

ARTICLE 68

(Home Rule Petition: An Act Regulating the Content and Application of Fertilizer Used in the Town of Nantucket)

Moved that the Board of Selectmen be authorized to request representatives in the General Court to introduce legislation seeking a special act and to authorize the General Court, with the approval of the Board of Selectmen, to make constructive changes in perfecting the language of this proposed legislation, in order to secure passage of legislation on the subject of regulating the content and application of fertilizer used in the Town of Nantucket.

AN ACT REGULATING THE CONTENT AND APPLICATION OF FERTILIZER USED IN THE TOWN OF NANTUCKET

SECTION 1. FINDINGS

1.1. There is a sound scientific basis to conclude that nitrogen and phosphorus in fertilizers are contaminants that negatively affect waterbodies when present in excessive amounts, contributing to undesirable algae and aquatic plant growth, known as "eutrophication".

1.2. Excessive amounts of both nitrogen and phosphorus discharged into the waters of Nantucket significantly decrease the habitat value of the freshwater and estuarine ecosystems and increase the risk of deleterious impacts on public health and general welfare.

1.3. The Nantucket and Madaket Harbors, the surrounding coastal waters, and Nantucket's ponds are essential components of the recreation and tourism and commercial fisheries industries in the Town of Nantucket.

1.4. Applying slow-release nitrogen to plants and plantings maintains healthy plant growth while decreasing contamination to groundwater.

1.5. Applying phosphorus to plants only in situations in which a soil test indicates the need to do so is a sound management practice and can decrease the nutrient load to Nantucket and Madaket Harbors and freshwater ponds in the Town of Nantucket.

1.6. Plants do not effectively utilize nitrogen and phosphorus during periods when the soil is frozen or they are dormant, thus allowing nutrients to run off into Nantucket's Harbors and ponds in increased amounts.

Deleted: To see if the Town will vote to request its representatives in the General Court to introduce legislation seeking a special act as set forth below and to authorize the General Court, with the approval of the Board of Selectmen, to make constructive changes in perfecting the language of this proposed legislation in order to secure passage, such legislation to read substantially as follows:

Comment [S1]: This is the entirety of Article 68 as amended and passed at ATM.

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Comment [S2]: Lucas (M), Misurelli (S), unanimous to remove "manufactured."

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Deleted: and Madaket Harbors watershed

Comment [S3]:

Comment [S4]: Deletion by Misurelli (M) and others (S); unanimous.

Comment [S5]: Insertion suggested by Saperstein based on comments during discussion.

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Comment [S6]: Suggestion by ... [2]

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Comment [S7]: The substituti... [3]

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1.7. Heavy precipitation, snowmelt, and excessive irrigation greatly increase the amount of nitrogen and phosphorus that run off into adjacent water-bodies.

Comment [S8]: Boyce (M) Saperstein (S)

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SECTION 2. PURPOSE

2.1. Voluntary Best Management Practices (BMP) on the application of fertilizer have not been sufficient to prevent degradation of Nantucket's waters. Consequently, it is necessary to control by regulation in the Town of Nantucket the use of fertilizer that contains phosphorus and high percentages of fast-acting nitrogen so as to improve the water quality of the Town.

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Comment [S9]: Draft language by Saperstein that will need to be reviewed by the Work Group.

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2.2. It is imperative that restrictions on the amount of nitrogen and phosphorus discharged into the Nantucket and Madaket Harbors watershed be imposed so as to protect the integrity of Nantucket's waters and ponds for present and future generations.

2.3. This Act (a.k.a ordinance, regulation) provides for a reduction of nitrogen and phosphorus going into Nantucket's waters by means of an organized system of education, licensure, and regulation of practice.

2.4. The Act 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.

Comment [S10]: Saperstein draft language for review.

SECTION 3. AUTHORITY

3.1. Article 68, as amended and passed by the Annual Town Meeting of Nantucket in April 6, 2010, adjourned session, asked the Board of Selectmen to devise legislation or other such vehicle to reduce the amount of nitrogen and phosphorus going into its waters.

Comment [S11]: This section is newly drafted by Saperstein and should be reviewed by the Work Group

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3.2. The Nantucket & Madaket Harbors Action Plan, approved by the Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (EEA) on December 21, 2009, specifies the need to reduce nutrients (specifically nitrogen and phosphorus) flowing into the Harbors.

3.3. EEA, in Report #97-TMDL-2 Control #249.0, January 28, 2009, "Nantucket Harbor Embayment System, Total Maximum Daily Loads for Total Nitrogen," has mandated Total Maximum Daily Loads (TMDL) for Nantucket Harbor.

3.4. 301 CMR 21.98, "Policy Appendix," specifies that the Massachusetts Coastal Zone Management (MCZM) Program Plan will "ensure that nonpoint pollution controls promote the attainment of state surface water quality standards in the coastal zone" (301 CMR 21.98(3): Water Quality Policy # 2).

