

**CALHOUN COUNTY
REGULATION REGARDING THE USE OF LAWN FERTILIZER
IN CALHOUN COUNTY**

Section 1. Title.

This regulation shall be known as the Calhoun County Lawn Fertilizer Regulation (hereinafter "Regulation").

Section 2. Authority.

This Regulation is adopted pursuant to the authority conferred upon the Calhoun County Health Department by the Michigan Public Health Code, 1978 P.A. 368, as amended, and specifically MCL §333.2435(d) and MCL §333.2441(1).

Section 3. Findings, Intent and Purpose.

The Calhoun County Health Department and the Calhoun County Board of Commissioners hereby find and declare that:

- (a) manufactured fertilizers containing phosphorus when used within Calhoun County (hereinafter "County") enter into the County's and neighboring communities' water resources, including wetlands and watercourses, resulting in excessive and accelerated growth of algae and aquatic plants which is detrimental to these resources.
- (b) testing has shown that most topsoil in the County has a sufficient level of phosphorus, which occurs naturally to promote adequate turf root growth.
- (c) it is necessary and appropriate to regulate the application of manufactured fertilizer on general turf to safeguard the public health and to reduce the adverse impact of fertilizer runoff to lakes, ponds, rivers, streams, wetlands and other water resources in the County.
- (d) it is the purpose and intent of this Regulation to regulate the application of manufactured fertilizers only on general turf areas and not on or in areas such as gardens, agricultural uses, farms, or landscape amenities.
- (e) it is the purpose and intent of this Regulation to regulate the use and application of manufactured fertilizer and manufactured fertilizer containing phosphorus within the County.

Section 4. Applicability.

- (a) This Regulation applies in all areas of Calhoun County.
- (b) Townships, cities and villages wholly or partially within Calhoun County may assume administration and regulation of lawn fertilizer application if they have adopted ordinances that includes standards at least as restrictive as those described in Sections 5 through 9.

Section 5. Definitions.

The following words and phrases, whenever used in this Regulation, shall be construed as defined in this section:

- (a) *Agriculture uses* means beekeeping, dairying, egg production, floriculture, fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts, berries, sod farming and vegetable raising.
- (b) *Applicator* means any person who applies manufactured fertilizer on general turf in the County including, but not limited to, homeowners, occupants of rental property, and property managers.
- (c) *Commercial applicator* means any person who applies manufactured fertilizer on general turf in the County in exchange for money, goods, services, or other valuable consideration.
- (d) *Commercial seller* means any person who sells or displays for sale any manufactured fertilizer in the County.
- (e) *Enforcement Agency* means the Calhoun County Health Department and the Calhoun County Health Officer or his/her designee.
- (f) *General turf* means nonagricultural land managed using a covering of turf grasses having aesthetic or functional benefits, or both, including but not limited to residential lawns, cemeteries and park areas; as well as commercial, educational and governmental grounds and golf courses. General turf does not include vegetable and flower gardens, sod farms, pasture or other land used for agricultural uses.
- (g) *Institutional applicator* means any person who applies manufactured fertilizer to general turf areas of more than 1 acre. Institutional applicators shall include but shall not be limited to, owners, operators and caretakers of public lands, parks, schools, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium or common ownership. Owners of individual parcels in single-family residential zoning districts shall not be considered institutional applicators.
- (h) *Manufactured fertilizer* means a commercially manufactured liquid or granular substance containing one or more recognized plant nutrients, which is used for its plant nutrient content and which is designed for use, or claimed to have value, in promoting plant growth and which may also contain pesticides. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, and wood ashes.

- (i) *Person* means an individual, partnership, association, firm, limited liability Company, Corporation or any other legal entity recognized by local, state, or federal law.
- (j) *Soil test* means a set of scientific measurements that determine the basic texture of soil, the pH level of the soil, and the various nutrient levels of phosphorus, potassium, calcium and magnesium in soil, for the purpose of providing a fertilizer recommendation regarding the amount of nutrients and rate of application of nutrients for general turf growth.

Section 6. Regulation of the use and application of manufactured fertilizer.

