

ARTICLE 68 WORK GROUP
Meeting of January 10, 2012, at 10:30 am
2 Fairgrounds Road, Conference Room
Final Minutes

ATTENDING

Members: Peter Boyce, Cormac Collier, Caroline Ellis, Mark Lucas, Mike Misurelli, Richard Ray, Seth Rutherford, Lee Saperstein, Ernie Steinauer, and Lucinda Young.

Absent: Dave Fronzuto, Bam LaFarge, Wendy McCrae.

CALL TO ORDER

Chair Young called the meeting to order at 10:31 am; a quorum was present.

APPROVALS

By acclamation, the Preliminary Agenda was approved.

Approval of the Minutes of November 29, 2011, was made by acclamation after it was determined that no amendments were offered by members of the Work Group.

CHAIR'S COMMENTS AND ANNOUNCEMENTS; COMMENTS FROM THE WORKGROUP

Chair Young opened her remarks by stating that, after a lot of consideration of our progress and of what remained to be done, that she is resigning as Chair, but not as a member of the Work Group. She will focus what time she has on final editing of the Nantucket Best Management Practices Plan (the BMP). After consultation with Vice Chair Peter Boyce, she recommended to the Work Group that the Secretary, Lee Saperstein, assume the duties of Chair. Peter Boyce agreed to record the rest of our meetings and provide the minutes.

Ernie Steinauer suggested that, while there might be agreement with the change, it would be a good idea to recognize it formally. At which point, Peter Boyce nominated Lee Saperstein as Chair, Mike Misurelli seconded, with no other nominations coming forward, the group voted unanimously in favor of the nomination. Peter Boyce spoke for the entire group when he thanked Lucinda Young for the leadership that brought us to the edge of completion.

Cormac Collier advised the Work Group that the Nantucket Land Council will sponsor an open workshop aimed at the landscape community on our findings and their place in the Nantucket BMP. It will be Tuesday, March 13, 2012, from approximately 9:00 am to 4:00 pm; specific times and place will be announced later. The experts from the University of Connecticut who were so helpful in reviewing the BMP, Drs. Thomas

Morris, Karl Guillard, John Inguagiato, and adjunct faculty member Steve Rackliffe, intend to lead the workshop.

UPDATE ON STATUS OF THE BMP

Chair Young began the discussion on editing the draft BMP by thanking members of the editorial sub-group, particularly Mark Lucas, and Ernie Steinauer who have both continued to provide expert editorial suggestions to the BMP since the current form was released in early November.

She explained the delay in the edit work she agreed to do earlier in November and after brief discussion about timelines set for herself a deadline of Wednesday, January 25, 2012, for completion of this task. She asked the editorial subgroup to meet with her on the next two Fridays so that she can share progress and get their input on it.

The January 25th deadline will allow the Work Group to distribute draft copies of the BMP for review to members of the Board of Selectmen and the Board of Health giving them two weeks time to read it to be best prepared for our 90-minute workshop scheduled on Thursday, February 9, 2012, at 4:00 pm, which is their next regularly scheduled meeting. This meeting will be the opportunity for the members of the Work Group to explain our recommendations. A quick review of schedules by the members of the editing subgroup showed that February 9th was potentially workable for them. Lee Saperstein suggested that we contact the paper to ensure that they announce the workshop.

In response to a question from Mark Lucas about having the BMP professionally copy-edited, it was agreed that we would take up Ms Libby Oldham's offer to do the editing. We will ask the Town for funds to cover her costs; if they are not forthcoming, Cormac Collier indicated that the Land Council would be able to cover her costs. Caroline Ellis reminded us that they would be in realm of \$400 to \$600. Caroline Ellis said that she would contact Ms Oldham.

Because feedback from the public and, in particular, the landscaping community was important, both Ernie Steinauer and Cormac Collier suggested persuading members of the landscape community to attend the workshop on February 9th.

