

ORDINANCE NO. 20-09

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HANOVER AMENDING AND SUPPLEMENTING THE CODE OF THE TOWNSHIP OF HANOVER, BY ESTABLISHING A NEW CHAPTER 126, ENTITLED FERTILIZER APPLICATION

WHEREAS, pursuant to regulations promulgated by the New Jersey Department of Environmental Protection, the Township of Hanover is required to adopt an ordinance regulating the use of fertilizers in the community as part of its obligation to implement the Township's mandatory Stormwater Pollution Prevention Plan.

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Hanover in the County of Morris and State of New Jersey as follows:

There is hereby established as part of the Code of the Township of Hanover, a new Chapter 126 entitled, Fertilizer Application, to read as follows:

CHAPTER 126

Fertilizer Application

Section 1. § 126-1. Purpose and background.

The purpose of this Chapter is 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.

Elevated levels of nutrients, particularly phosphorus, in surface waterbodies 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.

Section 2. § 126-2. Applicability.

This Chapter applies to all persons subject to the Township’s jurisdiction, unless specifically exempted herein.

This Chapter 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 waterbodies. 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 3. § 126-3. Definitions.

For the purpose of this Chapter, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Chapter 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.

BUFFER - The land area adjacent to any waterbody and within which the application of fertilizer is regulated by this Chapter. Buffers have a width of 25 feet on each side of the waterbody unless the width is reduced in accordance with the provisions of this Chapter.

COMMERCIAL FARM - A farm management unit producing agricultural or horticultural products worth \$2,500 or more annually.

FERTILIZER - 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.

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 or greatly reduces infiltration of water into the soil.

PERSON - Any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

PHOSPHORUS FERTILIZER - Any fertilizer that contains phosphorus, expressed as P₂O₅, 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. Fertilizer is typically packaged and sold with a label utilizing a number system that identifies the three primary plant nutrients, nitrogen, phosphorus and potassium, in that order. Thus, in a fertilizer with a 10-6-4 analysis, the phosphorus value is 6 and such a fertilizer is defined as a phosphorus fertilizer, whereas in a fertilizer with a 20-0-3 analysis, the phosphorus value is 0 and such a fertilizer is not defined as a phosphorus fertilizer.

SOILS TEST - A technical analysis of soil conducted by an accredited soil testing laboratory following the protocol for such a test established by the Rutgers Cooperative Research and Extension Service.

WATERBODY - A surface water feature, such as a lake, river, stream, creek, pond or lagoon.

Section 4. § 126-4. Prohibited fertilizer application.

No person may do any of the following, unless exempted by § 126-5.

- A. Apply any fertilizer when a runoff producing rainfall is occurring or predicted to occur and/or when soils are saturated and a potential for fertilizer movement off-site exists.
- B. Apply any 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 any fertilizer within the required buffer adjacent to any waterbody. The required buffer has a width of 25 feet, unless a reduction in the buffer width is obtained pursuant to § 126-6.
- D. Apply any fertilizer during the months of November, December, January or February.
- E. 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 Service. For contact information on obtaining assistance, refer to § 126-7.

Section 5. § 126-5. Exemptions.

The following activities shall be exempted from the prohibitions in § 126-4:

- A. The application of phosphorus fertilizer needed for establishing or repairing vegetation, such as after land disturbance, provided the fertilizer is only applied to the area being re-established or repaired and further provided that the fertilizer 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. The application of phosphorus fertilizer that delivers liquid or granular fertilizer under the soils surface, directly to the feeder roots.
- C. The application of phosphorus fertilizer to residential container plantings, flowerbeds, or vegetable gardens.

Section 6. § 126-6. Appeals for reduction of buffer; relief.

