONR 314 (a) establishes a dollar "partial payment limit" for the entire remaining item quantity. The CONR 314 (a) will not prevent an overpayment if the invoiced quantity is less than that required to complete the authorized quantity. The EIC must review the material unit price on the invoice and adjust the invoice amount if it exceeds 85% of the item unit price.

REQUEST FOR PARTIAL PAYMENT OF STORED MATERIALS

SECTION A: COMPLETED BY CONTRACTOR

Date

Contract ID: D

PIN

Description:

Contractor:

Item Specification Number:

Materials Description:

Value of Payment Requested:

Materials Stored At:

Scheduled Installation on Project:

Submitted By:

SECTION B: COMPLETED BY DEPARTMENT

Verify Submissions:

Date

Check By

- Bill of Sale or Voucher
- Certification of Title
(to Contractor)
- Warranty of Title
(to NYSDOT)
- Evidence of Acceptability
- Verify Storage
- Waiver & Release
(if stored on private property)

Verify Scheduled Installation

Yes No

Payment Recommended By: _____

EIC

Payment Approved By: _____

RDoT

**CERTIFICATION OF TITLE
TO MATERIALS STORED, OR TO BE STORED,
FOR INCORPORATION INTO DEPARTMENT OF
TRANSPORTATION PROJECT**

WHEREAS, _____, hereafter referred to as the "Contractor", is engaged in the performance of construction contract _____, hereafter referred to as the "contract", with the New York State Department of Transportation, hereafter referred to as the "Department", and

WHEREAS, in accord with the contract plans, specifications or order of the Department Engineer-in-Charge, the Contractor has purchased certain materials for incorporation into the contract work from _____, hereafter referred to as the "Vendor", and

WHEREAS, these materials referred to are as follows:

DESCRIPTION of Materials and Quantities:

and,

WHEREAS, to comply with the provisions of the contract documents regarding partial payments (Subsection 109-04) requiring certification of the Contractors absolute legal title to the materials described above and warrant of title to the same materials to the Department, the contractor and the vendor have entered into the following agreement.

NOW, THEREFORE, and in consideration of the forgoing premises, the Contractor and the Vendor agree, with the intention of being legally bound hereby, as follows:

1. The Vendor has executed this document for the purpose of acknowledging that: The Vendor has made an outright sale and transfer of title for the above materials to the Contractor free of all restrictions, filings or liens; The Vendor is the lawful owner of the above materials and has the right to make such transfer of title; and The Vendor will not in the future make any claims whatsoever to such title.
2. The Contractor certifies and represents that he is the lawful holder of the absolute legal title to the above materials, and has full legal right, power and authority to sell and transfer such title without restrictions, filings or liens of any kind on the part of the Vendor and/or any Subcontractor.

3. The Contractor, Vendor and/or any Subcontractor, their successors and assigns, will and do by these presents warrant title to the above described materials to the New York State Department of Transportation.
4. In the event that the Vendor has sold the above described materials to a Subcontractor of the Contractor, this Certification of Title is hereby amended at all applicable points to reflect this fact. By the execution of this certification, any such Subcontractor is acknowledging that: Such Subcontractor has made an outright sale and transfer of title for the above materials to the Contractor free of all restrictions, filings or liens; Such Subcontractor is the lawful owner of the above materials and has the right to make such transfer of title; and Such Subcontractor will not in the future make any claims whatsoever to such title.

IN WITNESS WHEREOF, the parties hereto have caused this Certification of Title to be executed this _____ day of _____, 199__.

ATTEST: CONTRACTOR

By _____

Title _____

ATTEST: SUBCONTRACTOR

By _____

Title _____

ATTEST: VENDOR

By _____

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION
ANALYSIS RECORD FOR PARTIAL PAYMENTS
ALLOWANCES AND REDUCTIONS**

Comptroller's Contract No. _____
Region _____

(Job Stamp)

Item Spec. No.	Auth. Contract Qty.	Unit Price

NOTE: ATTACH INVOICES & IDENTIFY ITEM SPECIFICATION NO. THEREON, IF MATERIAL IS STORED ON PRIVATE PROPERTY, A LIEN RELEASE & STATEMENT OF INGRESS, EGRESS & REGRESS ARE REQUIRED.

This analysis record pertains to partial payment in fiscal share _____.

Invoice Numbers		

	Est. No.	Est. No.	Est. No.
1. Contract Work Authorized (authorized quantity X unit price)			
2. Less Total Contract Work Done Including This Estimate (quantity used X unit price)			
3. Balance Contract Work Remaining To Be Done (line 1-line 3)			
4. Partial Payment Limit (85% of line 3)			
5. Less: Net Partial Payment Made To Date (line 13 of prior transaction)			
6. Balance: Max. Amount Eligible for Partial Payment (line 4-line 5)			
7. Material Cost (per attached invoices)			
8. Partial Payment Allowed This Estimate (lower of line 6 or 7)			
9. Partial Payments Allowed to Date (line 5 + line 8)			
10. Withdrawal Rate (qty. withdrawn + qty. in inventory prior to withdrawal) X 100			
11. Partial Payment Reduction This Estimate (line 9 X line 10)			
12. Net Partial Payments Made To Date (line 9 - line 11)			
Engineer-in-Charge Signature & Date →			

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION
ANALYSIS RECORD FOR PARTIAL PAYMENTS
ALLOWANCES AND REDUCTIONS**

Comptroller's Contract No. D12345
Region XX

<p>(Job Stamp)</p> <p>EXAMPLE</p>

Item Spec. No.	Auth. Contract Qty.	Unit Price
680.15	10.00	\$1,000.00

NOTE: ATTACH INVOICES & IDENTIFY ITEM SPECIFICATION NO. THEREON, IF MATERIAL IS STORED ON PRIVATE PROPERTY, A LIEN RELEASE & STATEMENT OF INGRESS, EGRESS & REGRESS ARE REQUIRED.

