

BY-LAW 2012-58

**A BY-LAW OF THE CITY OF GREATER SUDBURY TO REGULATE THE USE OF
MANUFACTURED FERTILIZERS CONTAINING PHOSPHORUS**

WHEREAS section 5 of the *Municipal Act, 2001*, S.O. 2001, c. 25 requires that a municipal power be exercised by by-law;

AND WHEREAS section 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25 grants to a municipality the authority to pass by-laws respecting the health, safety and well-being of persons, the protection of persons and property, the economic, social and environmental well-being of the municipality;

AND WHEREAS the municipal Council of the City of Greater Sudbury ("Council") has expressed its desire to protect the water quality and health of lakes by reducing phosphorus inputs;

AND WHEREAS Council passed resolution 2011-294 resolving that a by-law be prepared to restrict the use of manufactured lawn fertilizers containing phosphorus;

**NOW THEREFORE THE COUNCIL OF THE CITY OF GREATER SUDBURY
HEREBY ENACTS AS FOLLOWS:**

Interpretation

1. In this By-law:

"agriculture" means an agricultural, aquacultural or horticultural operation and includes:

(a) any of the following activities done for the purposes of any of those operations:

(i) Growing, producing or raising farm animals;

- (ii) The production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass, and any additional agricultural crops prescribed by the regulations made under the *Nutrient Management Act, 2002*, S.O. 2002, c. 4:
 - (iii) The production of eggs, cream and milk;
 - (iv) The operation of agricultural machinery and equipment;
 - (v) The processing by a farmer of the products produced primarily from the farmer's agricultural operation;
 - (vi) Activities that are a necessary but ancillary part of an agricultural operation such as the use of transport vehicles or storage containers or maintenance of a shelterbelt for the purposes of the agricultural operation;
 - (vii) The management of materials containing nutrients for farm purposes; and
 - (viii) The production of wood from a farm woodlot, if at least one of the activities described in clauses (i) to (vii) is carried out on the property where the farm woodlot is located; and
- (b) farm units and agricultural operations under the *Nutrient Management Act, 2002*, S.O. 2002, c. 4.

“apply” means to put to use, spray, distribute, or employ and “applies” and “application” have similar meanings;

“By-law Enforcement Officer” means a member of any police service with jurisdiction in the City, or any person appointed by Council for the enforcement of municipal by-laws, including this By-law;

“City” means the municipal corporation of the City of Greater Sudbury or the geographic area, as the context requires;

“Council” means the Council of the City of Greater Sudbury;

“forecast” means a forecast from Environment Canada;

“General Manager” means the General Manager of Growth and Development and includes his or her authorized representative;

“manufactured fertilizer” means any substance or mixture of substances, containing phosphorus, or a compound containing phosphorus, such as phosphate, that is manufactured, sold or represented for use as a plant nutrient or to aid plant growth and does not include:

- (a) pesticides as defined by the *Pesticides Act*, R.S.O. 1990, c. P.11 and
- (b) agricultural or non-agricultural source materials as defined by the *Nutrient Management Act, 2002*, S.O. 2002, c. 4.

“person” includes any individual, firm, partnership, association, corporation, company or organization of any kind;

“soil test” means a test conducted by a soil tester of soil taken from the surface on which a person plans to apply manufactured fertilizer to determine whether soil contains a sufficient amount of phosphorus to support turf growth;

“soil tester” means a company or organization that is accredited under the laws of the Province of Ontario to perform soil tests for phosphorus on Ontario soils;

“turf” means land upon which turf grasses grow or are intended to be grown including but not limited to:

- (i) residential, commercial, industrial or institutional lawns or grounds, and
- (ii) cemeteries and parks; and

“Zoning By-law” means a City by-law passed under the authority of the *Planning Act* to zone lands within the City.

2.(1) Whenever this By-law refers to a person or thing with reference to gender or the gender neutral, the intention is to read the By-law with the gender applicable to the circumstances.

(2) References to items in the plural include the singular, as applicable.

(3) The words “include”, “including” and “includes” are not to be read as limiting the phrases or descriptions that precede them.

(4) Headings are inserted for ease of reference only and are not to be used as interpretation aids.

(5) Specific references to laws in the By-law are printed in italic font and are meant to refer to the current laws applicable with the Province of Ontario as at the time the By-law was enacted, as they are amended from time to time.

(6) Any reference to periods of time, stated in numbers of days, shall be deemed applicable on the first business day after a weekend or statutory holiday if the expiration of the time period occurs on a weekend or statutory holiday.

3.(1) Whenever this By-law refers to an Act of the Province of Ontario or Canada, the reference includes reference to regulations under that Act.

Prohibition

4. (1) Subject to subsection 5(1), no person shall apply, permit to be applied or cause to be applied a manufactured fertilizer to any surface.

5. (1) A person may apply, permit or cause to be applied a manufactured fertilizer:

(a) if the application is:

(i) on a pervious surface for the purpose of establishing or re-establishing turf from seed or sod during the first growing season of the turf;

(ii) not within 15 metres of a water body; and

(iii) not when precipitation is occurring or when precipitation is forecast to occur in the next 48 hours;

(b) if the manufactured fertilizer is applied to turf for which a soil test completed within the 3 years prior to the date of application of the manufactured fertilizer indicates that the level of phosphorus in the soil is insufficient to support turf growth;

(c) on lands used as a golf course or a golf driving range where that land use is in accordance with the Zoning By-law;

(d) on lands or in containers used or intended to be used for any of the following:

- (i) flower or shrub beds;
- (ii) herb or vegetable gardens; or
- (iii) trees or shrubs.