3.5. The Massachusetts "Nonpoint Pollution Source (NPS) Management Plan," created by the Department of Environmental Protection (DEP), Bureau of Resource Protection, states that a DEP objective is to assist "communities in drafting river protection bylaws and ordinances."

3.6. The Massachusetts Estuaries Project (MEP), whose reports are available from the DEP, states that, as part of the suggestions for a solution to the problem of nutrient management that "limiting the use of lawn fertilizers" may be necessary.

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

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"Amendment" refers to the application of substances that are beneficial 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.

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"Best Management Practice (BMP) means a voluntary sequence of activities designed to limit a nonpoint pollution source.

"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.

"Conservation Farm Plan" means a formal plan filed by farms and farm units found to be degrading the quality of water beyond the promulgated Water Quality Standards.

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

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"Fertilize, fertilizing or fertilization" means the act of applying fertilizer to plants.

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"Fertilizer" means a substance that enriches the soil with elements essential for turf growth, such as nitrogen, phosphorus or other substances; fertilizer does not include those nutrients that are normally excluded such as contained in dolomite, limestone, or lime.

"Foliar Fertilizer" means any fertilizer product designed for uptake into a plant through its leaves; normally foliar products are sprayed directly onto a plant.

Comment [S12]: Suggested by Ms Marcus and agreed to by consent.

“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.

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

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

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

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

“Nutrient” means any of the approximately 16 elements needed for growth of a plant; normally carbon, hydrogen, oxygen, and nitrogen, available from air and water, are not included in the list of nutrients.

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

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

“Plants” are biological species in the vegetable kingdom that, for the purposes of this Act, are used domestically.

“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.”

“Water-bodies” includes, but is 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 all waters defined in Massachusetts General Laws Chapter 131, Section 40 and Town of Nantucket Code Section 136.

SECTION 5. Standards of Performance

5.1. Prohibited Conduct. Applicators shall not:

- a. 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.

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Page 102 Town of Nantucket 2010 Annual Town Meeting Warrant with Finance Committee Motions¶
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Deleted: “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.¶

Comment [S13]: Needs to be renumbered.

Comment [S14]: “Performance” is the suggested title.

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Comment [S15]: Storm events need to be defined explicitly but simply. The regulations could say something like “storm events leading to excessive run-off or percolation into the groundwater” while the BMP discusses storm frequencies and amounts and ways to predict storm events.

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b. apply fertilizer between **November 15** and April 1 of any calendar year.

Comment [S16]: One suggestion was to use November 15 instead of Dec 1.

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c. apply, spill or deposit fertilizer on any impervious surface and fail to remove the applied, spilled or deposited fertilizer immediately.

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d. apply fertilizer closer than **twenty five-feet** to **water-bodies**.

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e. deposit grass clippings, leaves, or any other vegetative debris into 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.

Comment [S17]: This number is displaced by Con Com regulations for wetlands. (100 ft); others have concern that 25 feet is too close.

Comment [S18]: A more expli... [4]

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5.2. Fertilizer Content and Application Requirements for Applicators

Comment [S19]: ConCom req... [5]

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a. The following restrictions shall apply to the content of fertilizer to be applied to turf:

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i. An applicator shall not apply any fertilizer to **turf** unless the fertilizer contains a minimum of **70%** slow-release nitrogen as the nitrogen additive.

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ii. An applicator shall not apply fertilizer that contains phosphorus, unless a soil test indicates a phosphorus deficiency.

Comment [S20]: Only turf or... [7]

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iii. Any fertilizer applied to soil with a demonstrated phosphorus deficiency shall comply with the recommendations of the **Northeast Organic Farming Association Standards for Organic Land Care**.

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b. Fertilizer application shall not exceed the manufacturer's recommended rate.

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Comment [S22]: Do we use N... [9]

c. The above-referenced application requirements shall apply without limitation to the application of pesticide, **herbicide**, and fertilizer mixtures, including but not limited to, **combination** products.

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d. **Foliar Products (a place holder)**

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5.3. Exemptions. The following activities shall be exempt from Section 12 of this Act:

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a. Application of phosphorus when:

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i. Establishing vegetation for the first time, such as after land disturbance, provided the application is in accordance with the **Northeast Organic Farmers Association Standards for Organic Land Care**.

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Comment [S24]: "Farming" ... [12]

ii. Re-establishing or repairing turf after substantial damage;

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b. Use of reclaimed water for irrigation, provided it is not used within **twenty-feet** of any **waterbody**.

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

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Comment [S26]: "Agricultur... [14]

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SECTION 6. [A place-holder for additional requirements]

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SECTION 7. Severability Clause

Should any section, part or provision of this Act 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.

Comment [S27]: It may be boiler plate but it is important to retain.

Section 8. Effective Date

This Act shall take effect on January 1, 2011.

