

**An Ordinance to Regulate the Outdoor Application of Fertilizer  
in the Township of Livingston**

**WHEREAS**, the New Jersey Department of Environmental Protection (NJDEP) in accordance with the requirements of "Amendment to the Northeast, Upper Raritan, Sussex County and Upper Delaware Water Quality Management Plans Total Maximum Daily Load Report For the Non-Tidal Passaic River Basin Addressing Phosphorus Impairments Watershed Management Areas 3, 4 and 6" has mandated that all municipalities adopt an ordinance regulating the application of fertilizer, consistent with a model ordinance provided by the NJDEP, as an additional measure of our Municipal Stormwater Permit.

**NOW THEREFORE BE IT ORDAINED**, by the Township Council of the Township of Livingston, in the County of Essex, as follows:

SECTION I. Purpose:

An ordinance to regulate the outdoor application of fertilizer so as to reduce the overall amount of excess nutrients entering waterways, thereby helping to protect and improve surface water quality. This ordinance does not apply to fertilizer application on commercial farms.

SECTION II. Basis and Background:

Elevated levels of nutrients, particularly phosphorus, in surface water bodies can result in excessive and accelerated growth of algae and aquatic plants (eutrophication). Excessive plant growth can result in diurnal variations and extremes in dissolved oxygen and pH, which, in turn, can be detrimental to aquatic life. As algae and plant materials die off, the decay process creates a further demand on dissolved oxygen levels. The presence of excessive plant matter can also restrict use of the affected water for recreation and water supply.

While healthy vegetated areas are protective of water quality by stabilizing soil and filtering precipitation, when fertilizers are applied to the land surface improperly or in excess of the needs of target vegetation, nutrients can be transported by means of stormwater to nearby waterways, contributing to the problematic growth of excessive aquatic vegetation. Most soils in New Jersey contain sufficient amounts of phosphorus to support adequate root growth for established turf. Over time, it is necessary to replenish available phosphorus, but generally not at the levels commonly applied. Other target vegetation, such as vegetable gardens and agricultural/horticultural plantings, will have a greater need for phosphorus application, as will the repair or establishment of new lawns or cover vegetation. A soils test and fertilizer application recommendation geared to the soil and planting type is the best means to determine the amount of nutrients to apply. Timing and placement of fertilizer application is also critical to avoid transport of nutrients to waterways through stormwater runoff. Fertilizer applied immediately prior to a runoff-producing rainfall, outside the growing season or to impervious surfaces is most likely to be carried away by means of runoff without accomplishing the desired objective of supporting target vegetation growth.

Therefore, the management of the type, amount and techniques for fertilizer application is necessary as one tool to protect water resources.

This ordinance does not apply to application of fertilizer on commercial farms, but improper application of fertilizer on farms would be problematic as well. Stewardship on the part of commercial farmers is needed to address this potential source of excess nutrient load to water bodies. Commercial farmers are expected to implement best management practices in accordance with conservation management plans or resource conservation plans developed for the farm by the Natural Resource Conservation Service and approved by the Soil Conservation District Board.

### SECTION III. Definitions:

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Ordinance clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- a) Buffer - the land area, 25 feet in width, adjacent to any water body.
- b) Commercial farm - a farm management unit producing agricultural or horticultural products worth \$2,500 or more annually.
- c) Fertilizer - means a fertilizer material, mixed fertilizer or any other substance containing one or more recognized plant nutrients, which is used for its plant nutrient content, which is designed for use or claimed to have value in promoting plant growth, and which is sold, offered for sale, or intended for sale.
- d) Impervious Surface - a surface that has been covered with a layer of material so that it is highly resistant to infiltration by water. This term shall be used to include any highway, street, sidewalk, parking lot, driveway, or other material that prevents infiltration of water into the soil.
- e) Person - any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.
- f) Phosphorus fertilizer - any fertilizer that contains phosphorus, expressed as P205, with a guaranteed analysis of greater than zero; except that it shall not be considered to include animal (including human) or vegetable manures, agricultural liming materials, or wood ashes that have not been amended to increase their nutrient content.
- g) Soils Test - a technical analysis of soil conducted by an accredited soil- testing laboratory following the protocol for such a test established by Rutgers Cooperative Research and Extension.
- h) Water Body - a surface water feature, such as a lake, river, stream, creek, pond,

lagoon, bay or estuary.

#### SECTION IV. Prohibited Conduct:

No person may do any of the following:

- a) Apply fertilizer when a runoff producing rainfall is occurring or predicted and/or when soils are saturated and a potential for fertilizer movement off-site exists.
- b) Apply fertilizer to an impervious surface. Fertilizer inadvertently applied to an impervious surface must be swept or blown back into the target surface or returned to either its original or another appropriate container for reuse.
- c) Apply fertilizer within the buffer of any water body.
- d) Apply fertilizer more than 15 days prior to the start of or at any time after the end of the recognized growing season Zone 6b (March 1 to November 15).

#### SECTION V. Phosphorus Fertilizer Application

No person may do the following:

- a) Apply phosphorus fertilizer in outdoor areas except as demonstrated to be needed for the specific soils and target vegetation in accordance with a soils test and the associated annual fertilizer recommendation issued by Rutgers Cooperative Research and Extension.
- b) Exceptions
  1. Application of phosphorus fertilizer needed for
    - a) establishing vegetation for the first time, such as after land disturbance, provided the application is in accordance with the requirements established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. and implementing rules,
    - b) re-established or repairing a turf area.
  2. Application of phosphorus fertilizer that delivers liquid or granular fertilizer under the soils surface, directly to the feeder roots.
  3. Application of phosphorus fertilizer to residential container plantings, flowerbeds, or vegetable gardens.

#### SECTION VI. Enforcement:

This ordinance shall be enforced by the Township Building Department or by any other Township employees designated by the Township Manager.

SECTION VII. Violations and Penalties:

Any person(s) found to be in violation of the provisions of this ordinance shall be subject to a fine not to exceed \$2,500.00.

SECTION VIII. Severability:

Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

SECTION IX. This Ordinance shall take effect upon final passage and publication in accordance with law.

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GARY S. SCHNEIDERMAN, Mayor

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GLENN R. TURTLETAUB, Township Clerk

Approved as to form:

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SHARON L. WEINER, Township Attorney

Introduced: October 6, 2008

Adopted: October 20, 2008