In a segue to a discussion on regulation, Richard Ray, Director of the Division of Health, reminded the Group of the process of creating a new regulation. If the Board of Health had enough time, i.e. the period between completion of edits on January 25th and the meeting of BOH on February 9th, then the process of approving the new regulation could begin at the close of the workshop. The BOH would need to give their approval to a process of public notification and hearing. Publication of a notice of the new regulations would need to go into two successive editions of the newspaper, which being weekly would meet the requirement for two-week notice. The public hearing could occur at the regularly scheduled March meeting of the BOH. Optimistically, this could all occur before Town Meeting.

UPDATE ON THE LEGAL REVIEW OF THE PROPOSED REGULATIONS

Chair Young asked Lee Saperstein to continue with an update on the regulatory package. As a first step toward BOH consideration of the draft regulation, he suggested that we are advisory to the Board of Selectmen and that we should ask them formally to forward the regulatory package to the Board of Health. The Work Group agreed with that approach and approved such a request of the Board of Selectmen.

Lee Saperstein also reported that Attorney Corbo had said that the Home-Rule Petition that was at the basis of Article 68 would need to be reapproved at the next Town Meeting because more than one year had passed since it was first approved. This Wednesday's meeting of the Board of Selectmen is the last possible time to get a Warrant Article approved by the BOS before the ATM Warrant closes. Several members of the Work Group, Lucas and Misurelli, asked if there was a need for a separate Home-Rule Petition if the Board of Health will have passed its regulation. Cormac Collier thought that reinforcement through the HRP was a good thing provided that the BOH passed its regulation first. Richard Ray weighed in strongly that the HRP was a good thing in providing support for local regulation.

In anticipation of asking the BOS for a warrant article, Attorney Corbo had provided the Work Group with two options on language: the first was a close repetition of the BOH language and the second was a more flexible choice of words that would enable either regulation or a Town Bylaw. The group approved the request for an HRP, chose the second option, and asked Lee Saperstein to consult with Mr. Corbo on perfecting the language to be used in the warrant article. As an aside, this has been done and suggested language will be put before the BOS on the evening of January 11, 2012. The edited HRP is ATTACHED to these minutes.

The Group then turned back to the suggested draft BOH regulation that had been prepared by Mr. Corbo. They discussed some of the changes, particularly to licensure, and suggested some revisions.

- Mark Lucas was concerned with section 6.1.2., particularly the sentence that spoke to passing a test. The Group, including Mr. Ray, felt that it was premature to specify a means of assessment or to mention the passing grade on that assessment and chose to eliminate the sentence. The amended section will read, "6.1.2. The Town's Board of Health shall administer an assessment to determine individuals' proficiency of the Nantucket BMP."
- Sections 6.2.2. and 6.2.3. require dates to be inserted. Mr. Ray said that he liked the calendar year and January 1st was put into 6.2.2. for the initial date of validity of a license; December 1st was put into 6.2.3. for the date of application.
- In section 6.2.4, mention is made of a fee for an application. At first, it was thought that the words, "a fee to be set by the Board of Health" would be inserted. Later it was agreed that the fee should be \$100.00 and the amended section reads, "6.2.4. Any application for a Fertilizer License or for renewal of a Fertilizer

License shall be accompanied by a fee in the amount of \$100.00; and certification that the applicant has shown proficiency of the Nantucket BMP as determined by the Board of Health, as set forth in Section 6.1.2 of this Regulation.”

- Section 6.2.5. specified a process for a group license to be held by a company or corporation that would cover any of its employees who could demonstrate knowledge of the BMP. The suggested language included the word “certification” and Mark Lucas and Mike Misurelli said that this was undefined. Furthermore, the group felt uncomfortable with a requirement for group education when it was not yet known how this would work, when it would be offered, or by whom it would be conducted. For the moment, they suggested that this section be removed until the questions were resolved. This was done and the subsequent section renumbered.

The final version of the draft Board of Health Regulations is also ATTACHED to this document.

DISCUSSION OF THE TIMELINE AND ITEMS PENDING TO COMPLETE OUR CHARGE

The Work Group is aware that there are still matters to be resolved and hope that they can be discussed at the next meeting of the Work Group. These include a recommendation on the existence of a permanent advisory group to be constituted after the work group group disbands. They also include educational materials to be created for the Town’s web site, the Blue Pages under creation by the HPIC, and flyers or brochures to be handed out by vendors and landscape contractors. Finally, the recommendations will include the need for workshops and educational forums. Lucinda Young said that her editing will include careful edits to the section summaries so that they could potentially provide a condensed form for much of the educational material.

