



Supplemental EPC Agenda Item Cover Sheet
June 10, 2010

Public Hearing Agenda Item IV
Fertilizer Draft Rule

DRAFT 6-4-2010
RULES OF THE
ENVIRONMENTAL PROTECTION
COMMISSION
OF HILLSBOROUGH COUNTY

CHAPTER 1-15
FERTILIZER USE AND LANDSCAPE
MANAGEMENT

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1-15.01 FINDINGS OF FACT AND STATEMENT OF INTENT

(a) As a result of impairment to Hillsborough County’s surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface and/or ground water within the aquifers or springs within Hillsborough County, the Commission has determined that the use of fertilizers creates a risk of adverse effects on surface and/or ground water. Accordingly, the Commission finds that additional management measures, including but not limited to those contained in the most recent edition of the Florida Department of Environmental Protection’s (FDEP) “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries,” are required by this rule.

(b) The intent of this rule is to regulate the proper use of fertilizers by any applicator; require proper training of commercial and institutional fertilizer applicators and landscape maintenance companies by establishing training and licensing requirements;

establish a prohibited application period; specify allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, exemptions, and training and licensing requirements. The rule requires the use of best management practices (BMPs) which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of fertilizers and improper landscape maintenance practices. These secondary and cumulative effects have been observed in and on Hillsborough County’s stormwater and drainage conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies, whether they are natural or artificial. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural, and economic well-being of Hillsborough County residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and artificial stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

Section History – Adopted [insert date]; Effective [insert date].

1-15.02 DEFINITIONS

For this rule, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

(a) “Executive Director” means the Environmental Director of the Commission, or his or her designee.

(b) “Application” or “Apply” means the actual physical deposit of fertilizer to turf or landscape plants.

(c) “Applicator” means any person who applies fertilizer on turf and/or landscape plants in Hillsborough County.

(d) “Commission” means the Environmental Protection Commission of Hillsborough County.

(e) “Best Management Practices” or “BMP” means turf and landscape practices which minimize the negative environmental impacts of installation and maintenance of landscapes.

(f) “Enforcement Officer”, “Official”, or “Inspector” means any designated employee or agent of

the Commission whose duty it is to enforce rules adopted by the Commission and any designated employee of Hillsborough County or a municipality designated to enforce the Commission's rule or their own similar ordinance.

(g) "Commercial Fertilizer Applicator" means any person who applies fertilizer on turf and/or landscape plants in Hillsborough County in exchange for money; goods, services or other valuable consideration.

(h) "Fertilize", "Fertilizing", or "Fertilization" means the act of applying fertilizer to turf, specialized turf, or landscape plants.

(i) "Fertilizer" means any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil. For purposes of this rule, when referring to "fertilizers" the meaning can include both those that contain nitrogen ("N") or phosphorous ("P"), and fertilizers that do not contain those substances. Nonetheless, this rule may use the following abbreviations also to reflect a specific type of content-based fertilizer: "N-fertilizer", "P-fertilizer", or fertilizer that contains either N and/or P - "N/P-fertilizer". For purposes of this rule only, reclaimed water does not fall under the definition of fertilizer.

(j) "Granular" means composed of small grains or particles. Granular does not include products mixed with water prior to application.

(k) "Institutional Applicator" means any person, other than a non-commercial or commercial applicator, that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional applicators shall include, but shall not be limited to, owners and managers of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

(l) "Impervious Surface" means a surface that has been compacted or covered with a layer of material so that it is highly resistant or prevents infiltration by water. It includes surfaces such as compacted sand, limerock, or clay, as well as conventionally surfaced streets, sidewalks, parking lots, and other similar surfaces.

(m) "Landscape Plant" means any native or exotic tree, shrub, ornamental, or groundcover (excluding turf).

(n) "Landscape Maintenance" means activities carried out to manage and maintain landscape plants and turf including but not limited to mowing, edging, and trimming.

(o) "Low Maintenance Zone" means an area a minimum of six (6) feet wide adjacent to surface waters which is planted with non-turf grass vegetation and managed in order to minimize the need for fertilization, watering, mowing, etc.

(p) "Pasture" means land used for livestock grazing that is managed to provide feed value.

(q) "Person" means any natural person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer, or any other entity whatsoever, or any combination of such, jointly or severally.

(r) "Guaranteed analysis" means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in the fertilizer. .

(s) "Restricted Season" means every June 1st through September 30th.

(t) "Site Supervisor" means the direct supervisor of landscape maintenance personnel.

