

CHAPTER 80

ESTABLISHING REGULATIONS FOR LAWN FERTILIZER AND COAL TAR SEALCOAT PRODUCTS APPLICATION AND SALE

- 80.01 Authority.
- 80.02 Purpose and Intent.
- 80.03 Applicability.
- 80.04 Definitions.
- 80.05 Regulation of the Use and Application of Law Fertilizer.
- 80.06 Exemptions.
- 80.07 Sale of Fertilizer Containing Phosphorus.
- 80.08 Regulation of the Application and Sale of Coal Tar and High PAH Sealant Products.
- 80.09 Exemptions.
- 80.10 Enforcement.
- 80.11 Penalty.
- 80.12 Severability Clause.

[80.13-80.99 reserved.]

80.01 AUTHORITY. This chapter is recommended by the Dane County Lakes and Watershed Commission and adopted by the Dane County Board of Supervisors under the authority of sec. 33.455, Wis. Stats.

80.02 PURPOSE AND INTENT. The Dane County Board of Supervisors finds that Dane County's lakes and streams are a natural asset which enhance the environmental, recreational, cultural and economic resources of the area and contribute to the general health and welfare of the public. The Board further finds that regulating the amount of nutrients and contaminants, including phosphorus contained in fertilizer and polycyclic aromatic hydrocarbons (PAHs) contained in coal tar sealcoat products, entering the lakes will improve and maintain lake water quality.

[History: am., OA 34, 2006-07, pub. 04/19/07, eff. 07/01/07.]

80.03 APPLICABILITY.

- (1) This ordinance applies in all areas of Dane County.
- (2) Cities and villages wholly or partially in Dane County may assume administration and regulation of lawn fertilizer and coal tar sealcoat products application and sale if they have adopted ordinances that include standards at least as restrictive as those described in ss. 80.05-80.09.

[History: (2) am., OA 34, 2006-07, pub. 04/19/07, eff. 07/01/07.]

80.04 DEFINITIONS.

- (1) *Agricultural use* has the meaning set forth in sec. 10.01(2a).
- (2) *Coal tar* is a byproduct of the process used to refine coal. *Coal tar* contains high levels of polycyclic aromatic hydrocarbons (PAHs).
- (3) *Coal tar sealant product* means a material that contains coal tar, coal tar pitch, coal tar pitch volatiles, or any variation, and is for use on asphalt or concrete surface, including a driveway, playground, or parking area.
- (4) *Department* shall mean the Environmental Health Division of the Public Health Department Madison and Dane County.
- (5) *Fertilizer* has the meaning set forth in sec. 94.64(1)(e), Wis. Stats.
- (6) *High PAH sealant product* means any pavement sealant product that contains greater than 0.1% polycyclic aromatic hydrocarbons by weight, including, but not limited to, coal tar, coal tar pitch, coal tar pitch volatiles, tar, fuel oil, petroleum, or asphalt.
- (7) *Lawn fertilizer* means any fertilizer, whether distributed by property owner, renter or commercial entity, distributed for nonagricultural use, such as for lawns, golf courses, parks and cemeteries. *Lawn fertilizer* does not include fertilizer products intended primarily for garden and indoor plant application.
- (8) *Polycyclic aromatic hydrocarbons (PAHs)* are a group of organic chemicals that are present in coal tar and other products. PAHs in pavement sealants are an environmental concern because many are known human carcinogens and toxic to aquatic life.

[**History:** (2) and (3) renum., respectively, as (3) and (4) and a new (2), (5) and (6) cr., OA 34, 2006-07, pub. 04/19/07, eff. 07/01/07; 80.04 am. and renum., 2018 OA-14, pub. 10/16/18.]

80.05 REGULATION OF THE USE AND APPLICATION OF LAWN FERTILIZER.

- (1) Effective January 1, 2005, no person shall apply any lawn fertilizer within Dane County that is labeled as containing more than 0% phosphorus or other compound containing phosphorus, such as phosphate, except as provided in section 80.06.
- (2) No lawn fertilizer shall be applied when the ground is frozen.
- (3) No person shall apply fertilizer to any impervious surface including parking lots, roadways, and sidewalks. If such application occurs, the fertilizer must be immediately contained and either legally applied to turf or placed in an appropriate container.

80.06 EXEMPTIONS. The prohibition against the use of fertilizer under section 80.05 shall not apply to:

- (1) Newly established turf or lawn areas during their first growing season.
- (2) Turf or lawn areas that soil tests, performed within the past three years by a state-certified soil testing laboratory, confirm are below phosphorus levels established by the University of Wisconsin Extension Service. The lawn fertilizer application shall not contain an amount of phosphorus exceeding the amount and rate of application recommended in the soil test evaluation.
- (3) Agricultural uses, vegetable and flower gardens, or application to trees or shrubs.

- (4) Yard waste compost, biosolids or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil.

80.07 SALE OF FERTILIZER CONTAINING PHOSPHORUS.

- (1) Effective January 1, 2005, no person shall sell or offer for sale any lawn fertilizer within Dane County that is labeled as containing more than 0% phosphorus, or other compound containing phosphorus, such as phosphate, except such fertilizer may be sold for use as provided in section 80.06.
- (2) Effective January 1, 2005, no person shall display lawn fertilizer containing phosphorus. Signs may be posted advising customers that lawn fertilizer containing phosphorus is available upon request for uses permitted by s. 80.06.
- (3) Effective May 1, 2004, a sign containing the regulations set forth in this ordinance and the effects of phosphorus on Dane County's waters must be prominently displayed where lawn fertilizers are sold.

