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August 13, 2013

Mr. Allen P. Hubbard, P.E., Program Administrator, NPDES Stormwater Program
Florida Department of Environmental Protection
Bob Martinez Center
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Dear Mr. Hubbard,

Provided below is the **Response** to the FDEP Comment regarding the Town of Jupiter Inlet Colony Annual NPDES Report (Third Term, Year 2) as part of FDEP's "Year 2 Annual Report Comments".

Comment re: Florida-Friendly Fertilizer Ordinance: Part III.A.6. of the MS4 permit requires that if a Florida-Friendly Landscaping Ordinance is not adopted, all local governments within the watershed of a nutrient-impaired water body shall adopt the Department's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes or an ordinance that includes all of the requirements set forth in the Model Ordinance. The ordinance is required to be adopted within 24 months of permit issuance.

Response: *The Town of Jupiter Inlet Colony adopted a Fertilizer-Friendly Use Ordinance (Ordinance No. 04-2013) at its August 12, 2013 Commission meeting which is attached hereto for your records.*

I hope this **Response** provides an adequate explanation and/or correction to the Department's Comment. If you have any questions regarding this matter, please contact me.

Respectfully submitted,

A handwritten signature in black ink that reads 'Jack Horniman'.

Jack Horniman, JLH Associates
Town of Jupiter Inlet Colony Planning Consultant

Cc. Alan Wertepny, PBC NPDES Coordinator
Daniel J. Comerford, III, Mayor, Town of Jupiter Inlet Colony



ORDINANCE NO. 04 - 2013

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF JUPITER INLET COLONY, FLORIDA, AMENDING CHAPTER 19 VEGETATION ARTICLE II RESERVED OF THE CODE OF ORDINANCES TO CREATE NEW SECTIONS 19-16 THROUGH 19-31, INCLUSIVE IN ORDER TO ADOPT A FERTILIZER-FRIENDLY USE ORDINANCE FOCUSING ON EXCESSIVE NUTRIENT LEVELS IN PALM BEACH COUNTY WATER BODIES; PROVIDING FOR TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR FINDINGS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR APPLICABILITY; PROVIDING FOR TIMING OF FERTILIZER APPLICATIONS; PROVIDING FOR FERTILIZER FREE ZONES; PROVIDING FOR FERTILIZER CONTENT AND APPLICATION RATES; PROVIDING FOR FERTILIZER APPLICATION PRACTICES; PROVIDING FOR MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER; PROVIDING FOR DOMESTIC ANIMAL WASTE; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRAINING; PROVIDING FOR LICENSING OF COMMERCIAL APPLICATORS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR APPEAL; PROVIDING AUTHORITY TO CODIFY; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to Section 303(d) of the federal Clean Water Act and the resulting Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code), the Florida Department of Environmental Protection (FDEP) has classified specific water bodies in Palm Beach County as “impaired” as a result of the presence of excessive nutrients; and

1 **WHEREAS**, Section 403.9337, Florida Statutes, requires local governments
2 located within the watershed of a water body or water segment that is listed as impaired
3 by nutrients pursuant to, Section 403.067, Florida Statutes, to adopt an ordinance for
4 Florida-Friendly™ fertilizer use on urban landscapes; and

5 **WHEREAS**, the Florida Department of Environmental Protection (FDEP) on the
6 2nd day of March 2011, issued its Palm Beach County Municipal Separate Storm Sewer
7 System Permit No. FLS 000018-003 (hereinafter referred to as the “MS4 Permit”) to
8 forty-one (41) governmental entities including the Town of Jupiter Inlet Colony; and

9 **WHEREAS**, the MS4 permit requires local governments within the watershed of
10 a nutrient impaired water body to adopt FDEP’s Model Ordinance for Florida Friendly
11 Fertilizer Use on Urban Landscapes or an Ordinance that includes all the requirements
12 set forth in the Model Ordinance; and

13 **WHEREAS**, surface water runoff and base flow runoff leaves residential
14 neighborhoods, commercial centers, industrial areas, and other lands of Palm Beach
15 County and enters into natural and artificial stormwater and drainage conveyances and
16 natural water bodies in Palm Beach County; and

17
18 **WHEREAS**, phosphorus and nitrogen, the primary nutrients associated with the
19 degradation of surface water, are commonly the primary components of fertilizer for turf
20 and landscape application; and
21

