BAY COUNTY BOARD OF COMMISSIONERS

ORDINANCE NO. 48

TITLE: ORDINANCE TO BAN LAWN FERTILIZER CONTAINING PHOSPHORUS IN BAY COUNTY

APPROVAL DATE: NOVEMBER 13, 2007

PUBLISH DATE: DECEMBER 16, 2007

1. Authority

This Ordinance is adopted under the authority of MCLA 46.10b.

2. Purpose and Intent

The Bay County Board of Commissioners finds that Bay County's lakes, rivers and streams are natural assets, 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 lawn fertilizer, entering the lakes, rivers and streams of Bay County will improve and maintain lake and stream water quality by reducing algae blooms and the excess growth and spread of other aquatic plants. The Bay County Board of Commissioners finds that unreasonable adverse effects on the environment of Bay County and on the public health of the citizens of Bay County and the visitors to Bay County will occur unless this Ordinance is adopted to ban and/ or control the use of lawn fertilizers containing phosphorus.

3. Applicability

(a) This Ordinance applies in all areas of Bay County.

(b) Townships, cities and villages wholly or partially in Bay 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 8.

4. Definition

(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) Fertilizer has the meaning in MCLA 324.8501(l).

(c) Lawn fertilizer means any fertilizer, whether applied by property owner, renter or commercial entity, intended for nonagricultural use, such as for lawns, golf courses, parks and cemeteries. Lawn fertilizer does not include fertilizer products intended primarily for garden or indoor use.

5. Regulation of the Use and Application of Lawn Fertilizer

(a) Effective January 1, 2009, no person shall apply any lawn fertilizer within Bay County that is labeled as containing more than 0% phosphorus, except as provided in Section 6 of this Ordinance.

(b) No lawn fertilizer shall be applied when the ground is frozen.

(c) No person shall apply lawn fertilizer to any impervious surface including parking lots, roadways, and sidewalks. If such application occurs, the fertilizer must be immediately removed from those surfaces and either legally applied to turf or placed in an appropriate container.

6. Exemptions

The restrictions upon the use of lawn fertilizer under Section 5 of this Ordinance shall not apply to:

(a) Newly established turf or lawn areas during their first growing season.

(b) Turf or lawn areas that soil tests, performed within the past three years by the Michigan State University Extension Service or other qualified or recognized authority in the area of soil analysis, confirm are below phosphorus levels established by the Michigan State University 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.

(c) Agricultural uses, vegetable and flower gardens, or application to trees or shrubs.

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

7. Enforcement

This Ordinance will be enforced by the Environmental Health Division of the Bay County Health Department.

8. Civil Infraction Penalties; Injunctive Relief

Any person who violates Section 5 in the application of lawn fertilizer at his or her residence shall be subject to a civil infraction penalty of fifty ($50) dollars per violation. Any commercial

fertilizer applicator, residential or commercial developer, industrial or commercial owner, or other person who violates Section 5, and any person violates Section 7 shall be subject to a civil infraction penalty of $50 for the first violation within a twelve (12) month period, $150.00 for the second violation within a twelve (12) month period, and $300.00 for the third and each subsequent violation within a twelve (12) month period. The repeated use of lawn fertilizer in violation of this Ordinance may also be declared a nuisance, subject to injunctive and other equitable relief in the Bay County Circuit Court.

9. Effective Date

This Ordinance was approved and adopted by the Bay County Board of Commissioners on November 13, 2007 and shall be effective on January 1, 2009.

Date: November 14, 2007

Kim Coonan, Chairperson
Bay County Board of Commissioners

CERTIFICATION

I hereby certify that the above Ordinance No. 48 was duly adopted by the Bay County Board of Commissioners at a regular meeting on November 13, 2007.

Date: November 14, 2007

Cynthia A. Luczak, Bay County Clerk