80.08 REGULATION OF THE APPLICATION AND SALE OF COAL TAR AND HIGH PAH SEALANT PRODUCTS.

- (1) No person shall apply any coal tar sealant product or high PAH sealant product within Dane County.
- (2) No person shall allow a coal tar sealant product or high PAH sealant product to be applied upon property in Dane County that is under that person's ownership or control.
- (3) No person shall sell, offer to sell, or display for sale any coal tar sealant product or high PAH sealant product within Dane County.
- (4) Any person who sells pavement sealant products shall prominently display, in the area where such pavement sealant products are sold, a notice that contains the following language: "The application of coal tar sealant products and high PAH sealant products in Dane County is prohibited by section 80.08 of the Dane County Code of Ordinances. Coal tar is a significant source of polycyclic aromatic hydrocarbons (PAHs), a group of organic chemicals that can be carried by stormwater and other runoff into Dane County's lakes and streams. PAHs are an environmental concern because they are toxic to aquatic life."

[History: 80.08 renum. as 80.10 and a new 80.08 cr., OA 34, 2006-07, pub. 04/19/07, eff. 07/01/07; (3) will be repealed eff. 04/01/09 unless re-enacted by the Co. Bd., OA 4, 2007-08, pub. 06/01/07; 80.08 am. and renum., 2018 OA-14, pub. 10/16/18.]

80.09 EXEMPTIONS.

- (1) The sale of a coal tar sealant product or a high PAH sealant product to a person who intends to apply the product on a surface that is not located within Dane County is permitted under the following conditions:
- (a) The seller requires the purchaser to complete and sign a form, to be provided by the Land and Water Resources Department, that includes the purchaser's name, address, phone number, date of purchase, quantity purchased and a statement that the product will not be applied on a surface that is located within Dane County.
- (b) The seller retains the completed form for a period of not less than three (3) years from the date of sale and allows the inspection and copying of the form by Dane County staff upon request.

(2) The Department after consultation with the Director of the Land and Water Resources Department may exempt a person from the requirements of section 80.08 if the person is conducting *bona fide* research concerning the effects of a coal tar sealant product or high PAH sealant product on the environment and the use of the coal tar product is required for said research.

[History: 80.09 renum. as 80.11 and a new 80.09 cr., OA 34, 2006-07, pub. 04/19/07, eff. 07/01/07; (1) and (2) am., 2018 OA-14, pub. 10/16/18.]

80.10 ENFORCEMENT.

(1) Violations of this ordinance will be enforced by the Department.

(2) Any violation of this ordinance may be enforced by injunctive order at the suit of the corporation counsel.

(3) Each day that a violation of this chapter is permitted to exist shall constitute a separate offense.

[History: 80.10 renum. as 80.12 and 80.08 renum. as 80.10 and, as renum., am., OA 34, 2006-07, pub. 04/19/07, eff. 07/01/07; am., OA 1, 2011-12, pub. 08/01/11; (1) and (2) am., (3) cr., 2018 OA-14, pub. 10/16/18.]

80.11 PENALTY.

(1) Any person who violates section 80.05 in the application of fertilizer at his or her residence shall be subject to a forfeiture of \$25 per violation.

(2) Any person who violates section 80.08(1) by applying a coal tar sealant product or high PAH sealant product to property under that person's ownership or control shall be subject to a forfeiture of \$25 per violation.

(3) Any commercial fertilizer applicator, residential or commercial developer, industrial or commercial owner, or other person who violates section 80.05, and any person who violates section 80.07, shall be subject to a forfeiture of \$50 for the first violation within a twelve-month period, \$150 for the second violation within a twelve-month period, and \$300 for the third and each subsequent violation within a twelve-month period.

(4) Any commercial sealant product applicator, residential or commercial developer, industrial or commercial owner, or any other person, other than a person identified under sub. (2) above, who violates section 80.08, shall be subject to a forfeiture of \$500 for the first violation within a twelve-month period, \$1000 for the second violation within a twelve-month period, and \$2000 for the third and each subsequent violation within a twelve-month period.

(5) If a coal tar sealant product or high PAH sealant product is applied in violation of s. 80.08, each day the product remains on the property shall constitute a separate offense until the product is removed and disposed of in a manner approved by the Department.

(6) Any person who sells, offers to sell, or displays for sale any sealant product in violation of s. 80.08(3) or (4) shall be subject to a forfeiture of \$500.

[History: 80.09 renum. as 80.11 and, as renum., am., OA 34, 2006-07, pub. 04/19/07, eff. 07/01/07; (4) am., OA 1, 2011-12, pub. 08/01/11; (2), (4), and (6), am. and renum., (5) cr., 2018 OA-14, pub. 10/16/18.]

80.12 SEVERABILITY CLAUSE. If any section, provision or portion of this ordinance is ruled invalid by a court, the remainder of the ordinance shall not for that reason be rendered ineffective or invalid.

[History: 80.10 renum. as 80.12, OA 34, 2006-07, pub. 04/19/07, eff. 07/01/07.]

[80.13-80.99 reserved.]

[History: Ch. 80 (sec. 80.01 through 80.10) cr., Sub. 1 to OA 33, 2003-04, pub. 04/30/04; Chapter Title am., OA 34, 2006-07, pub. 04/19/07, eff. 07/01/07.]

END OF CHAPTER