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September 9, 2013

FDEP: Allen P. Hubbard
C/o Alan Wertepny, P.E.
Mock Roos & Associates, Inc.
5720 Corporate Way
West Palm Beach, FL 33407

**RE: City of Atlantis – NPDES #FLS00018 Cycle 3
Year 2 Annual Report Comments
SJE Project # 04028.001**

Dear Mr. Hubbard;

This letter is in response to your letter dated August 6, 2013 regarding the above co-permittee. You requested the following:

1. Justification as to why Atlantis had not adopted the "Florida-friendly Fertilizer Ordinance".
Atlantis did adopt a fertilizer ordinance, see attached. This was inadvertently marked N/A.
2. Use the "Department-approved FSA Load Reduction tool".
Using DEP's tool we calculate 28 lbs. of TN removed and 18 lbs. of TP removed in comparison to the 9.3 and 6.0 lbs. respectively reported.
3. Table II.A.1.a. report illicit discharge inspection numbers: did not report illicit discharge inspection numbers.
We said daily but, numerically this translates to 238 times.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Jay G. Foy', is written over the typed name.

Jay G. Foy, P.E.
President

JGF/lam
Enclosure
Cc: M. Thornton

ORDINANCE NO. 422

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATLANTIS, FLORIDA, AMENDING CHAPTER 8.5. LANDSCAPING AND TREE PROTECTION. BY RE-ORGANIZING THIS CHAPTER TO CONTAIN ARTICLE I "IN GENERAL" WHICH SHALL BE COMPRISED OF THE EXISTING CODE IN THIS CHAPTER, AND AN ENTIRELY NEW ARTICLE II "FERTILIZER USE" TO PROVIDE FOR NEW FERTILIZER USE AND APPLICATION REGULATIONS IN THE CITY AS REQUIRED BY STATE AND FEDERAL LAW; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 8.5 SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS CLAUSE; A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING 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

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

WHEREAS, the FDEP on the 2nd day of March 2011, issued its Palm Beach County Municipal Separate Storm Sewer System Permit No. FLS 000018-003 (hereinafter referred to as the "MS4 Permit") to forty-one (41) governmental entities including the City of Atlantis; and

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

WHEREAS, Atlantis is located within the watershed of a nutrient impaired water body; and

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

WHEREAS, this Ordinance has been prepared based on information and input from the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences; and

WHEREAS, the City Council of the City of Atlantis deems approval of this Ordinance to be in the best interests of the health, safety, and welfare of the residents and citizens Atlantis and the public at large.

NOW, THEREFORE, BE IT ORDAINED BY THE CTIY COUNCIL OF THE CTIY OF ATLANTIS, FLORIDA, THAT:

Section 1: Chapter 8.5. Landscaping and Tree Protection. of the Code of Ordinances of the City of Atlantis is hereby amended by creating a new Article I. “In General” to contain the existing code in this Chapter, and by creating an entirely new Article II. “Fertilizer Use” to provide for new fertilizer use and application regulations in the city; providing that Chapter 8.5. Landscaping and Tree Protection. shall hereafter read as follows:

Chapter 8.5
LANDSCAPING AND TREE PROTECTION

Article I. In General.

[Secs. 8.5-1. — 8.5-15. **Shall remain in full force and effect as previously adopted]**

Secs. 8.5-16. — 8.5-20. Reserved.

Article II. Fertilizer Use.

Sec. 8.5-21. Title.

This Article shall be known as the “Fertilizer-Friendly Use Ordinance” which is required by Section 403.9337, Florida Statutes (2011) to be adopted by any municipality located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to Section 403.067, Florida Statutes (2011). Other related regulations concerning water quality and discharge adopted in furtherance of the City’s NPDES MS4 permit are set forth at Chapter 14. Article VI. of the City Code of Ordinances.

Sec. 8.5-22. Definitions.

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

“Application” or “apply” means the actual physical deposition of fertilizer to turf or landscape plants.

“Applicator” means any person who applies fertilizer on turf and/or landscape plants in the City of Atlantis.