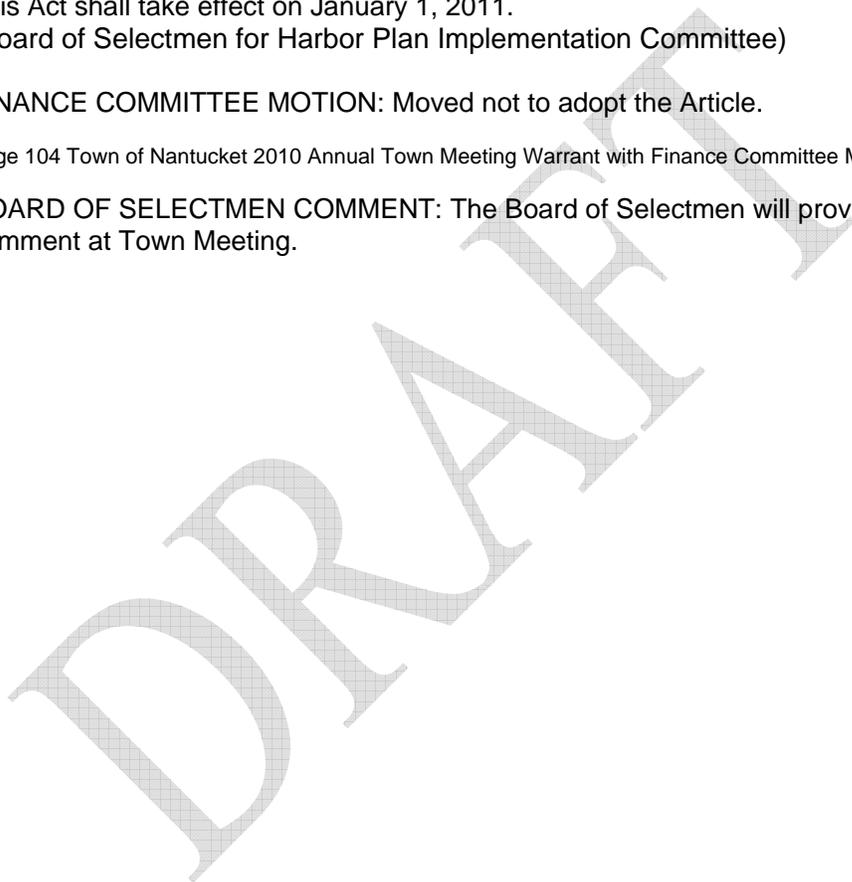
(Board of Selectmen for Harbor Plan Implementation Committee)

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FINANCE COMMITTEE MOTION: Moved not to adopt the Article.

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BOARD OF SELECTMEN COMMENT: The Board of Selectmen will provide a comment at Town Meeting.



Page 1: [1] Deleted	Saperstein	5/20/2010 11:24:00 AM
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SECTION

Page 1: [2] Comment [S6]	Saperstein	5/20/2010 2:43:00 PM
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Suggestion by Willauer and accepted by consensus

Page 1: [3] Comment [S7]	Saperstein	5/20/2010 2:43:00 PM
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The substitution of plant and/or planting for turf throughout the document was moved by Saperstein, seconded by Collier and agreed to unanimously.

Page 5: [4] Comment [S18]	Saperstein	7/8/2010 2:15:00 PM
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A more explicit term or phrase should be used instead of “water bodies.”

Page 5: [5] Comment [S19]	Saperstein	7/8/2010 1:48:00 PM
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ConCom requires no closer than 25 ft to wetlands.

Page 5: [6] Deleted	Saperstein	7/31/2010 9:47:00 AM
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Page 5: [7] Comment [S20]	Saperstein	7/8/2010 1:49:00 PM
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Only turf or on all landscaped lands to include beds and plantings?

Page 5: [8] Comment [S21]	Saperstein	7/8/2010 1:50:00 PM
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Exception for garden beds (10-10-10)?

Page 5: [9] Comment [S22]	Saperstein	7/8/2010 1:52:00 PM
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Do we use NOFA or UMass Extension or some other recognized agency such as NRCS of USDA? Should we reduce the strictness of 12.A.3. in the regulation and put the onus on language to go into the BMP?

Page 5: [10] Comment [S23]	Saperstein	7/8/2010 1:53:00 PM
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“Combination Products” preferred. We may need a section D. for foliar fertilizer.

Page 5: [11] Deleted	Saperstein	7/31/2010 9:51:00 AM
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A.

Page 5: [12] Comment [S24]	Saperstein	7/8/2010 1:54:00 PM
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“Farming” More importantly, should we use NOFA or something broader, i.e. UMass Ext or NRCS?

Page 5: [13] Comment [S25]	Saperstein	7/8/2010 1:55:00 PM
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Match word use to same as above.

Page 5: [14] Comment [S26]	Saperstein	7/8/2010 2:16:00 PM
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“Agricultural” is a broad word meaning farms and farming systems. “Horticultural” has a broad meaning (plant science) and also a more narrow one: flowers, fruit, nursery, nut, and vegetable. Perhaps what is desired is an indication of “commercial” purposes.