NEXT MEETING

A meeting of the Work Group was scheduled for Tuesday, January 31st, at 9:00 am to consider progress on the BMP, the BOH workshop on February 9th, and fulfillment of the balance of our charge. It is noted that 9:00 am was selected for the convenience of several of the members who have commitments later in the day.

Lee Saperstein will ask the Board of Selectmen at their meeting at 6:00 pm on January 11, 2012, to forward the draft regulation to the Board of Health and to approve a warrant article reapproving the home-rule petition on the control of fertilizer application on Nantucket.

ADJOURNMENT

At 11:55 pm, Chair Young ceded the Chair to Lee Saperstein and there was unanimous consent for adjournment. Mr. Saperstein said that he believed that we could not have the

progress that we have without the stalwart work of Lucinda Young and he thanked her for it.

Lee W. Saperstein, Secretary, 12 November 2012

ATTACHMENTS

ATTACHMENT ONE: The Draft Warrant Article Re-approving the Home-Rule Petition.

To see if the Town will vote to re-authorize the Board of Selectmen to petition the General Court to enact Special Legislation so as to carry-out the vote taken under Article 68 of the April 6, 2010, Annual Town Meeting, as follows; provided the General Court may make clerical or editorial changes of form only to the bill, unless the Board of Selectmen approves amendments to the bill before enactment by the General Court. The Board of Selectmen is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition, or take any other action relative thereto;

An Act Regulating the Content and Application of Fertilizer Used in the Town of Nantucket.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. FINDINGS

1.1. There is sound scientific evidence to conclude that nitrogen and phosphorus in fertilizers are contaminants that negatively affect fresh and salt waters when present in excessive amounts. These excessive amounts of nitrogen and phosphorus contribute to undesirable algal and aquatic plant growth within all Nantucket water bodies. This undesirable algal and aquatic plant growth has a adverse affect on public health through the degradation of waters used for drinking water, shellfishing, and recreational swimming and boating.

SECTION 2. PURPOSE

2.1. It is necessary to control by regulation in the Town of Nantucket the use of fertilizer that contains phosphorus and nitrogen so as to improve the water quality of the Town.

2.2. The soils of Nantucket are unique insofar as Nantucket has significant amounts of coarse, sandy soils that are subject to rapid water infiltration, percolation and leaching of nutrients, and such unique local conditions require that Nantucket retain localized control over the amounts of nitrogen and phosphorus added to soils through the application of fertilizers.

2.3. The Nantucket Board of Health has established a fertilizer regulation based on Best Management Practices developed by a broad group of stakeholders representing diverse interests that has been reviewed by soil and turf scientists and educators and has been determined appropriate for the unique soils and climate of Nantucket.

2.4. This Act provides for a reduction of nitrogen and phosphorus going into Nantucket's waters and wetlands by means of an organized system of education, licensure, and regulation of practice and should help Nantucket to achieve compliance with the Total Maximum Daily Loads (TMDL) prescribed by the Commonwealth of Massachusetts for nitrogen and phosphorus in its waters.

SECTION 3. LOCAL REGULATION BY THE TOWN OF NANTUCKET

3.1. This Act shall apply to the content and application of fertilizer used in the Town of Nantucket, notwithstanding any General or Special law to the contrary, including but not limited to any General or Special law conferring exclusive authority upon the Department of Agriculture to regulate and control the application of fertilizers elsewhere in the Commonwealth.

3.2. The Town of Nantucket is hereby specially authorized to regulate the content and application of fertilizer used in the Town of Nantucket either through a general bylaw enacted by a majority vote of its Town Meeting and/or through a regulation adopted by its Board of Health in accordance with the procedure set forth in Section 3.3 of this Act.

