

BENTON COUNTY BOARD OF COMMISSIONERS

RESOLUTION 2014 - #49

WHEREAS, the County of Benton from time to time receives requests for installation of drainage tile along a right-of-way, for a ditch or drain connection to a right-of-way ditch, and for ditch cleaning; and

WHEREAS, pursuant to Minn. Stat. §160.20, an owner is allowed to connect a drain or ditch with any drain or ditch constructed along or across the highway or install drain tile along or across the highway right-of-way. Prior to installing a drain or ditch connection or tiling, the statute requires an owner to first acquire a written permit from the road authority. The permit must comply with the requirements of Minn. Stat. §160.20, subd. 4.

WHEREAS, failure to obtain a written permit as required by Minn. Stat. §160.20 is a misdemeanor crime; and

WHEREAS, Minn. Stat. §160.20, allows a road authority to prescribe and enforce reasonable rules and regulations in addition to the statutory requirements; and

WHEREAS, the County believes the requirements and additions prescribed for permits required under Minn. Stat. §160.20 would also apply to individuals requesting permission and a permit to clean a public right- of-way ditch, and as a result the County chooses to include cleaning permits into this policy; and

WHEREAS, the County is not required to approve an application for a private party to clean a public right- of-way ditch, the County may approve such application if the requirements of this policy and other applicable laws and regulations are complied with; and

WHEREAS, the County is not mandated to approve an application to clean a public right- of-way ditch even if the requirements of this policy are met; and

WHEREAS, in addition to Minn. Stat. §160.20, if a ditch is deemed to be a portion of the public drainage system, the requirements of Minn. Stat. Ch. 103E and any other applicable law and regulations will also need to be complied with; and

WHEREAS, it is desirable to define the policy and procedure of the County for connection of private drains to roadway drains, installation of drain tile along or across a County right-of-way, and cleaning of public right-of-way ditches; and

THEREFORE, BE IT RESOLVED, that the following policy and regulations be adopted in Benton County:

1. The recitals set forth in the whereas clauses above are incorporated by reference as if fully set forth herein.

2. The County may approve an application for a permit connecting a drain or ditch with any drain or ditch constructed along or across the highway, installing drain tile along or across the highway right-of-way roadway ditch, or the cleaning of a roadway ditch provided that the parties requesting the permit shall comply with federal and state laws and regulations and these adopted policies and regulations.
3. The applicant shall submit a completed Drainage and Cleaning Permit application to the Public Works Director and shall comply with any provisions described therein.
4. Before any permit is approved and any work is started, the individual/contractor responsible for the project (applicant) shall provide a certified check or performance bond in the amount deemed appropriate by the County engineer for the scope of work included under the permit. The maximum amount of the required check or performance bond is set forth in the adopted current County Fee Schedule. A fee will be charged for the required permit. The fee for the permit is also set forth in the County Fee Schedule.

Upon completion of the work, the applicant shall notify the Public Works Department to obtain final inspection. If the work is determined acceptable and after 60 calendar days have elapsed (to determine if any settlement occurs), the certified check or performance bond will be returned.

If the work is deemed unacceptable by the Public Works Director, notification will be given to the applicant, who shall complete all necessary corrective action within 30 days. If corrective action is not completed by the applicant within the allotted time frame, the performance bond or certified check funds will be used by the County to correct any deficiencies in the project. The remainder (if any) of the performance bond or certified check funds will be returned to the applicant upon completion of the corrective action.

5. For all Drainage and Cleaning Permits the parties requesting the permit shall comply with the following regulations:
 - a. Submit an overview of all of the applicant's drainage work on the benefitted property so that the Public Works Director may assess the appropriate place of connection to the right-of-way ditch, to assess whether or not the right-of-way ditch will have sufficient capacity for the proposed drainage, and to ensure that the length of the installation is restricted to the minimum necessary to achieve the desired agricultural benefits.
 - b. The Public Works Director will determine if the connection will be provided with an adequate outlet. The applicant may be required to restore any downstream ditch or drain to original line and grade. Any work done on highway right-of-way ditches or on slopes shall be done in a manner to meet current geometric standards as determined by the Public Works Director.
 - c. All backfill material and the method of compaction shall comply with 2451.3D of the Minnesota Department of Transportation Standard Specifications (latest version).
 - d. Wherever topsoil and sod are disturbed, they shall be replaced and maintained satisfactorily until the turf is established, and otherwise restore the county highway right-

