

**BOROUGH OF BERNARDSVILLE
ORDINANCE #09-1521**

**AN ORDINANCE CONCERNING FERTILIZER AND SUPPLEMENTING AND
AMENDING CHAPTER III OF THE BOROUGH CODE ENTITLED "POLICE
REGULATIONS"**

STATEMENT OF PURPOSE: To adopt fertilizer regulations as mandated by NJDEP stormwater rules.

BE IT ORDAINED by the Council of the Borough of Bernardsville in the County of Somerset, New Jersey that Chapter III of the Borough Code entitled "Police Regulations" is hereby supplemented and amended as follows:

Section 1. There is hereby created a new section 3-27' entitled "Fertilizer" which reads as follows:

"3-27 FERTILIZER.

3-27.1 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.

3-27.2 Basis and Background

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. 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 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.

3-27.3 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 waterbody.
- 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. Fertilizer Management Area - means shaded area shown on attached Fertiler Area Map, prepared by Ferriero Engineering, Inc., dated September 2009, which is attached hereto and incorporated herein by reference.
- e. 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.

f. Person - any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

g. Phosphorus fertilizer - any fertilizer that contains phosphorus, expressed as P_2O_5 , 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.

h. Waterbody - a surface water feature, such as a lake, river, stream, creek, pond, lagoon, bay or estuary.

3-27.4 Prohibited Conduct

No person may do any of the following in the Fertilizer Management Area:

- 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 waterbody.
- d) Apply fertilizer more than 15 days prior to the start of or at any time after the end of the recognized growing season (March 1 through November 15).

3-27.5 Phosphorus Fertilizer Application

No person may do the following in the Fertilizer Management Area:

- a) Apply phosphorus fertilizer in outdoor areas.
- 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.

3-27.6 Enforcement

This ordinance shall be enforced by the Code Enforcement Officer.

3-27.7 Violations and Penalties

Any person who violates the provisions of this section shall, upon conviction, be liable to the penalties stated in Chapter I, Section 1-5 of this Code.


Section 2. Any and all other ordinances or parts thereof in conflict or inconsistent with any of the terms hereof are hereby repealed to such extent as they are so in conflict or inconsistent.


Section 3. In case any article, section or provision of this ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect any other article, section or provision of this ordinance except insofar as the article, section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 4. This ordinance shall take effect immediately upon final passage and publication as required by law.

COUNCIL OF THE BOROUGH OF
BERNARDSVILLE IN THE COUNTY
OF SOMERSET

ATTEST:


Sandra G. Jones, Borough Clerk
10/26/09

By: 
Lee C. Honecker, Mayor

First Reading and Introduction: August 10, 2009

1st Publication: August 20, 2009, October 1, 2009 (after amendment)

Second Reading and Adoption: September 14, 2009, September 28, 2009 (amended)
October 13, 2009 (adopted)

2nd Publication: October 22, 2009