3.3. Notwithstanding the requirements of G.L. c. 111, §31, no such Board of Health regulations shall be adopted or amended until such time as the Board of Health shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than fourteen days prior to the date set for such hearing. No such amendment shall be effective unless the proposed amendment has been reviewed and commented upon by soil and turf scientists and educators and it is passed by a four-fifths vote of the Board of Health.

SECTION 4. EFFECTIVE DATE

This act shall take effect upon passage.

ATTACHMENT TWO: Draft Board of Health Regulation for the Control of Fertilizer Application.

A Proposal to the Board of Selectmen of the Town and County of Nantucket from the Article 68 Work Group for Regulations Enforced by the Board of Health of the Town of Nantucket (December 7, 2011)

With Town Counsel Comments – December 30, 2011

BOARD OF HEALTH REGULATION ON THE CONTENT AND APPLICATION OF FERTILIZER USED IN THE TOWN OF NANTUCKET

SECTION 1. FINDINGS

1.1. There is sound scientific evidence to conclude that nitrogen and phosphorus in fertilizers are contaminants that negatively affect fresh and salt waters when present in excessive amounts. These excessive amounts of nitrogen and phosphorus contribute to undesirable algal and aquatic plant growth within all Nantucket water bodies. This undesirable algal and aquatic plant growth has a adverse affect on public health through the degradation of waters used for drinking water, shellfishing, and recreational swimming and boating.

1.2. Nantucket has significant amounts of glacially deposited coarse, sandy soils that are subject to rapid water infiltration, percolation, and leaching of nutrients. These soil characteristics mean that normal agronomic practices of soil fertilization and amendment do not always apply on Nantucket.

SECTION 2. PURPOSE

2.1. It is necessary to control by regulation in the Town of Nantucket the use of fertilizer that contains phosphorus and nitrogen so as to improve the water quality of the Town.

2.2. This Regulation provides for a reduction of nitrogen and phosphorus going into Nantucket's waters and wetlands by means of an organized system of education, licensure, and regulation of practice and should help Nantucket to achieve compliance with the Total Maximum Daily Loads (TMDL) prescribed by the Commonwealth of Massachusetts for nitrogen and phosphorus in its waters.

SECTION 3. AUTHORITY

3.1. This Regulation is adopted by the Town of Nantucket's Board of Health as authorized by Massachusetts General Laws, Chapter 111, section 31.

SECTION 4. DEFINITIONS; for the purposes of this Regulation, the following words shall have the following meanings unless the context clearly indicates a different meaning:

“Agriculture” means farming in all of its branches and the cultivation and tillage of the soil, the production, cultivation, growing, and harvesting of any agricultural, floricultural or horticultural commodities. For the purposes of this Regulation, agriculture means the raising of crops for commercial sale, where the threshold of commercial is two thousand five hundred dollars (\$2500.00) or more per year measured as an average over a five-year period. See also “horticulture.”

“Amendment” refers to the application of substances to soils and plantings; amendments include but are not limited to fertilizers and may include other soil conditioners such as lime, compost, and other organic materials.

“Applicator” means any person who applies fertilizer to plants and soils.

“Best Management Practice,” BMP, means a sequence of activities designed to limit a nonpoint pollution source. For the purposes of this Regulation and pursuant to Section 5.1 of this Regulation, BMP means the current edition of “Best Management Practices for Fertilizer Use on Lawn and Landscape Plantings on Nantucket, MA.”

“Combination Products,” sometimes known as “Weed and feed,” means any product that, in combination with fertilizer, contains weed killer, defoliant, crabgrass preventer, or any other chemical for restricting the growth of plants other than turf.

“Compost” is partially decomposed organic matter that is used as a soil amendment. Compost is considered a fertilizer for the purposes of this Act.

“Compost tea” is a liquid infusion of compost that is used as a soil amendment or foliar fertilizer. Compost tea is considered a fertilizer for the purposes of this Act.

“Continuing education hours” means elapsed or actual time spent in an educational, professional-development activity.

“Fast-acting nitrogen” means any water-soluble nitrogen that is immediately available to plants upon application.

“Fertilize, fertilizing, or fertilization” means the act of applying fertilizer to plants or soils.

