

ORDINANCE NO. 409

BONNER COUNTY POLICY FOR APPLICATION OF DUST ABATEMENT MATERIALS

AN ORDINANCE OF BONNER COUNTY, IDAHO, SETTING FORTH ITS AUTHORITY; AMENDING CHAPTER 4 OF TITLE 2, BONNER COUNTY REVISED CODE BY DEVELOPING A POLICY FOR APPLYING DUST SUPPRESSANTS ON COUNTY ROADWAYS.

WHEREAS, Idaho Code, Title 40, Chapter 6 provides that the Board of County Commissioners shall develop general policies regarding highway matters; and

WHEREAS, the Board of Bonner County Commissioners has determined that a policy is necessary to ensure responsible dust abatement practices;

NOW THEREFORE BE IT ORDAINED by the Board of County Commissioners of Bonner County, Idaho, that the following be and is hereby adopted as an ordinance of Bonner County:

SECTION 1: AUTHORITY.

This Ordinance is adopted pursuant to the authority granted at Chapter 6, Title 40, Idaho Code.

SECTION 2: AMENDING CHAPTER 4 OF TITLE 2, BONNER COUNTY REVISED CODE, BY ADDING THE FOLLOWING:

Section 2-440 of the Bonner County Revised Code is hereby created as follows:

BONNER COUNTY DUST ABATEMENT POLICY

A. Prior to contractor being allowed to apply dust suppressant in Bonner County

1. A Bonner County dust abatement Contractor's Permit is required each year by anyone applying a dust suppressant on Bonner County roads. It is unlawful for any dust suppressant to be applied on County roads without a permit.
2. Permit Bond Requirement - \$10,000
3. Liability Insurance \$500,000 naming Bonner County as Additional Insured.
4. Materials Certification: Submit current (not more than 30 days old) certified test report and current MSDS (Material Safety Data Sheet) for products proposed for dust abatement on county roads. (Products must meet the requirements Below)
5. Current Idaho Public Works License
6. Addresses of storage tanks owned by contractor
7. Contractor must provide a legal, physical address for their office or home for notification purposes.
8. Contractor must submit a copy of their claim process prior to issuance of permit. (This process must be acceptable to the Public Works Director)

B. Process for applying dust suppressant on Bonner County Roads

1. **Each applicator shall contact and gain the approval of the Bonner County Public Works Department prior to applying any dust suppressant material to public roadways.**
2. Application for road grading shall be made by facsimile or e-mail request from an approved contractor. Contractor shall provide the name, physical address and telephone number of applicant as well as dust suppressant that will be used and application rate.
3. Contractor will be given a Notice to Proceed by facsimile or e-mail when the road is ready for suppressant.
4. Contractor shall complete the application of dust suppressant within one week of the Notice to Proceed, or sooner if the Public Works personnel advise that the road should be treated within a shorter time period. Failure to complete the treatment within the time specified may result in the County re-grading the area where the dust suppressant is applied. In this case, the Contractor will be obliged to reapply the suppressant at his/her expense, after a new Notice to Proceed is issued. Under these circumstances, this location will not be made a priority as crews will be grading other roads.
5. It shall be a violation of this ordinance for any dust suppressant to be applied, or to migrate to a ditch or other drainage facility.
6. Asphalt Emulsions shall be placed one lane at a time. The opposing lane can be treated once the emulsion has "cured" to the extent that it does not pick up on vehicles traveling 10mph or slower. The contractor shall be responsible for any and all claims resulting from vehicle damage due to not following this procedure.
7. The Bonner County Public Works Department will issue permits for all non-water soluble products used as dust suppressants if such application is approved. The Bonner County Public Works Department employees will fill out these permits and a facsimile copy will be sent to the applicator. These permits can be generated by phone without necessitating an office visit by the resident. The application of these products without a permit is prohibited. If these materials are applied to a county maintained roadway without a permit, the roadway will be graded as soon as practicable.
8. No dust suppressant material shall be applied prior to final Spring grading and approval of the Public Works Department. If this occurs, the Public Works Department will grade the section of road that was treated during normal spring grading. It will be the homeowner's/applicator's responsibility to reapply dust suppressant if grading damages the dust suppressant.
9. Bonner County assumes no liability or responsibility for damages due to the application of dust suppressants.
10. Parties who contract for the application of, asphalt emulsions or lignosulfonates shall be responsible for the maintenance of the roadway that has been treated. Potholes must be filled regularly, or within five (5) days of a request from the Public Works Department. If the potholes are not filled, the roadway will be graded.
11. "Fresh Oil" or other appropriate signs that state the Contractor's Name and Phone Number shall be required at each end of dust suppressant application.