1 **WHEREAS**, the quality of streams, lakes, and wetlands is important to
2 environmental, economic, and recreational prosperity and to the health, safety, and
3 welfare of the residents of Palm Beach County; and
4

5 **WHEREAS**, algae blooms and accelerated growth of aquatic weeds in Palm
6 Beach County's water bodies have heightened community concerns about water quality
7 and eutrophication of surrounding waters; and
8

9 **WHEREAS**, it is generally recognized that Eastern Palm Beach County soils
10 naturally have adequate phosphorus content for most vegetative needs and that
11 additional phosphorus is therefore only occasionally needed to create or maintain a
12 vibrant landscape; and
13

14 **WHEREAS**, it has been recognized that proper application of slow-release
15 nitrogen sources is more efficiently used by plants and less likely to leach or runoff; and
16

17 **WHEREAS**, this Ordinance is part of a regulatory program to address nonpoint
18 sources of nutrient pollution which is scientifically based, and economically and
19 technically feasible; and
20

21 **WHEREAS**, in the process of adoption of this Ordinance, the Town of Jupiter
22 Inlet Colony Commission has considered scientific information, including input from the
23 Department of Environmental Protection, the Department of Agriculture and Consumer
24 Services, and the University of Florida Institute of Food and Agricultural Sciences.

1
2 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**
3 **TOWN OF JUPITER INLET COLONY, FLORIDA, that:**

4
5 **SECTION 1:** Chapter 19 VEGETATION, Article II Reserved of the Code of Ordinances
6 is hereby amended to create new Sections 19-16 through 19-31 which shall read as
7 follows:

8
9 **SECTION 19-16. TITLE.**

10 This Ordinance shall be known as the Fertilizer-Friendly Use Ordinance.

11
12 **SECTION 19-17. DEFINITIONS.**

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

15 1. *“Application”* or *“Apply”* means the actual physical deposition of fertilizer to
16 turf or landscape plants.

17 2. *“Applicator”* means any person who applies fertilizer on turf and/or
18 landscape plants in Town of Jupiter Inlet Colony.

19 3. *“Approved Test”* means a soil test from the University of Florida,
20 government, or other commercial licensed laboratory that regularly performs soil testing
21 and recommendations.

22 4. *“Best Management Practices (BMP’s)”* means turf and landscape
23 practices or combination of practices based on research, field-testing, and expert
24 review, determined to be the most effective and practical site-specific means, including

1 economic and technological considerations, for improving water quality, conserving
2 water supplies and protecting natural resources.

3 5. "Code Enforcement Officer", "Official", or "Inspector" means any
4 designated employee or agent of the Town of Jupiter Inlet Colony whose duty it is to
5 enforce codes and ordinances enacted by the Town of Jupiter Inlet Colony.

6 6. "Commercial Fertilizer Applicator" except as provided in section
7 482.1562(9), F.S., means any person who applies fertilizer for payment or other
8 consideration to property not owned by the person or firm applying the fertilizer or the
9 employer of the applicators.

10 7. "Fertilizing", or "Fertilization" means the act of applying fertilizer to turf,
11 specialized turf, or landscape plants.

12 8. "Fertilizer" means any substance or mixture of substances that contains
13 one or more recognized plant nutrients and promotes plant growth, or controls soil
14 acidity or alkalinity, or provides other soil enrichment, or provides other corrective
15 measures to the soil.

16 9. "Institutional Applicator" means any person, other than a private, non-
17 commercial or a Commercial Applicator (unless such definitions also apply under the
18 circumstances), that applies fertilizer for the purpose of maintaining turf and/or
19 landscape plants. Institutional Applicators shall include, but shall not be limited to,
20 owners, managers, or employees of public lands, schools, parks, religious institutions,
21 utilities, industrial or business sites and any residential properties maintained in
22 condominium and/or common ownership.

23 10. "Landscape Plant" means any native or non-native tree, shrub, or
24 groundcover (excluding turf).

1
2 11. "Person" means any natural person, business, corporation, limited liability
3 company, partnership, limited partnership, association, club, organization, and/or any
4 group of people acting as an organized entity.

5 12. "Prohibited Application Period" means the time period during which a
6 Flood Watch or Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or
7 Warning is in effect for any portion of the Town of Jupiter Inlet Colony, issued by the
8 National Weather Service, or if heavy rain (2 inches or more within a twenty-four (24)
9 hour period) is likely.