“Fertilizer” means a substance that enriches the soil with elements essential for plant growth, such as nitrogen, phosphorus, or other substances; fertilizer does not include those nutrients that are normally excluded from fertilizer such as chemically part of dolomite, limestone, or lime. Fertilizer includes foliar fertilizers as defined below.

“Foliar Fertilizer” means any fertilizer product designed for uptake into a plant through its leaves and which typically are sprayed directly onto a plant.

“Horticulture” is a general term meaning plant science and plant products. For the purposes of this Regulation, horticulture means the raising of flowers, fruits, vegetables, berries, herbs, nuts, and other similar products for commercial sale, where the threshold of commercial is two thousand five hundred dollars (\$2500.00) or more per year measured as an average over a five-year period. See also “agriculture.”

“Impervious surface” means a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water.

“Landscape professional” means a person who, in exchange for money, goods, services, or other consideration, applies fertilizer to plants or soils.

“Landscaping” means establishment by sod, seeding, or transplanting, renovation, maintenance, or fertilization of turf and other plantings.

“Licensed applicator” means a person authorized by the Nantucket Board of Health or Health Agent to apply fertilizer for commercial purposes.

“Nantucket” is the Town and County of Nantucket and all of its waters.

“Nantucket BMP” is the current edition of the “Best Management Practices for Fertilizer Use on Lawn and Landscape Plantings on Nantucket, MA.” Pursuant to Section 5.1 of this Regulation, the Nantucket BMP is adopted by the Board of Health and is generally available to the public.

“‘Nonpoint Pollution’ means contamination which includes but is not limited to sediments, nutrients, pathogens, and pollutants that collect in water-bodies from stormwater runoff.” (301 CMR 26.03, “Definitions” in the “Coastal Pollutant Remediation Program”)

“Nonpoint Pollution Source (NPS)” means any activity releasing pollution that is not deemed point-source pollution.

“Nutrient” means any of the following 16 elements needed for growth of a plant; the three (3) non-mineral elements: carbon, hydrogen, and oxygen; the six (6) macronutrients: nitrogen, phosphorus, potassium, calcium, magnesium, and sulphur; and the seven (7) micronutrients: boron, copper, iron, chloride, manganese, molybdenum, and zinc.

“Nutrient management” means systematic control of the application of nutrients.

“Plantings” means organized cultivation of plants for beneficial purposes.

“Plants” are biological organisms in the *Kingdom Plantae* that, for the purposes of this Act, are used domestically.

“Point-Source water pollution” comes from stationary locations such as sewage treatment plants, factories, and ships and is subject to regulatory control under the Clean Water Act.

“Slow-release, controlled-release, timed-release, slowly available, or water-insoluble nitrogen” means nitrogen in a form that delays its availability for plant uptake and use after application and is not rapidly available to turf and other plants.

“Soil” means the upper-most layer of the earth’s surface, comprised of mineral and organic matter, which can host biological communities.

“Soil test” means a technical analysis of soil conducted by an accredited soil-testing laboratory.

“Turf” means grass-covered soil held together by the roots of the grass, also known as “sod” or “lawn.”

“Waters” or “Water-bodies” include, but are not limited to, streams, including intermittent streams, creeks, rivers, freshwater and tidal wetlands, ponds, lakes, marine waters, canals, lagoons, and estuaries within the Town of Nantucket, including without limitation all waters defined in Massachusetts General Laws Chapter 131, Section 40 and Town of Nantucket Code Section 136 with the exception of the following: coastal and inland banks, beaches, coastal dunes, dune fields, and lands subject to coastal storm flowage, inland or coastal flooding or inundation, or within 100 feet of the hundred-year storm line, or within any area located within the geographic boundaries of the resource areas that are habitat for rare/significant wildlife and/or fauna.