Invoice Numbers		
XY9876	XY9945	
XY4721		

This analysis record pertains to partial payment in fiscal share _____.

	Est. No. 2	Est. No. 8	Est. No. 9
1. Contract Work Authorized (authorized quantity X unit price)	10,000.00	10,000.00	10,000.00
2. Less Total Contract Work Done Including This Estimate (quantity used X unit price)	0.00	0.00	8,000.00
3. Balance Contract Work Remaining To Be Done (line 1-line 3)	10,000.00	10,000.00	2,000.00
4. Partial Payment Limit (85% of line 3)	8,500.00	8,500.00	1,700.00
5. Less: Net Partial Payment Made To Date (line 13 of prior transaction)	0.00	3,000.00	8,500.00
6. Balance: Max. Amount Eligible for Partial Payment (line 4-line 5)	8,500.00	5,500.00	N/A
7. Material Cost (per attached invoices)	3,000.00	6,000.00	N/A
8. Partial Payment Allowed This Estimate (lower of line 6 or 7)	3,000.00	5,500.00	N/A
9. Partial Payments Allowed to Date (line 5 + line 8)	3,000.00	8,500.00	8,500.00
10. Withdrawal Rate (qty. withdrawn ÷ qty. in inventory prior to withdrawal) X 100	N/A	N/A	90.0%
11. Partial Payment Reduction This Estimate (line 9 X line 10)	N/A	N/A	7,650.00
12. Net Partial Payments Made To Date (line 9 - line 11)	3,000.00	8,500.00	850.00
Engineer-in-Charge Signature & Date →	D. Chase 5/30/94	D. Chase 8/15/94	D. Chase 8/30/94

**SAMPLE FORM
RELEASE AND WAIVER
FOR MATERIALS STORED ON PRIVATE PROPERTY**

CONTRACT INFORMATION

CONTRACT NO.: _____

DESCRIPTION: _____

CONTRACTOR: _____

STORAGE INFORMATION

STORAGE SITE: _____

OWNERS NAME: _____

MATERIALS STORED: _____

WHEREAS, the undersigned certifies to be property owner, or authorized representative thereof, of the above described storage site,

WHEREAS, the undersigned has contracted and leased to the Contractor indicated above who holds a contract with the New York State Department of Transportation (NYSDOT) the right to store and remove the above listed materials at said storage site, and

WHEREAS, these listed materials are the same as those for which the Contractor is asking payment in whole or part from the NYSDOT in advance of removal of such materials from said storage site.

NOW, THEREFORE, in consideration of such payment being made to said Contractor, I/we do hereby release any and all claims which I/we have or can claim to have upon the above listed materials for any and all sums of money which may be due to me from said Contractor for the privilege of storing such materials on said storage site,

FURTHER, I/we do hereby consent and agree that in the event of the failure of said Contractor to fulfill and perform said Contract with NYSDOT, or if said Contract is canceled in part or in whole by NYSDOT such that the Contractor is prohibited from completing said Contract, then NYSDOT or any substitute party or contractor may remove all such materials from the above storage site without further payments due to me for use of said storage site,

FURTHER, I/we do hereby agree that for purposes of inspection, sampling, inventory, removal or other reasons as determined necessary by the Commissioner of Transportation, NYSDOT officers, employees, agents, contractors or contractors agents, officers and employees shall have the right to enter upon the storage site at any and all times with equipment and vehicles to take therefrom any or all of said stored materials stored by the above contract, and that such right of ingress, egress and regress to and from the storage site shall be without obstruction, objection or hinderance, and without further payment due for such rights, and

FURTHER, I/we do hereby waive any and all claims upon such stored material or upon rights to remove the same.

THE FORGOING INSTRUMENT shall bind the property owner(s), their successors and assigns, and legal representatives.

ATTEST: _____

L.S. _____
Date

L.S. _____
Date

IN WITNESS WHEREOF, I have hereunto set my

hand and seal this _____ day of

_____ 19__.

NOTARY PUBLIC



MEMORANDUM
DEPARTMENT OF TRANSPORTATION

TO: Distribution

FROM: P. T. Wells, Construction Division, 4-101, MC 0414 *PTW*

SUBJECT: ENGINEERING INSTRUCTION 95-007

DATE: January 31, 1995

Please replace the first page of Engineering Instruction 95-007 (approved 1/23/95) with the attached page. We are re-issuing the first page of EI 95-007 because of an error. Engineering Instruction 94-002 is not superseded by EI 95-007. The number should have read EI 94-022.

If you have already deleted EI 94-002, please contact Thomas Moon in Structures (518-457-7412) for a replacement.

We apologize for any inconvenience.

PTW:cw
Attachment