10 13. "Saturated Soil" means a soil in which the voids are filled with water.
11 Saturation does not require flow. For the purposes of this Ordinance, soils shall be
12 considered saturated if standing water is present or the pressure of a person standing
13 on the soil causes the release of free water.

14 14. "Slow-Release", "Controlled Release", "Timed Release", "Slowly-
15 Available", or "Water Insoluble Nitrogen" means nitrogen in a form which delays its
16 availability for vegetative uptake and use after application, or which extends its
17 availability to the vegetation longer than a reference rapid or quick release product.

18 15. "Turf", "Sod", or "Lawn" means an area of grass-covered soil held together
19 by the roots of the grass.

20 16. "Urban Landscape" means pervious areas on residential, institutional,
21 road rights-of-way, or other nonagricultural lands that are planted with turf or landscape
22 plants. For the purposes of this section, agriculture has the same meaning as provided
23 in section 570.02, Florida Statutes.
24

1 SECTION 19-18. FINDINGS.

2 As a result of the Florida Department of Environmental Protection's determination
3 that certain water bodies within Palm Beach County are impaired for excessive nutrient
4 levels, the Town of Jupiter Inlet Colony finds that the best management practices
5 contained in the most recent edition of the "Florida-Friendly Best Management Practices
6 for Protection of Water Resources by the Green Industries", are required in this
7 Ordinance.

8
9 SECTION 19-19. PURPOSE AND INTENT.

10 This Ordinance regulates the proper use of fertilizers by any applicator; requires
11 proper training of commercial and institutional fertilizer applicators; establishes training
12 and licensing requirements; establishes a Prohibited Application Period; and specifies
13 allowable fertilizer application rates and methods, fertilizer-free zones, and exemptions.
14 This Ordinance requires the use of Best Management Practices to minimize negative
15 environmental effects associated with excessive nutrients in our water bodies. These
16 environmental effects have been observed in and on Palm Beach County's natural and
17 constructed storm-water conveyances, rivers, creeks, canals, lakes, estuaries and other
18 water bodies. Collectively, these water bodies are an asset important to the
19 environmental, recreational, cultural and economic well-being of Palm Beach County
20 residents and the health of the public. Overgrowth of algae and vegetation hinder the
21 effectiveness of flood attenuation provided by natural and constructed storm-water
22 conveyances. Regulation of nutrients, including both phosphorus and nitrogen
23 contained in fertilizer, is anticipated to help improve and maintain water and habitat
24 quality.

1
2 SECTION 19-20. APPLICABILITY.

3 This Ordinance shall be applicable to and shall regulate any and all applicators of
4 fertilizer and areas of application of fertilizer to urban landscapes within the Town of
5 Jupiter Inlet Colony, unless such application is specifically exempted by Section XI of
6 this Ordinance. This Ordinance shall be prospective only, and shall not impair any
7 existing contracts.
8

9 SECTION 19-21. TIMING OF FERTILIZER APPLICATIONS.

10 1. No applicator shall apply fertilizers containing nitrogen and/or phosphorus
11 to turf and/or landscape plants during the Prohibited Application Period or to saturated
12 soils.

13 2. Fertilizer containing nitrogen and/or phosphorus shall not be applied
14 before seeding or sodding a site, and shall not be applied for the first thirty (30) days
15 after seeding or sodding, except when hydro-seeding for temporary or permanent
16 erosion control in an emergency situation (wildfire, etc), or in accordance with the
17 Storm-water Pollution Prevent Plan for that site.
18

19 SECTION 19-22. FERTILIZER FREE ZONES.

20 Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector
21 shield or drop spreader is used, of any pond, stream, water body, lake, canal, or
22 wetland as defined by the Florida Department of Environmental Protection (Chapter 62-
23 340), Florida Administrative Code or from the top of a seawall or lake bulkhead. Newly
24 planted turf or landscape plants may be fertilized in this zone only for a sixty (60) day

1 period beginning thirty (30) days after planting if needed to allow the vegetation to
2 become well established. Caution shall be used to prevent direct deposition of fertilizer
3 into the water.

4
5 SECTION 19-23. FERTILIZER CONTENT AND APPLICATION RATES.