SECTION 5. STANDARDS OF PERFORMANCE

5.1. Nantucket Best Management Practices

The Board of Health shall adopt the document known as the Nantucket Best Management Practices (“Nantucket BMP”), which shall be incorporated into and be part of this Regulation. The initial version of the Nantucket BMP was developed by a broad group of stakeholders representing diverse interests and has been reviewed by soil and turf scientists and educators, and is based on principles of soil science appropriate to Nantucket soils and climate. Therefore, notwithstanding the requirements of G.L. c. 111, §31, no amendment to the Nantucket BMP shall be adopted until such time as the Board of Health shall hold

a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than fourteen days prior to the date set for such hearing. No such amendment shall be effective unless the proposed amendment has been reviewed and commented upon by soil and turf scientists and educators and it is passed by a four-fifths vote of the Board of Health.

5.2. Performance Standards for Non-Licensed Applicators:

Applicators who do not hold Fertilizer Licenses issued in accordance with Section 6.2 of this Regulation shall comply with the following standards:

5.2.1. Applicators shall not apply fertilizer immediately before or during heavy rainfall, such as but not limited to thunderstorms, hurricanes, or north eastern storms, or when the soil is saturated due to intense or extended rainfall;

5.2.2. Applicators shall not apply fertilizer between October 16th and the following April 14th;

5.2.3. Applicators shall not apply, spill, or deposit fertilizer on any impervious surface and fail to remove the applied, spilled, or deposited fertilizer immediately, or to apply fertilizer in a manner that allows fertilizer to enter into storm drains;

5.2.4. Applicators shall not apply fertilizer closer than 100 feet to any water-body as defined above unless a permit is obtained from the Nantucket Conservation Commission allowing such activity [This reflects current Nantucket Wetland Regulations];

5.2.5. Applicators shall not deposit grass clippings, leaves, or any other vegetative debris into or within 25 feet of water-bodies, retention and detention areas, drainage ditches or storm water drains, or onto impervious surfaces such as, but not limited to, roadways and sidewalks, except during scheduled clean-up programs.

5.2.6. The following restrictions shall apply to the content of fertilizer to be applied to turf, other plants, or soil by non-licensed Applicators.

5.2.6.1. An Applicator shall not apply more than 0.25 lb N/1000 sq ft of fast-release nitrogen fertilizer in any one application.

5.2.6.2. An Applicator shall not apply fertilizer that contains phosphorus, unless a soil test indicates a phosphorus deficiency and it is applied in conformance with the Nantucket BMP.

5.2.6.3. Applications of compost, which contain phosphorus, may only be applied in conformance with the Nantucket BMP.

5.2.7. A single application of nitrogen for turf shall not exceed 0.5 pounds of actual nitrogen per thousand square feet and the annual rate shall not exceed 3.0 pounds of actual nitrogen per thousand square feet; a single application for trees, shrubs, herbs and other ornamental plantings shall not exceed 0.5 pounds of actual nitrogen per thousand square feet and the annual rate shall not exceed 2.0 pounds of actual nitrogen per thousand square feet.

5.2.8. Applications of nitrogen shall be done at intervals of no less than two weeks until the annual maximum is reached.

5.2.9. The fertilizer application requirements of Section 5.2.7. shall apply without limitation to the application of combination products.

5.2.10. Foliar fertilizers shall be applied in compliance with the Nantucket BMP. The nitrogen application rate of foliar products shall be included when calculating the annual total nitrogen application rate.

5.2.11. Compost and compost tea shall be applied in compliance with the Nantucket BMP. The nitrogen and phosphate application rates of compost and compost tea shall be included when calculating the annual total fertilizer application rate.

5.3 Performance Standards for Licensed Applicators

5.3.1. Licensed Applicators shall be exempt from the performance standards set forth in Section 5.2 of this Regulation, provided that they comply with the requirements of Section 5.3.2 of this Regulation.

5.3.2. All applications of fertilizer by a Licensed Applicator shall be in accordance with the Nantucket BMP, as amended at the time of the application.

5.4. Exemptions. The following activities shall be exempt from Sections 5.2. and 5.3.

5.4.1. Application of phosphorus when establishing vegetation, after land disturbance, and when re-establishing or repairing turf after substantial damage, provided the application is in compliance with the Nantucket BMP. When applied within 100 ft of any water-body such application requires a permit from the Nantucket Conservation Commission [This reflects current Nantucket Wetland Regulations].