(u) "Slow" or "Controlled Release" fertilizer means a fertilizer containing a plant nutrient in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant significantly longer than a referenced "rapidly available nutrient fertilizer."

(v) "Specialized Turf" means areas of turf used for athletic fields, golf courses, golf course practice areas, and other private or public athletic fields.

(w) "Specialized Turf Manager" means a person responsible for fertilizing or directing the fertilization of specialized turf.

(x) "Surface Water" means those waters as identified by section 62-340.600, Florida Administrative Code (F.A.C.), which include waters

upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. They shall include, but not be limited to, bays, rivers, streams, lakes, ponds, swamps, wetlands, canals, springs, impoundments and all other waters or bodies of water, including fresh, brackish or saline, tidal or intermittent, which are located, either entirely or partially, within the geographic boundaries of Hillsborough County.

(y) “Turf”, “Sod”, or “Lawn” means a piece of grass-covered soil held together by the roots of the grass.

(z) “Vegetable Garden” means an area dedicated to the cultivation of edible plants or individual trees that produce edible food products.

Section History – Adopted [insert date]; Effective [insert date].

1-15.03 APPLICABILITY

This rule shall be applicable to and shall regulate any and all applicators of fertilizer, areas of application of fertilizer, and landscape maintenance activities as described herein within Hillsborough County, unless such applicator or activity is specifically exempted by the terms of this rule from the regulatory provisions of this rule. Exemptions are located in section 1-15.09.

Section History – Adopted [insert date]; Effective [insert date].

1-15.04 WEATHER AND SEASONAL RESTRICTIONS

(a) No applicator shall apply fertilizers containing nitrogen and/or phosphorous to turf during the restricted season from June 1 – September 30.

(b) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during one or more of the following events: i) if it is raining at the application site, or ii) within the time period during which a flood watch or warning, or a tropical storm watch or warning, or a hurricane watch or warning is in effect for any portion of Hillsborough County, issued by the National Weather Service, or iii) within 36 hours prior to a rain event greater than or equal to 2 inches in a 24 hour period is likely.

Section History – Adopted [insert date]; Effective [insert date].

1-15.05 FERTILIZER CONTENT AND APPLICATION RATE

(a) N/P-fertilizers shall be applied to turf and/or landscape plants at the recommended rate per the “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries”, December 2008, as revised. However, no more than four (4) pounds of nitrogen per 1000 ft² shall be applied in any calendar year.

(b) No fertilizer containing phosphorus shall be applied to turf and/or landscape plants in Hillsborough County, except where phosphorus deficiency has been demonstrated in the soil underlying the turf and/or landscape plants by a soil analysis test performed by a State of Florida-certified laboratory. Any person who obtains such a soil analysis test showing a phosphorus deficiency and who wishes to apply phosphorus to turf and/or landscape plants shall maintain a copy of the test results for two years and allow the Executive Director to review the results upon request.

(c) Nitrogen fertilizer shall not be applied before planting new turf or on newly established turf for the first 30 days.

(d) Liquid fertilizers containing nitrogen applied to turf and/or landscape plants within Hillsborough County shall not be applied at a rate that exceeds 0.5 lbs/1000 ft² per application.

(e) It is a violation of this rule to fail to comply with the provisions of this rule and any requirements set forth in Rule 5E-1.003(2), F.A.C., *Labeling Requirements For Urban Turf Fertilizers*.

Section History – Adopted [insert date]; Effective [insert date].

1-15.06 IMPERVIOUS SURFACES AND MODE OF APPLICATION

(a) Fertilizer shall not be applied or otherwise deposited on any impervious surfaces. Any fertilizer applied or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container. Fertilizer shall not be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, drainage conveyances, roadways, or surface waters.

(b) Spreader deflector shields are required when applying fertilizer by use of any broadcast or rotary spreader. Deflector shields must be positioned such that fertilizer granules are deflected away from all impervious surfaces and surface waters.

Section History – Adopted [insert date]; Effective [insert date].

1-15.07 FERTILIZER-FREE ZONES

Fertilizer shall not be applied within ten (10) feet from the landward extent of any surface water as identified in section 62-340.600(2), F.A.C.

Section History – Adopted [insert date]; Effective [insert date].

1-15.08 MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATERIAL

It shall be a violation of this section for any person to wash, sweep, blow or otherwise cause grass clippings, leaves, or other vegetative material to be deposited into stormwater drains, ditches, drainage conveyances, sewer systems, surface waters, or roadways.

