

ORDINANCE #09-16

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF
THE BOROUGH OF CHATHAM, COUNTY OF MORRIS,
STATE OF NEW JERSEY ADOPTING PROVISIONS
REGULATING THE APPLICATION OF FERTILIZERS**

WHEREAS, the State of New Jersey, Department of Environmental Protection (“DEP”) has promulgated rules and regulations governing stormwater management; and

WHEREAS, pursuant to the regulations, the DEP has issued an NJPDES MASTER GENERAL PERMIT NJPDES Permit No.NJ0141852, Effective Date of Renewal March 1, 2009, Expiration Date: February 28, 2014, entitled “Tier A Municipal Stormwater General Permit, (NJ0141852), FINAL -NJPDES Master General Permit Renewal; (the “General Permit”) and

WHEREAS, pursuant to Section F. (Statewide Basic Requirements) 5. (Improper Disposal of Waste) g. (Fertilizer Management Ordinance) of the General Permit, Tier A Municipalities identified in the adopted Non-Tidal Passaic River Basin Addressing Phosphorus Impairments TMDL shall adopt and enforce a fertilizer management ordinance, consistent with the model ordinance provided by the Department’s Division of Watershed Management; and

WHEREAS, the Borough of Chatham is an identified municipality in the adopted Non-Tidal Passaic River Basin Addressing Phosphorus Impairments TMDL and, therefore, must adopt a fertilizer management ordinance; and

WHEREAS, the Mayor and Council have determined that it is in the best interests of and will protect and promote the health, safety and welfare of the Borough of Chatham and its residents to adopt provisions regulating the application of fertilizers;

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the Borough of Chatham, County of Morris, and State of New Jersey as follows:

Section 1.

The following provisions regulating the application of fertilizers are adopted and shall be codified into such Chapter and Sections of the Borough Code as deemed appropriate by the Borough's Code Publishing Company:

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.

SECTION II. 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.

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 waterbody.
- b. 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.
- c. 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.
- d. Person - any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.
- e. 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.
- f. 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.
- g. Waterbody - 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 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 (the Borough of Chatham is in Zone 6b) between 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:

The provisions of this Chapter shall be enforced by a prompt investigation made by the appropriate personnel of the Borough of Chatham of any person or entity believed to be in violation of this Chapter. The Code Enforcement Officer of the Borough of Chatham is hereby designated as the enforcement officer for the purposes of enforcement of the provisions of this article. All members of the Chatham Borough Police Department are hereby designated as assistant enforcement officers for the purposes of the enforcement

of this article. Nothing in this Chapter shall be construed to preclude the Borough's right, pursuant to any applicable statute, to initiate legal proceedings under this Chapter in Municipal Court. The violation of any section or subsection of this Chapter shall constitute a separate and distinct offense independent of the violation of any other section or subsection, or of any order pursuant to this Chapter. Each day a violation continues shall be considered a separate offense.

SECTION VII. Violations and Penalties:

- A. Any person violating any part of this chapter shall be punishable as provided in Chapter 1, § 1-14. However, where the penalty for such offense may be limited by a state statute, then such limitation shall be applicable notwithstanding the provisions of this article.
- B. Each and every violation of this chapter for each and every day that any provision of this chapter shall be violated shall be construed as a separate and distinct violation

SECTION VIII. Severability:

Each section, paragraph, subsection, sentence, clause and provision is declared to be an independent section, 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 3.

If any section, paragraph, subsection, sentence, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, sentence, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

Section 4.

Any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict; and

Section 5.

This Ordinance shall take effect on upon passage and publication in accordance with applicable law.

INTRODUCED: September 14, 2009

ADOPTED: _____, 2009

APPROVED: _____
V. Nelson Vaughan, III, Mayor

Attest:

Susan Caljean, Borough Clerk