5.4.2. Application of fertilizer for agricultural and horticultural uses, including sod farms.

SECTION 6. EDUCATION, LICENSURE, ENFORCEMENT, AND PENALTIES.

6.1. Education

6.1.1. The Town of Nantucket Board of Health shall maintain a program of fertilizer education that is based on the Nantucket BMP.

6.1.2. The Town's Board of Health shall administer an assessment to determine individuals' proficiency of the Nantucket BMP.

6.1.3. Summaries of fertilizer application requirements will be made readily available to the public by the Board of Health.

6.2. Licensure

6.2.1. No Landscape Professional shall apply fertilizer in the Town of Nantucket without a license issued by the Board of Health in accordance with this Regulation. Such a license may be held but is not required by property-owners who apply fertilizer on their own property.

6.2.2. Fertilizer Licenses shall be effective beginning on January 1st in the year of issue, and shall be in effect for three calendar years, unless previously revoked in accordance with Section 6.3 of this Regulation.

6.2.3. Fertilizer Licenses may be renewed on application. Renewal applications shall be submitted to the Board of Health no later than December 1st of the year preceding the year for which renewal is sought.

6.2.4. Any application for a Fertilizer License or for renewal of a Fertilizer License shall be accompanied by a fee in the amount of \$100.00; and certification that the applicant has shown proficiency of the Nantucket BMP as determined by the Board of Health, as set forth in Section 6.1.2 of this Regulation.

6.2.5. Any Landscape Professional licensed under this Regulation shall keep said license in his/her possession which shall be readily available for display. The License shall indicate the license number and shall include the Licensee's signature and date of the license expiration. The Licensee shall display such license when requested to do so by any officer of the Nantucket Police Department or Board of Health.

6.3. Enforcement

6.3.1. License Suspension or Revocation

The Board of Health may suspend or revoke any license issued pursuant to this Regulation or any other applicable law. Such revocation or suspension may take place after a hearing held by the Board of Health of which the license holder is given seven (7) days written notice. Such notice shall be deemed given upon mailing same to the address listed on the license application.

6.3.2. Non-Criminal Disposition

This Regulation may be enforced by the Health Director, Assistant Health Officer and/or any Police Officer of the Town of Nantucket .

Whoever violates any provision of this Regulation may be penalized by a noncriminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition by-law, Sections 1-2, 1-3, 1-4, 1-5, and 1-6 of the Code of the Town of Nantucket. If noncriminal disposition is elected, then any person who violates any provision of this Regulation shall be subject to a penalty in the amount of three hundred dollars (\$300.00) per day for each day of violation, commencing ten days following day of receipt of written notice from the Board of Health. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

6.3.3. Other

Whoever violates any provision of this Regulation may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be one thousand dollars (\$1,000). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

The Board of Health may enforce this Regulation or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

SECTION 7. SEVERABILITY CLAUSE

Should any section, part or provision of this Regulation be deemed invalid or unconstitutional, such decision shall not affect the validity of the remaining terms of this Act as a whole or any part thereof, other than the section, part or provision held invalid or unconstitutional.

SECTION 8. AMENDMENTS

This Regulation is based on the Nantucket BMP and were developed by a broad group of stakeholders representing diverse interests and has been reviewed by soil and turf scientists and educators. Therefore, notwithstanding the requirements of G.L. c. 111, §31, no amendment to this Regulation shall be adopted until such time as the Board of Health shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than fourteen days prior to the date set for such hearing. No such amendment shall be effective unless the proposed amendment has been reviewed and commented upon by soil and turf scientists and educators and it is passed by a four-fifths vote of the Board of Health.

SECTION 9. EFFECTIVE DATE

This Regulation shall take effect upon publication pursuant to G.L. c. 111, §31.

SECTION 10. INTERIM PROVISIONS

Landscape Professionals may apply fertilizer without a license during the interim period between the effective date of this Regulation and the development of a licensing program by the Nantucket Board of Health, provided that they comply with Section 5.3.2 of this Regulation.

[Printed: 2012-02-01]