Section History – Adopted [insert date]; Effective [insert date].

1-15.09 EXEMPTIONS

(a) The following activities are exempt from this regulation:

(1) Golf courses. For all golf courses and associated practice areas, the provisions of the FDEP document, “BMPs for the Enhancement of Environmental Quality on Florida Golf Courses, January 2007,” as updated, are required and shall be followed.

(2) Bona fide farm operations as defined in the Florida Right to Farm Act, section 823.14, Florida Statutes.

(b) Section 1-15.04(a) shall not apply to fertilizer applications on or the use of:

(1) Vegetable gardens, owned by individual property owners or a community, provided that fertilizer application rates do not exceed University of Florida Institute of Food and Agricultural Sciences (IFAS) recommendations per SP103 Florida Vegetable Gardening Guide, December 2008, as revised.

(2) Yard waste compost or mulch.

(3) Tree trunk or root zone injection fertilization.

(4) **[DELETE IF COMMISSION WANTS MORE CONSISTENCY WITH PINELLAS]** Landscape plants, except for during any weather event described in section 1-15.04. The fertilizer for this exemption may not be applied with a broadcast or rotary spreader.

(5) Value added products, including but not limited to, small, hand-held spray fertilizers, seeds, and planting soils that contain N/P-fertilizer. However, these products may not be applied to turf during the restricted season.

(6) **[INSERT IF SUMMER APPLICATION BY CERTIFIED COMMERCIAL APPLICATORS ONLY IS DESIRED]** Commercial applicators trained and certified in accordance with section 1-15.10 may apply fertilizer containing nitrogen to turf during the restricted season. All certifications must be current. All restricted season applications by commercial applicators must comply with all other provisions of this rule, including but not limited to the application rates.

(7) Theme parks, zoos, and botanical gardens that have an NPDES permit, that follow a landscape BMP manual or similar manual to protect water quality, and whose applicators are trained and certified based on the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries program.

(8) Mine reclamation activities.

(9) Fertilizer on any non-residential lands used for scientific research regarding fertilizer use and its effects.

(c) **[DELETE IF SUMMER SALES RESTRICTION IS NOT APPROVED]** Retail or wholesale fertilizer sellers may sell products containing nitrogen and/or phosphorus to any person exempted under 1-15.09 during the restricted season.

(d) Section 1-15.04(a) and 1-15.05(a) shall not apply to fertilizer applications on specialized turf, including but not limited to, privately and publicly operated athletic fields. Specialized turf managers must follow the provisions and directions in section 5E-

1.003(2)(d), F.A.C., all other provision of this rule, and all applicable provisions the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, as updated. Notwithstanding the definition of specialized turf, golf course and golf practice areas are governed by the exemption in subsection (a)(1) above.

Section History – Adopted [insert date]; Effective [insert date].

1-15.10 CERTIFICATION AND TRAINING

(a) All commercial applicators and their supervisors, as well as government and institutional landscape applicators, shall abide by and successfully complete an IFAS-approved BMP training program within three hundred and sixty five (365) days of adoption of this rule or within 90 days of being hired, whichever is later. The training is based on the Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries manual and the provision of this rule. Commercial applicators and their supervisors are required to keep a copy of the BMP Certificate of Completion with them during landscape maintenance activities and shall present the certificate to the Commission or any authorized local government official, upon request.

(b) All commercial and institutional applicators, site supervisors, and managers of professional landscape maintenance companies, government and institutional landscape supervisors, and any employee of a lawn and landscape maintenance company performing landscape maintenance shall comply with Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries and the provisions of this rule.

(c) In the event of a conflict between the BMPs and any law, the law shall prevail. Failure to follow any fertilizer BMP is a violation of this rule.

(d) A vehicle decal issued by the Executive Director or other authorized organization indicating that the company is in compliance with the training and certification requirements herein shall be affixed and maintained on the exterior of all vehicles and/or trailers used by the company in connection with landscape maintenance activities and/or the application of fertilizer within the area regulated by this rule. The vehicle and trailer decals shall be provided by the Executive Director or other authorized organization upon submittal of demonstration of compliance of the company with the requirements herein. In the event the

applicator was BMP-certified (based on the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries) in a county other than Hillsborough County, the certification and their decal will be recognized in Hillsborough, but the applicator is required to be familiar with and to comply with all provisions of this rule. The Commission may charge a nominal fee for issuance of a decal, for administration of training and certification, or for administration of compliance with this rule.