- (a) Manufactured fertilizer shall not be applied to general turf when the ground is frozen in any part of the year due to the inability of frozen soil to absorb nutrients.
- (b) Manufactured fertilizer shall not be applied to general turf when conditions exist which can reasonably be anticipated to promote or create runoff, as for example, when heavy rain is forecast.
- (c) Manufactured fertilizers shall not be applied or deposited on driveways, parking lots, streets, sidewalks, or other impervious surfaces. Any fertilizer applied or spilled, whether intentionally or accidentally, on an impervious surface shall be completely removed within one hour by its legal application to general turf or other lawful area or it being appropriately containerized.
- (d) Manufactured fertilizer shall not be applied to general turf within 25 feet of any wetland, lake, river, stream, drain, watercourse, or storm water retention or detention basin.

Section 7. Regulation of the use and application of manufactured fertilizer containing phosphorus.

- (a) Except as otherwise permitted by the terms of this Regulation, manufactured fertilizer that contains any amount of phosphorus or a compound containing phosphorus, such as phosphate, shall not be applied to general turf within the County.
- (b) If permitted by the terms of this Regulation, manufactured fertilizer containing any amount of phosphorus or a compound containing phosphorus shall be watered into the soil within 24 hours of application so that the fertilizer is immobilized and prevented from loss by stormwater runoff.

Section 8. Exemption for the use and application of manufactured fertilizer containing phosphorus.

- (a) The prohibition against the application of manufactured fertilizer containing any amount of phosphorus or a compound containing phosphorus in this chapter shall not apply to:

- (1) General turf that is being established from seed or sod, during the first growing season of the seed or sod.
 - (2) General turf areas where a soil test completed within the last three (3) years from the date of application has indicated that the level of phosphorus in the soil is insufficient to support turf growth. A level of phosphorus in a soil test that is less than or equal to 10 parts per million indicates that the level of phosphorus in the soil is insufficient to support turf growth.
- (b) The application of manufactured fertilizer allowed under this section shall not exceed the amount or rate of application of phosphorus or a compound containing phosphorus recommended by the soil test.

Section 9. Soil testing.

- (a) A soil sample or samples shall be taken from the general turf area on which an Applicator is proposing to apply manufactured fertilizer containing phosphorus or a compound containing phosphorus, following the procedure required by the soil testing service.
- (b) The Applicator shall submit the soil sample to the soil testing service, following the procedure required by the soil testing service.
- (c) The soil testing service shall determine the rate and application of manufactured fertilizer containing phosphorus based on the results of the soil test and the requirements of this Regulation.
- (d) The results of the soil test shall be maintained by the Applicator for a period of 3 years following receipt of the test from the soil testing service.
- (e) The Applicator shall provide a copy of the soil test results to the Enforcement Agency within 48 hours of a written request for the test results by that Agency.

Section 10. Enforcement

This Ordinance will be enforced by the Calhoun County Health Department and the Health Officer or his/her designee.

Section 11. Civil Infraction Penalties; Injunctive Relief

Each violation of this Regulation shall be a misdemeanor punishable as follows:

- (a) a warning citation for the first violation;
- (b) a fine not to exceed \$200.00 for the second violation within one (1) year from the receipt of the first violation and a fine not to exceed \$200.00 for each subsequent violation thereafter.

If testing indicates that phosphorus is present in manufactured fertilizer thereby making the Applicator subject to a citation under Section 11 of this Regulation, it shall be an affirmative defense if the Applicator can prove that the manufactured fertilizer in

question was labeled as containing zero percent (0%) phosphorus and the Applicator had no knowledge that phosphorus was in fact present in the manufactured fertilizer. Within twenty (20) days after receipt of a citation issued under this section, the alleged violator may appeal the citation as provided in MCL §333.2462, being Section 2462 of the Michigan Public Health Code, 1978 P.A. 368, as amended. Appeals pursuant to MCL §333.2462 from the determination of the Health Officer shall be to the Calhoun County Board of Health.

A violation of this chapter is declared to be a nuisance *per se*. The Health Officer, or his/her designee, without posting bond, may maintain an action in a court of competent jurisdiction for an injunction or other process against any person(s) to restrain or prevent a violation of this Regulation.

Notwithstanding any other provisions of this Regulation, a private citizen may bring legal action to enforce this Regulation.

Section 12. Severability.

If any provision, clause, sentence, or paragraph of this regulation or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Regulation which can be given effect without the invalid provision or application and, to this end, the provisions of this regulation are declared to be severable.

Section 13. Effective Date.

This Regulation shall be effective September 1, 2010.