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

“Best management practices (BMP’s)” means turf and landscape practices, or combination of practices, based on research, field-testing, and expert review, determined to be the most effective and practical site-specific means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

“Code enforcement officer”, “official”, or “inspector” means any designated employee or agent of the City of Atlantis whose duty it is to enforce codes and ordinances enacted by the City of Atlantis.

“Commercial fertilizer applicator” as provided in Section 482.1562(9), Florida Statutes, means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicators.

“Fertilizing” or “fertilization” means the act of applying fertilizer to turf, specialized turf, or landscape plants.

“Fertilizer” means any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

“Institutional applicator” means any person, other than a private, non-commercial or a commercial applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional applicators shall include, but shall not be limited to, owners, managers, or employees of

public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

“Landscape plant” means any native or non-native tree, shrub, or groundcover (excluding turf).

“Person” means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

“Prohibited application period” means the time period during which a Flood Watch or Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of the City of Atlantis, issued by the National Weather Service, or if heavy rain (2 inches or more within a twenty-four (24) hour period) is likely.

“Saturated soil” means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this Article, soils shall be considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water.

“Slow-release”, “controlled release”, “timed release”, “slowly-available”, or “water insoluble nitrogen” means nitrogen in a form which delays its availability for vegetative uptake and use after application, or which extends its availability to the vegetation longer than a reference rapid or quick release product.

“Turf”, “sod”, or “lawn” means an area of grass-covered soil held together by the roots of the grass.

“Urban landscape” means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or landscape plants. For the purposes of this section, agriculture has the same meaning as provided in Section 570.02, Florida Statutes.

Sec. 8.5-23. Findings.

As a result of the Florida Department of Environmental Protection’s determination that certain water bodies within Palm Beach County are impaired from excessive nutrient levels, the City Council of the City of Atlantis finds that the best management practices contained in the most recent edition of the “Florida-Friendly Best Management Practices for Protection of Water

Resources by the Green Industries”, are required and are necessary to implement within the City as set forth in this Article.

Sec. 8.5-24. Purpose and intent.

This Article regulates the proper use of fertilizers by any applicator; requires proper training of commercial and institutional fertilizer applicators; establishes training and licensing requirements; establishes a prohibited application period; and specifies allowable fertilizer application rates and methods, fertilizer-free zones, and exemptions. This Article requires the use of best management practices to minimize negative environmental effects associated with excessive nutrients in water bodies. These environmental effects have been observed in and on Palm Beach County’s natural and constructed stormwater conveyances, rivers, creeks, canals, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset important to the environmental, recreational, cultural and economic well-being of Palm Beach County residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, is anticipated to help improve and maintain water and habitat quality.

Sec. 8.5-25. Applicability.

This Article shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer to urban landscapes within the area of the City of Atlantis unless such application is specifically exempted by Sec. 8.5-31. of this Article. The regulations in this Article shall be prospective only, and shall not impair any existing contracts.

Sec. 8.5-26. Timing of fertilizer applications.

(a) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the prohibited application period or to saturated soils.

(b) Fertilizer containing nitrogen and/or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first thirty (30) days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an

emergency situation (wildfire, etc), or in accordance with the stormwater pollution prevent plan for that site.

Sec. 8.5-27. Fertilizer free zones.

Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector shield or drop spreader is used, of any pond, stream, water body, lake, canal, or wetland as defined by the Florida Department of Environmental Protection at Chapter 62-340, Florida Administrative Code, or from the top of a seawall or lake bulkhead. Newly planted turf or landscape plants may be fertilized in this zone only for a sixty (60) day period beginning thirty (30) days after planting if needed to allow the vegetation to become well established. Caution shall be used to prevent direct deposition of fertilizer into the water.

Sec. 8.5-28. Fertilizer content and application rates.

(a) Fertilizers applied to turf within the City of Atlantis shall be applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, Labeling Requirements For Urban Turf Fertilizers. Under Rule 5E-1.003(2), Florida Administrative Code, required application rate and frequency maximums, which vary by plant and turf types, are found on the labeled fertilizer bag or container.

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

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

Sec. 8.5-29. Fertilizer application practices.

(a) As provided in Sec. 8.5-27. of this Article, spreader deflector shields shall be used when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that

fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including wetlands. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.

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

(c) In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

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

Sec. 8.5-30. Management of grass clippings and vegetative matter.