(2) For the purposes of subsection 5(1)(b), a level of phosphorus in a soil test that is less than or equal to 10 parts per million indicates that the level of phosphorus in the soil is insufficient to support turf growth.

6. Where a person applies manufactured fertilizer in accordance with subsection 8(1)(b), the person shall retain the soil test for 3 years after the date of applying manufactured fertilizer.

Application

7. (1) This By-law does not apply to the application of a manufactured fertilizer:

- (a) on any of the following:
 - (i) lands used for the growing of trees in Crown forest;
 - (ii) lands formerly used for mining purposes that are the subject of reclamation efforts;
 - (iii) lands designated by the General Manager for re-greening;
 - (iv) lands used for the purpose of agriculture; and
 - (v) lands regulated by the *Nutrient Management Act, 2002*, S.O. 2002, c. 4;
- (b) which is a pesticide as a defined by the *Pesticides Act*, R.S.O. 1990, c. P.11;

- (c) which is a nutrient, agricultural source material or non-agricultural source material regulated by the *Nutrient Management Act, 2002*, S.O. 2002, c. 4;

Enforcement

8. (1) This By-law may be enforced by a By-law Enforcement Officer.

(2) Without limiting subsection (1), for the purpose of conducting an inspection to determine whether a person is complying with this By-law, a By-law Enforcement Officer may:

- (a) enter onto lands at a reasonable time;
- (b) require the production for inspection of documents or things relevant to the inspection;
- (c) require information from any person concerning a matter related to the inspection; and
- (d) take photographs or soil samples.

9. (1) No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this By-law.

(2) No person required to produce documents, things or information by a By-law Enforcement Officer shall fail to respond forthwith.

Offences, Penalties, Costs and Orders

10. (1) Every person who contravenes any of the provisions of this By-law and any director or officer of a corporation who concurs in such contravention is guilty of an

offence and on conviction is liable to a fine as provided for in the *Provincial Offences Act*.

(2) For the purposes of subsection 10 (1), each day on which a person contravenes any of the provisions of this By-law shall be deemed to constitute a separate offence under this By-law.

11. Where a person has been convicted of an offence under this By-law, the City may, in addition to any other penalty imposed on the person convicted, seek an order from the Ontario Court (Provincial Division) or any court of competent jurisdiction, prohibiting the continuation of the offence or doing of any act or thing by the person convicted directed towards the continuation of the offence.

12. (1) When a person has been convicted of an offence under this By-law, a By-law Enforcement Officer may issue an order, in addition to any other penalty imposed on the person convicted, requiring the person who contravened this By-law or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.

(2) Where a person fails to comply with an order issued pursuant to subsection (1), the work ordered may be done by the City at the person's expense.

(3) Any unpaid costs or charges levied upon a person under this By-law shall be a debt owing by the person to the City.

(4) The levying and payment of any fine as provided for under the *Provincial Offences Act* shall not relieve a person from the necessity of paying any costs or charges for which such person is liable under this By-law.

(5) An offence and subsequent conviction under this By-law pursuant to the *Provincial Offences Act* or the *Municipal Act, 2001*, shall not be deemed in any way to preclude the City from issuing a separate legal proceeding to recover charges, costs and expenses incurred by the City and which may be recovered in a Court of competent jurisdiction.

Administration

13. (1) The administration of this By-law is assigned to the General Manager who is also delegated the authority to make all decisions required of the General Manager under this By-law and to perform all administrative functions identified herein and those incidental to and necessary for the due administration of this By-law, including:

(a) designation of lands for re-greening.

(2) The General Manager may delegate the performance of any one or more of his or her functions under this By-law to one or more persons from time to time as the occasion requires and may impose conditions upon such delegation and may revoke any such delegation.

Severability / Conflict

14. (1) If any section, subsection, part or parts of this By-law is declared by any court of law to be bad, illegal or *ultra vires*, such section, subsection, part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

(2) Nothing in this By-law relieves any person from complying with any provision of any federal or provincial legislation or any other By-law of the City.

(3) Where a provision of this By-law conflicts with the provisions of another By-law in force in the City, the provision that establishes the higher standard to protect the health, safety and welfare of persons or the environmental well-being of the municipality shall prevail.

(4) This By-law does not apply in any situation where any of the following Acts or any successor Acts apply:

(a) *Nutrient Management Act, 2002*, S.O. 2002, c. 4; and

(b) *Pesticides Act*, R.S.O. 1990, c. P.11.

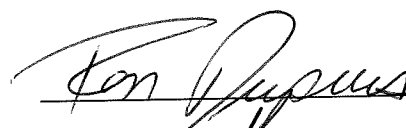
Short Title

15. (1) This By-law shall be known as the "Phosphorus By-law".


Effective Date

16. (1) This By-law shall come into force on April 1, 2012.

READ AND PASSED IN OPEN COUNCIL this 27th day of March, 2012



Deputy Mayor



Clerk