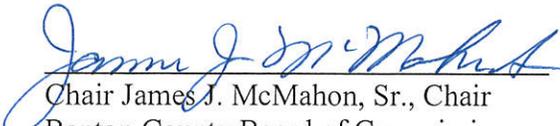
of-way to its original condition. Open trenches shall not be allowed to remain open on the right-of-way after the installation of the drain tile.

- e. Upon completion of an installation, the applicant shall then notify the Public Works Department of the completion of the work so that inspection can be made to determine its acceptability.
 - f. When working within the right-of-way limits of the county highway, the contractor shall erect and maintain all barricades, signs and lights needed to protect the traffic, including all warning signs specified under Minn. Stat. §160.16, and in compliance with the current Minnesota Manual of Uniform Traffic Control Devices (MN MUTCD).
 - g. The highway shall not be closed to traffic on Sundays or on legal holidays, and shall not be closed for more than 5 hours on any project.
 - h. The installation shall not interfere with any existing utility facilities on the county highway right-of-way. Interruption, interference or damages to any utility shall be restored and/or paid for by the permit holder. It is the permit holder's responsibility to complete a Gopher State One-Call ticket 48 hours prior to any excavation.
 - i. The installation shall be made in conformity with all applicable laws, regulations, and codes covering said installations. All installations shall be made in conformity with regulations of governmental agencies for the protection of the public.
6. Any additional right-of-way required for the above work shall be obtained at the expense of the owner or applicant requesting the work.
 7. The County may participate in funding the requested work, if in the judgment of the Public Works Director, a Benton County highway, or the traveling public receives a direct benefit for connecting a drain or ditch cleaning. Amount or percentage of funding shall be at the discretion of the County Highway Engineer. It shall otherwise be the responsibility of Benton County to maintain roadways in a manner to provide what would otherwise be a natural drainage condition.
 8. Each permit application and/or project will be reviewed on its own merits and specific circumstances by the Public Works Director. County financial considerations will govern participation in all project costs. No guarantee of issuance of a permit or county participation in the project is implied by county participation in any other project or issuance of any other permit.
 9. Written notification shall be made to the Public Works Director if drainage ditching or other utility work will affect drainage to/from county facilities and/or right-of-way even if the work is to be accomplished outside of the existing of the existing right-of-way. Modifications to the existing county facilities, including to ditch/drainage systems made necessary by drainage, ditching, or other utility work, will require financial contribution from the responsible party. If the responsible party refuses to provide financial contribution, the cost of the required modification and/or alteration may be assessed to the responsible parties' property tax.

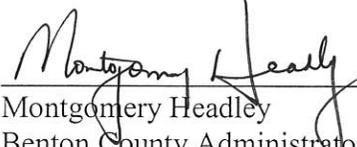
10. Other Permits and Agency Notification The applicant shall notify all appropriate agencies of the scope and nature of the work to be performed. Appropriate agencies may include but may not be limited to Benton County Department of Development, Soil and Water Conservation District, Minnesota Department of Natural Resources, U.S. Army Corps of Engineers, and other notifications as are appropriate to the specific project. Any permits required from outside agencies shall be obtained prior to commencing work. Required notifications and initial responses shall be included with the permit application.
11. If the county road right-of-way ditch or drain is a part of the public drainage system, the applicant will need to follow the procedures and requirements prescribed in Minn. Stat. Ch. 103E and other applicable law.
12. By signing this permit the responsible party agrees to give permission for the county to enter onto any properties requiring corrective action associated with the work included in this permit.
13. The permit holder shall indemnify and hold harmless the County, its agents and employees from and against all claims, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the applicant, anyone directly or indirectly employed by the applicant, or anyone for whose acts the applicant may be liable.

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Approved and adopted this 2nd day of December, 2014.


Chair James J. McMahon, Sr., Chair
Benton County Board of Commissioners,

ATTEST:


Montgomery Headley
Benton County Administrator