In no case shall grass clippings, vegetative material, and/or vegetative debris intentionally be washed, swept, or blown on to or into stormwater drains, ditches, conveyances, water bodies, wetlands, sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

Sec. 8.5-31. Exemptions.

The provisions set forth in this Article shall not apply to the following:

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

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

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

Sec. 8.5-32. Training.

(a) All commercial and institutional applicators of fertilizer within Palm Beach County shall abide by and successfully complete the six-hour training program in the “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” offered by the Florida Department of Environmental Protection through the University of Florida/Palm Beach County Cooperative Extension Service “Florida-Friendly Landscapes” program or an approved equivalent program.

(b) Non-commercial and non-institutional applicators not otherwise required to be certified, such as private citizens on their own residential property, are encouraged to follow the recommendations of the University of Florida/IFAS “Florida-Friendly Landscape Program” and label instructions when applying fertilizers.

Sec. 8.5-33. Licensing of commercial applicators.

(a) All businesses applying fertilizer to turf or landscape plants (including, but not limited to, residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that the business owner or his/her designee holds the appropriate “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” training certificate prior to the business owner obtaining a Local Business Tax Receipt. Owners for any category of occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide proof of completion of the program to the City of Atlantis. It is the responsibility of the business owner to maintain the “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” certificate to receive their annual Business Tax Receipt.

(b) After December 31, 2013, all commercial applicators of fertilizer within the City of Atlantis shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator per Rule 5E-14.117(18), Florida Administrative Code.

(c) All businesses applying fertilizer to turf and/or landscape plants (including, but not limited to, residential lawns, golf courses, commercial properties and multi-family and condominium properties) must ensure that at least one (1) employee has an appropriate “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries”

training certificate prior to the business owner obtaining a Local Business Tax Receipt. Standard Business Tax Receipt (BTR) and transaction fees shall apply.

Sec. 8.5-34. Enforcement; penalties; appeal.

(a) Enforcement. The provisions of this Article shall be enforced by (1) the City of Atlantis Special Magistrate pursuant to the authority granted by Section 162.01 et. seq., Florida Statutes, as may be amended, and Chapter 2. Article V. of the City Code of Ordinances; or (2) the City of Atlantis through its authority to enjoin and restrain any person violating the City Code of Ordinances. The City of Atlantis may pursue these or any other enforcement remedies available under the law.

(b) Penalties. Failure to comply with the requirement of this Article shall constitute an irreparable and irreversible violation of this Article and each new day the violation exists it is considered a separate incident. Fines shall be determined by considering the factors set forth at Section 162.09, Florida Statutes, and shall not exceed the amounts listed in this section of the state law.

(c) Disposition of Penalty Funds. Funds generated by penalties imposed under this Article shall be used by the City of Atlantis for the administration and enforcement of Section 403.9337, Florida Statutes, and the corresponding sections of this Article, and to further water conservation and nonpoint pollution prevention activities.

(d) Appeals. Appeals of administrative orders of the Special Magistrate shall be as provided under state law, which process is also set forth at Sec. 2-99. of the City Code of Ordinances.

Section 2: Each and every other section and subsection of Chapter 8.5. Landscaping and Tree Protection. shall remain in full force and effect as previously adopted.

Section 3: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

Section 4: Should any Section or provision of this Ordinance or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

Section 5: Specific authority is hereby granted to codify and incorporate this Ordinance into the existing Code of Ordinances of the City of Atlantis.

Section 6: This Ordinance shall take effect immediately upon adoption.

FIRST READING this ____ day of _____, 2012.

SECOND AND FINAL READING this ____ day of _____, 2012.

CITY OF ATLANTIS

_____ Aye	_____ Nay	_____ Mayor Michael C. Dahlgren
_____ Aye	_____ Nay	_____ Vice Mayor David Kintz
_____ Aye	_____ Nay	_____ Mayor Pro Tem Catherine Higgins
_____ Aye	_____ Nay	_____ Councilmember Manuel A. Fernandez
_____ Aye	_____ Nay	_____ Councilmember Fred Furtado

ATTEST:

(SEAL)

Jude Goudreau, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Keith W. Davis, City Attorney