6 1. Fertilizers applied to turf within the Town of Jupiter Inlet Colony shall be
7 applied in accordance with requirements and directions provided by Rule 5E-1.003(2),
8 Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*. Under
9 Rule 5E-1.003(2), Florida Administrative Code, required application rate and frequency
10 maximums, which vary by plant and turf types, are found on the labeled fertilizer bag or
11 container.

12 2. Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape
13 plants except as provided in section (1) above for turf, or in UF/IFAS recommendations
14 for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or
15 tissue deficiency has been verified by an approved test.

16 3. Fertilizer used for sports turf at golf courses shall be applied in
17 accordance with the recommendations in "Best Management Practices for the
18 Enhancement of Environmental Quality on Florida Golf Courses", published by the
19 Florida Department of Environmental Protection, dated January 2007, as may be
20 amended. Fertilizer used at park or athletic fields shall be applied in accordance with
21 Rule 5E-1.003(2), Florida Administrative Code.

22
23 SECTION 19-24. FERTILIZER APPLICATION PRACTICES.

1 1. As required in Section VII of this Ordinance, spreader deflector shields
2 shall be used when fertilizing via rotary (broadcast) spreaders. Deflectors must be
3 positioned such that fertilizer granules are deflected away from all impervious surfaces,
4 fertilizer-free zones and water bodies, including wetlands. Any fertilizer applied, spilled,
5 or deposited, either intentionally or accidentally, on any impervious surface shall be
6 immediately and completely removed to the greatest extent practicable.

7 2. Fertilizer released on an impervious surface must be immediately
8 contained and either legally applied to turf or any other legal site, or returned to the
9 original or other appropriate container.

10 3. In no case shall fertilizer be washed, swept, or blown off impervious
11 surfaces into storm-water drains, ditches, conveyances, or water bodies.

12 4. Property owners and managers are encouraged to use an Integrated Pest
13 Management (IPM) strategy as currently recommended by the University of Florida
14 Cooperative Extension Service publications.

15
16 SECTION 19-25. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE
17 MATTER.

18 In no case shall grass clippings, vegetative material, and/or vegetative debris
19 intentionally be washed, swept, or blown on to or into storm-water drains, ditches,
20 conveyances, water bodies, wetlands, sidewalks or roadways. Vegetative material
21 may be placed within the roadway right-of-way, but not over the storm drains, for pick-
22 up by the municipality's vegetative waste hauler.

23
24 SECTION 19-26. EXEMPTIONS.

1 The provisions set forth above in this Ordinance shall not apply to:

2 (a) bona fide farm operations as defined in the Florida Right-to-Farm Act,
3 Section 823.14, Florida Statutes.

4 (b) other properties not subject to or covered under the Florida Right-to-Farm
5 Act that have pastures used for grazing livestock.

6 (c) any lands used for bona fide scientific research, including, but not limited
7 to, research on the effects of fertilizer use on urban storm-water, water quality,
8 agronomics, or horticulture.

9
10
11 SECTION 19-27. TRAINING.

12 1. All commercial and institutional applicators of fertilizer within Palm Beach
13 County shall abide by and successfully complete the six-hour training program in the
14 "Florida-Friendly Best Management Practices for Protection of Water Resources by the
15 Green Industries" offered by the Florida Department of Environmental Protection
16 through the University of Florida/Palm Beach County Cooperative Extension Service
17 "Florida-Friendly Landscapes" program or an approved equivalent program.

18 2. Non-commercial and non-institutional applicators not otherwise required to
19 be certified, such as private citizens on their own residential property, are encouraged to
20 follow the recommendations of the University of Florida/IFAS "Florida-Friendly
21 Landscape Program" and label instructions when applying fertilizers.
22

1 SECTION 19-28. LICENSING OF COMMERCIAL APPLICATORS.

2 1. All businesses applying fertilizer to turf or landscape plants (including, but
3 not limited to, residential lawns, golf courses, commercial properties, and multi-family
4 and condominium properties) must ensure that the business owner or his/her designee
5 holds the appropriate “Florida-Friendly Best Management Practices for Protection of
6 Water Resources by the Green Industries” training certificate prior to the business
7 owner obtaining a Local Business Tax Certificate. Owners for any category of
8 occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide
9 proof of completion of the program to the Town of Jupiter Inlet Colony Administration
10 Office. It is the responsibility of the business owner to maintain the “Florida-Friendly
11 Best Management Practices for Protection of Water Resources by the Green Industries”
12 certificate to receive their Business Tax Receipt annually.

