

REGULATIONS GOVERNING APPLICATION OF FERTILIZERS

Per RSA 147:1 the following regulations governing the application of fertilizers are hereby adopted. These regulations are in addition to any applicable State laws and regulations/rules promulgated by the New Hampshire Department of Environmental Services (DES).

Section 1 – Purpose - Surface water runoff of fertilizer products into adjoining water bodies or their tributaries, can result in reduced water quality and increased growth of aquatic weeds and algae. Degradation of surface water reduces the ability to enjoy such waters for recreation purposes, and impacts the value of waterfront properties. The objective of this regulation is to enhance the health and safety of users of such water bodies and the general community.

Section 2 – Scope - The restrictions herein are applicable to any properties located within Watershed Protection Overlay Districts (WPOD) as enacted under the Windham Zoning Ordinance (WZO).

Section 3 – Restrictions -

Section 3.1: Application of any type of fertilizer is not allowed within 200 feet of the prevailing shoreline/high-water mark of any public water body or their tributaries.

Section 3.2: In any other areas beyond 200 feet of the prevailing shoreline/high-water mark of any public water body or their tributaries and within the scope of these regulations, only low phosphate, slow-release nitrogen fertilizers are permissible for application.

Section 3.3 - Definitions:

- a. Fertilizer:** means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.
- b. Low Phosphate Fertilizer:** means fertilizer products intended for new or established turf or lawns, with available phosphate levels equal to or above 0.5 percent phosphorus pentoxide (P₂O₅) and an application rate not to exceed 0.25 pounds P₂O₅ per 1000 square feet per application and 0.5 pounds P₂O₅ per 1000 square feet per year.
- c. Tributary:** Any perennial, intermittent, or ephemeral stream, or other flow of concentrated surface water (i.e. not sheet flow or runoff) caused by geographic contours (either natural or human made) flowing either directly or indirectly into a public water body as defined herein. This shall include any stream or concentrated water flow section contained within a stream bed, ditch, pipe system or other modified channel.

Section 4 – Exceptions - Nothing herein shall be applicable to activities associated with agricultural operations governed by State law.

Section 5 – Waivers - A property owner may apply for a waiver from the Restrictions herein, which may be granted by the Board of Health, pursuant to the Rules of Procedure for the Board of Health (#WIN 4:06:14:99) upon a demonstration that the proposed fertilizer application will not result in elevated nutrient loading to the protected water resources. All requests for a Waiver shall be submitted on forms provided by the Board of Health or their designee and include any applicable fees required by the Board of Selectmen. The Board of Health will consider the following when deciding on a Waiver:

- That the topography of land adjacent to the water body slopes away from the water body.
- That there exist berms, retaining walls, or installed drain systems which prevent direct run-off into adjoining waters.
- That treatment systems exist (e.g. infiltration; treatment swales, etc.) which are designed to prevent run-off of fertilizer components into the adjoining waters. Such applications may require plans prepared by a licensed civil engineer, affirming drainage patterns.

Approved waivers shall last only so long as the property remains in its original state at the time said waiver was approved. Waivers shall expire two years from the date of approval or upon a significant change to the property that alters drainage patterns and/or increases lawn area, whichever occurs sooner.

Section 6 – Enforcement - The enforcement of the provisions herein shall be the responsibility of the Health Officer.

Section 7 – Appeals - A property owner may appeal a violation notice issued by the Health Officer to the Board of Health within ten (10) days of the written notice of the violation. The Board of Health shall hold a hearing and render a decision within forty-five (45) days of an Appeal request.

Section 8 – Penalties - Any person who violates this ordinance shall be guilty of a violation as provided in RSA 147:1(III) and RSA 625:9 (V-a) and will be subject to fines and penalties as provided by law (RSA 651:2), which may be enforced under RSA 31:39-d. Each occurrence of a violation shall constitute a separate offense.

If a property owner is found to have violated these Regulations, the Board of Health or their designee shall impose a fine of \$500 for the first violation. Each violation thereafter constitutes a separate offense subject to a fine of \$750 per occurrence to a maximum fine of \$1,000.

Section 9 – Severability - So far as the Board of Selectmen may provide, each section of their regulations shall be construed as separate to the end that if any portion shall be held involved for any reason, the remainder of these regulations shall continue in force and effect.

Section 10 – Amendments - This policy may from time to time be amended by the vote of the Board at a regularly scheduled Board Meeting.

Section 11 – Effective Date - These regulations shall take effect upon approval by the Board of Selectmen, recorded by the Town Clerk, and published or posted as required under RSA 147:1 (I).

Originally Adopted by the Board of Health on October 23, 2024.

Amended by the Board of Health on August 11, 2025.