- A. Notwithstanding the prohibition in 126-4C; in situations that warrant additional flexibility, such as where lot sizes are exceptionally small or where the required buffer constitutes the majority of the available property, the Township shall consider appeals for limited relief from the strict buffer width requirements.
- B. Appeals for relief shall be filed with the Township Engineer. The appeal shall include a description of the basis for the appeal, a current survey of the subject property and the location of any water body located on or within 25 feet of the subject property.
- C. If the Township Engineer determines that the circumstances in § 126-6A have been demonstrated and that a reduction in the buffer width will not substantially

D. impair the purposes of this Chapter as set forth in § 126-1, the Township Engineer may authorize a reduction in the width of the buffer, provided that the following limitations shall apply to any relief that may be granted:

- (1) The amount of the reduction in the required buffer width shall be determined by the Township Engineer based upon the specific circumstances affecting the subject property, provided, however that no buffer shall be reduced to less than 10 feet in width.
- (2) Any relief that may be granted shall include as a conditions that: (a) a drop spreader shall be used for fertilizer application within the area of the approved reduction; and (b) the application of any fertilizer within the reduced buffer area approved by the Township Engineer shall be specifically prohibited.

Section 7. § 126-7. Assistance; contact information.

The Morris County Cooperative Extension is useful for obtaining assistance in soil testing for fertilizer needs and for obtaining answers to general questions on the application of fertilizer. Contact information is provided below:

Mailing address: Cooperative Extension of Morris County
Rutgers New Jersey Agricultural Experiment Station
P.O. Box 900
Morristown, New Jersey 07963-0900

Site address: County Building 550
West Hanover Avenue
Morristown, New Jersey 07960

Web site: morris.njaes.rutgers.edu

Phone number: 973-285-8300

Fax number: 973-605-8195

For information concerning specific provisions of this Chapter, interested parties should contact the Township's Engineering Department.

Section 8. § 126-8. Enforcement, violations and penalties.

- A. This Chapter shall be enforced by the Building Department's Property Maintenance Officer, Engineering Department, Health Department and/or Police Department of the Township of Hanover, acting jointly or separately. When any of said persons or agencies believe or have reason to believe that a violation of the provisions of this Chapter exists, either by complaint or from

personal knowledge or observation, they shall make or cause to be made inspections and/or investigations to determine whether or not a violation has in fact occurred.

- B. If upon investigation there are reasonable grounds to believe that a violation exists, the enforcement agency or person may either serve a warning notice, in the case of first time offenses for minor violations, or file a complaint in the Municipal Court. If a complaint is filed, notice of the violation shall be served.
- C. Warning notices and notices of violations shall be served upon the owner of record by certified mail to his/her last known address or, if the letter with the copy is returned, showing that it has not been delivered to him/her, by posting a copy thereof in a conspicuous place in or about the structure affected by the notice. Such notice shall:
 - (1) Be in writing;
 - (2) Include a description of the property sufficient for identification; and
 - (3) Specify the violation which exists and the penalty for violation of this Chapter.
- D. Every violation of any provision of this Chapter shall, upon conviction, be punishable by a fine of not more than \$1,000.

Section 9. In case, for any reason, any section or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other section or provision of this Ordinance, except so far as the section or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

Section 10. All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

Section 11. This ordinance shall take effect in accordance with the law.

TOWNSHIP COMMITTEE
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

DATE OF INTRODUCTION: October 22, 2009

DATE OF ADOPTION: November 12, 2009

NOTICE OF INTRODUCTION

NOTICE IS HEREBY GIVEN, That the foregoing Ordinance was submitted in writing at a meeting of the Township Committee of the Township of Hanover, in the County of Morris and State of New Jersey, held on the 22ND day of October, 2009, introduced and read by title and passed on first reading and the Governing Body will further consider the same for second reading and final passage thereof at a meeting to be held on the 12th day of November, 2009, at 8:30 o'clock in the evening prevailing time, at the Municipal Building, 1000 Route 10, Whippany, in said Township of Hanover, at which time and place a public hearing will be held thereon by the Governing Body and all persons and citizens in interest shall have an opportunity to be heard concerning same.

JOSEPH A. GIORGIO, TOWNSHIP CLERK
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

DATED: October 29, 2009