C. Materials

1. Contractor shall provide a current certified test report of the product proposed for use on county roads. Petroleum products, other than County approved Emulsified Asphalt products are no longer allowed on Bonner County roads. Only products specifically labeled as “dust palliative”, by the manufacturer, will be approved for use in Bonner County. The manufacturer or supplier must submit a letter to the County stating that the product is labeled as a dust palliative and must also include instructions, recommendations and /or guidelines for the application of such product as a dust suppressant. The contractor must provide a current MSDS report on the material. Copies of the MSDS shall be carried on the applicator truck and made available for inspection by county personnel upon request.
2. The County will sporadically take samples of the dust suppressant products. The Contractor and operators shall cooperate with county personnel in obtaining the samples from the distributing trucks. An MSDS must be provided at the time the sample is obtained. If a truck is said to be empty, a county employee must still be allowed to attempt to obtain a sample.
3. If a certified test report shows a significant variation from the approved dust suppressant as determined by the Public Works Director, contractor will no longer be allowed to apply dust suppressant in Bonner County until quality control procedures are approved by Bonner County.
4. When the Contractor changes products, a new Certified Test Report will be required. Failure to provide current information on a dust suppressant shall result in the termination of Contractor’s Permit.

D. Restrictions

1. Petroleum-based dust suppressant products other than approved asphalt emulsions are no longer approved for use as a dust suppressant on Bonner County roads. “Road-Oils” are no longer allowed in Bonner County.
2. Emulsified asphalt products will not be allowed near streams or in watersheds where the product could migrate into lakes, streams, wetlands or other water sources.
3. Calcium Chloride, Magnesium Chloride or Lignosulfonates may be used in watershed areas. However, care must be taken in all cases and with all products to ensure that no product is applied to groundwater or other water sources, or to any area that is close enough to a water source that would allow even the slightest migration to enter that water source.
4. If any product is misapplied within a watershed area, it will be the Contractor’s responsibility to remove the product in the manner approved by the Idaho Department of Environmental Quality (IDEQ) at his/her own expense. If IDEQ has to respond to a “spill”, the Contractor assumes full legal and financial responsibility for the removal process and any fines related to the misapplication.

E. Remediation

1. Where unauthorized dust suppressants are used, or where dust suppressant is applied too heavily on hard surface, it may be necessary for the County to take immediate corrective measures. If such measures are deemed necessary by the Public Works Director, the Contractor shall pay for all labor and materials

involved in the remediation. Contractor shall not be allowed to apply any dust suppressant within Bonner County until the bill is paid in full.

F. Penalties

1. There shall be a \$300.00 penalty per incident for any applicator violating any provision of this policy in addition to any expenses incurred in any corrective measures taken.
2. If a contractor violates any provision of this policy, the contractor's permit shall be revoked until penalty and damages are paid.
3. A permit may be denied to any contractor who repeatedly or blatantly violates the provisions of this policy.

G. Permit

1. By his/her signature on the Permit, the contractor agrees to follow each provision of this policy.
2. The Permit may be cancelled at any time the Public Works Director determines any contractor has violated the provisions herein.

SECTION 3: SEVERABILITY

The provisions of this Ordinance are hereby declared to be individually severable. Should any provision of this ordinance be declared invalid by a court of competent jurisdiction, such declaration shall not affect the validity of the remaining provisions.

SECTION 4: EFFECTIVE DATE

This Ordinance shall be in full force and effect upon its passage and publication in one (1) issue of the Bonner County Daily Bee Newspaper.

Regularly considered, passed and approved as an ordinance of Bonner County, Idaho, done this ____ day of _____, 2001, upon the following roll call vote:

Chairman Suttmeier: _____

Commissioner Orr _____

Commissioner Clemons _____

APPROVED AND ADOPTED AS A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS UNDER THE SUSPENSION OF THE RULES AT A DULY NOTICED MEETING OF THE BOARD OF COMMISSIONERS ON THIS 1ST DAY OF May, 2001.

Tom Suttmeier, Chairman

Brian E. Orr, Commissioner District 2

Jerry Clemons, Commissioner District 3

ATTEST: _____
Becky Witte, Deputy Clerk