13 2. After December 31, 2013, all commercial applicators of fertilizer within the
14 Town of Jupiter Inlet Colony, shall have and carry in their possession at all times when
15 applying fertilizer, evidence of certification by the Florida Department of Agriculture and
16 Consumer Services as a Commercial Fertilizer Applicator per Rule 5E-14.117(18),
17 Florida Administrative Code.

18 3. All businesses applying fertilizer to turf and/or landscape plants (including,
19 but not limited to, residential lawns, golf courses, commercial properties and multi-family
20 and condominium properties) must ensure that at least one (1) employee has an
21 appropriate “Florida-Friendly Best Management Practices for Protection of Water
22 Resources by the Green Industries” training certificate prior to the business owner
23 obtaining a Local Business Tax Certificate. Standard Business Tax Receipt (BTR and
24 transaction fees shall apply).

1
2 SECTION 19-29. ENFORCEMENT.

3 The provisions of this Ordinance shall be enforced by (1) the Town of Jupiter
4 Inlet Colony Code Special Master pursuant to the authority granted by Section 162.01
5 et. seq., Florida Statutes, (2) the Town of Jupiter Inlet Colony through its authority to
6 enjoin and restrain any person violating its Code of Ordinances, or (3) the Town of
7 Jupiter Inlet Colony through the provisions of Part II of Chapter 162, Florida Statutes, as
8 may be amended. The Code Enforcement Director may pursue these or any other
9 enforcement remedies available to and applicable to the Town of Jupiter Inlet Colony.

10
11 SECTION 19-30. PENALTIES.

- 12 1. Failure to comply with the requirement of this Ordinance shall constitute a
13 violation of this Ordinance and shall be punishable by a fine not to exceed \$250,
14 per incident, for the violation or a fine not to exceed \$500 per incident for a
15 repeat violation, and, in addition, may include all costs of repairs and remediation
16 including administrative costs. Each new day the violation exists it is considered
17 a separate incident.
- 18 2. In determining the amount of fines that should be imposed, the Special Master
19 shall consider the following factors: (1) the gravity of the violation; (2) any
20 actions taken by the violator to correct the violation; and (3) any previous
21 violations committed by the violator. If the Special Master finds the violation is
22 irreparable or irreversible in nature, a fine not to exceed \$15,000 per violation
23 may be imposed.

1 3. Funds generated by penalties imposed under this Ordinance shall be used by the
2 Town of Jupiter Inlet Colony for the administration and enforcement of Section
3 403.9337, Florida Statutes, and the corresponding Sections of this Ordinance
4 and to further water conservation and nonpoint pollution prevention activities.

5 SECTION 19-31. APPEALS.

6 An aggrieved party, including the Town of Jupiter Inlet Colony, may appeal a final
7 administrative order of a Special Master to the circuit court. Such an appeal shall not be
8 a hearing de novo, but shall be limited to appellate review of the record created before
9 the Special Master. An appeal shall be filed within thirty (30) days of the execution of
10 the order to be appealed.

11
12 **SECTION 2.** The provisions of this Ordinance shall become and be made a part of the
13 Town of Jupiter Inlet Colony Code of Ordinances. The sections of this Ordinance may
14 be renumbered or re-lettered to accomplish such, and the word "ordinance" may be
15 changed to "section", "article", or other appropriate word.

16
17 **SECTION 3.** All ordinances or parts of ordinances in conflict herewith are hereby
18 repealed.

19
20 **SECTION 4.** If any section, paragraph, sentence, clause, phrase, or word of this
21 Ordinance is for any reason held by a Court of competent jurisdiction to be
22 unconstitutional, inoperative, or void, such holding shall not affect the remainder of this
23 Ordinance.

SECTION 5. The provisions of this Ordinance shall become effective immediately upon passage.

FIRST READING this 8th day of July, 2013.

SECOND READING this 12th day of August, 2013.

TOWN OF JUPITER INLET COLONY, FLORIDA


MAYOR DANIEL J. COMERFORD, III


VICE-MAYOR THOMAS M. DISARNO


COMMISSIONER DOUGLAS C. PIERSON


COMMISSIONER MILTON J. BLOCK


COMMISSIONER RICHARD D. BUSTO

ATTEST:


Town Clerk Gasper Taormina