Section History – Adopted [insert date]; Effective [insert date].

1-15.11 RETAIL SALE OF FERTILIZER CONTAINING NITROGEN OR PHOSPHOROUS

[DELETE SECTION IF NO SUMMER SALES RESTRICTION]

(a) Effective June 1, 2011, no person shall sell, at retail, any lawn or landscape fertilizer, liquid or granular, within Hillsborough County that contains any amount of nitrogen or phosphorous during the restricted season from June 1 – September 30, unless otherwise provided for and/or exempted in this rule.

(b) Retail stores shall not display non-exempt fertilizer during the restricted season.

(c) During the restricted season, retailers shall post a notice stating that the use of non-exempt lawn and landscape N/P-fertilizers in Hillsborough County is restricted in accordance with this rule.

Section History – Adopted [insert date]; Effective [insert date].

1-15.12 ENFORCEMENT AND PENALTY

(a) Violations of this rule will be enforced in accordance with the Hillsborough County Environmental Protection Act or enforced by any other local government which has entered into an agreement with the Commission.

(b) Enforcement of this rule shall be tolled for 12 months from the effective date of this rule, in order to allow the Commission to educate the public and landscape industry regarding this rule.

Section History – Adopted [insert date]; Effective [insert date].

1-15.13 RECOMMENDATIONS AND ADDITIONAL INFORMATION

(a) A voluntary six (6) foot low-maintenance, “no-mow” zone is strongly recommended from those areas described as fertilizer-free zones in

section 1-15.07 to reduce the potential for N/P-fertilizer residue entering adjacent water bodies and wetlands. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. No vegetative material shall be deposited or left remaining in this zone or in the water. Care should be taken to prevent the overspray of aquatic weed products in this zone.

(b) It is recommended that the application of fertilizer for properties using reclaimed water service be reduced in accordance with the nutrient level contained in the reclaimed water. This information is available through the County and municipal water departments.

(c) The Commission strongly recommends the establishment of training programs using Spanish-speaking certified BMP trainers.

(d) The Commission recommends that private homeowners become familiar with and utilize the recommendations of the IFAS Florida Yards and Neighborhoods Handbook (September 2009) when applying fertilizer.

(e) It is recommended that granular fertilizers containing nitrogen applied to turf and/or landscape plants contain the maximum available percent of slow release nitrogen possible per guaranteed analysis label.

(f) It is recommended persons properly collect and dispose of pet waste.

(g) This rule is not applicable to farm manure products and dolomite.

Section History – Adopted [insert date]; Effective [insert date].

1-15.14 VARIANCES

(a) All requests for a variance(s) from the requirements of this rule shall be made in writing to the Executive Director on an EPC fertilizer variance form. The Executive Director may require the variance applicant to provide such information as necessary to carry out the purpose of this rule. The Executive Director may approve, approve with conditions or deny requests for variances. The Executive Director will post notice of fertilizer variance requests on the EPC website.

(b) Upon application, the Executive

Director may grant a variance from the provisions of this rule, where the applicant demonstrates:

(1) A substantial hardship as defined by section 120.542, F.S., or that a violation of the principles of fairness as defined by section 120.542, F.S., would occur, and

(2) The purpose of the underlying rule can be, or has been, achieved by other means, and

(3) The variance requested is the minimum necessary to afford relief, and

(4) That failure to grant the variance would result in a practical difficulty or a physical hardship affecting the applicant's economic use of the property, (e.g. condemnation, abandonment, eviction, foreclosure, or extended illness that has led to lawn deterioration), and

(5) That the granting of the variance will not result in threats to the health, safety and welfare of the residents of the County.

(c) The application must specify the rule for which the variance is requested, the type of action requested, the specific facts that would justify a variance, and the reasons why and the manner by which the purposes of the underlying rule would still be met.

(d) Any person aggrieved by the decision of the Executive Director may appeal pursuant to the provisions of Chapter 1-2, Rules of the Commission.

(e) A variance for scientific research on residential property may be applied for by a commercial entity, a governmental entity, or academia. Those entities are not required to provide the demonstration required in subsections (b)(1) and (b)(4) above.

Section History – Adopted [insert date]; Effective [insert date].

1-15.15 AGENCY REVIEW

Within 4 years of the effective date of this rule, the Commission shall review the effectiveness of the rule and whether any changes are merited.

Section History – Adopted [insert date]; Effective [insert date].

Rule History:

Adopted and Effective xx/xx/2010