

2018 OA - 014

AMENDING CHAPTER 80 OF THE DANE COUNTY CODE OF ORDINANCES,
PROHIBITING APPLICATION AND SALE OF COAL TAR SEALANT AND
OTHER HIGH PAH PAVEMENT SEALANT

The County Board of Supervisors of the County of Dane does ordain as follows:

ARTICLE 1. Unless otherwise expressly stated herein, all references to section and chapter numbers are to those of the Dane County Code of Ordinances.

ARTICLE 2. Section 80.4 is amended to read as follows:

80.04 DEFINITIONS. (1) *Agricultural use* has the meaning set forth in sec. 10.01(2a).

(2) *Coal tar* is a byproduct of the process used to refine coal. *Coal tar* contains high levels of polycyclic aromatic hydrocarbons (PAHs).

(3) *Coal tar sealant product* means a material that contains coal tar, coal tar pitch, coal tar pitch volatiles, or any variation, and is for use on asphalt or concrete surface, including a driveway, playground, or parking area.

(4) *Department* shall mean the Environmental Health Division of the Public Health Department Madison and Dane County.

(35) *Fertilizer* has the meaning set forth in sec. 94.64(1)(e), Wis. Stats.

(6) *High PAH sealant product* means any pavement sealant product that contains greater than 0.1% polycyclic aromatic hydrocarbons by weight, including, but not limited to, coal tar, coal tar pitch, coal tar pitch volatiles, tar, fuel oil, petroleum, or asphalt.

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

(58) *Polycyclic aromatic hydrocarbons (PAHs)* are a group of organic chemicals that are present in coal tar and other products. PAHs in pavement sealants and are an environmental concern because many are known human carcinogens and they are toxic to aquatic life.

~~(6) — Sealcoat is a black liquid that is sprayed or painted on asphalt pavement in an effort to protect and beautify the asphalt. Most sealcoat products are coal tar or asphalt based.~~

ARTICLE 3. Section 80.08 is amended to read as follows:

80.08 REGULATION OF THE APPLICATION AND SALE OF SEALCOAT PRODUCTS CONTAINING COAL TAR AND HIGH PAH SEALANT PRODUCTS. (1) No person shall apply any sealcoat coal tar sealant product or high PAH sealant product within Dane County ~~that is labeled as containing coal tar.~~

45 (2) No person shall allow a coal tar sealant product or high PAH sealant
46 product to be applied upon property in Dane County that is under that person's
47 ownership or control.

48 (23) No person shall sell, offer to sell, or display for sale any sealcoat coal tar
49 sealant product or high PAH sealant product within Dane County that is labeled
50 as containing coal tar.

51 (34) Any person who sells pavement sealcoat sealant products shall prominently
52 display, in the area where such pavement sealcoat sealant products are sold, a
53 notice that contains the following language: "The application of coal tar
54 sealcoat sealant products and high PAH sealant products on driveways, parking
55 lots and all other paved surfaces in Dane County is prohibited by section 80.08
56 of the Dane County Code of Ordinances. Coal tar is a significant source of
57 polycyclic aromatic hydrocarbons (PAHs), a group of organic chemicals that can
58 be carried by stormwater and other runoff into Dane County's lakes and streams.
59 PAHs are an environmental concern because they are toxic to aquatic life."
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61 ARTICLE 4. Section 80.09 is amended to read as follows:

62 **80.09 EXEMPTIONS. (1)** The sale of a sealcoat coal tar sealant product or a
63 high PAH sealant product containing coal tar to a person who intends to apply
64 the product on a surface that is not located within Dane County is permitted
65 under the following conditions:

66 **(a)** The seller requires the purchaser to complete and sign a form, to be
67 provided by the Land and Water Resources Department, that includes the
68 purchaser's name, address, phone number, date of purchase, quantity
69 purchased and a statement that the coal tar sealcoat product will not be applied
70 on a surface that is located within Dane County.

71 **(b)** The seller retains the completed form for a period of not less than three (3)
72 years from the date of sale and allows the inspection and copying of the form by
73 Dane County staff upon request.

74 **(2)** The Department after consultation with the Director of the Land and Water
75 Resources Department may exempt a person from the requirements of section
76 80.08 if the person is conducting *bona fide* research concerning the effects of a
77 coal tar sealant product or high PAH sealant product on the environment and the
78 use of the coal tar product is required for said research.
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80 ARTICLE 5. Section 80.10 is amended to read as follows:

81 **80.10 ENFORCEMENT. (1)** Violations of this ordinance will be enforced by the
82 Environmental Health Section of the Public Health Division of the Department of
83 Human Services, or any successor organization Department.

84 **(2)** Any violation of this ordinance may be enforced by injunctive order at
85 the suit of the county corporation counsel.

86 **(3)** Each day that a violation of this chapter is permitted to exist shall constitute
87 a separate offense.
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91 ARTICLE 6. Section 80.11 is amended to read as follows:

92 **80.11 PENALTY. (1)** Any person who violates section 80.05 in the application
93 of fertilizer at his or her residence shall be subject to a forfeiture of \$25 per
94 violation.

95 **(2)** Any person who violates section 80.08(1) by applying a coal tar sealant
96 product or high PAH sealant product at his or her residence to property under
97 that person's ownership or control shall be subject to a forfeiture of \$25 per
98 violation.

99 **(3)** Any commercial fertilizer applicator, residential or commercial developer,
100 industrial or commercial owner, or other person who violates section 80.05, and
101 any person who violates section 80.07, shall be subject to a forfeiture of \$50 for
102 the first violation within a twelve month period, \$150 for the second violation
103 within a twelve month period, and \$300 for the third and each subsequent
104 violation within a twelve month period.

105 **(4)** Any commercial ~~sealcoat~~sealant product applicator, residential or commercial
106 developer, industrial or commercial owner, or any other person, other than a
107 person identified under sub. (2) above, who violates section 80.08, shall be
108 subject to a forfeiture of \$500 for the first violation within a twelve month period,
109 \$1000 for the second violation within a twelve month period, and \$2000 for the
110 third and each subsequent violation within a twelve month period.

111 **(5)** If a coal tar sealant product or high PAH sealant product is applied in
112 violation of s. 80.08, each day the product remains on the property shall
113 constitute a separate offense until the product is removed and disposed of in a
114 manner approved by the department.

115 ~~**(56)** Any person who applies, sells, offers to sell or displays for sale any~~
116 ~~sealcoat product within Dane County that is labeled as containing coal tar is~~
117 ~~presumed to have applied, sold, offered to sell or displayed the product in~~
118 ~~violation of this section who sells, offer to sell, or display for sale any sealant~~
119 ~~product in violation of s. 80.08(3) or (4) shall be subject to a forfeiture of \$500.~~

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[EXPLANATION: This amendment prohibits the application of sealant products containing coal tar or high PAH.]