

**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 Sealcoat Products Containing Coal Tar.
- 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) *Fertilizer* has the meaning set forth in sec. 94.64(1)(e), Wis. Stats.

(4) *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.

(5) *Polycyclic aromatic hydrocarbons (PAHs)* are a group of organic chemicals that are present in coal tar and are an environmental concern because they are toxic to aquatic life.

(6) *Sealcoat* is a black liquid that is sprayed or painted on asphalt pavement in an effort to protect and beautify the asphalt. Most sealcoat products are coal tar or asphalt based.

[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.]

80.05 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 SEALCOAT PRODUCTS CONTAINING COAL TAR. (1) No person shall apply any sealcoat product within Dane County that is labeled as containing coal tar.

(2) No person shall sell, offer to sell, or display for sale any sealcoat product within Dane County that is labeled as containing coal tar.

(3) Any person who sells pavement sealcoat products shall prominently display, in the area where such pavement sealcoat products are sold, a notice that contains the following language: "The application of coal tar sealcoat products on driveways, parking lots and all other paved surfaces 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.]

80.09 EXEMPTIONS. (1) The sale of a sealcoat product containing coal tar 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 coal tar sealcoat 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 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 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.]

80.10 ENFORCEMENT. (1) Violations of this ordinance will be enforced by the Environmental Health Section of the Public Health Division of the Department of Human Services, or any successor organization.

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

[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.]

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 at his or

her residence 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 sealcoat 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) Any person who applies, sells, offers to sell or displays for sale any sealcoat product

within Dane County that is labeled as containing coal tar is presumed to have applied, sold, offered to sell or displayed the product in violation of this section.

[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.]

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