

Chapter 119

FERTILIZER NUTRIENT CONTROL

[HISTORY: Adopted by the 11-17-2014 Fall Yearly Town Meeting, Art. 11. Amendments noted where applicable.]

GENERAL REFERENCES

Flooding — See Ch. 100.

Pollution — See Ch. 135.

Water — See Ch. 112.

Water betterment — See Ch. 171.

Illicit connections and discharges — See Ch. 115.

Wetlands protection — See Ch. 172.

§ 119-1. Findings.

The Town of Brewster herein makes the following findings:

- A. There is sufficient scientific evidence demonstrating that excessive nutrient enrichment of the region's water resources can have numerous, significant negative impacts.
- B. Public health risks from excessive loading of nutrients to water resources may include direct detrimental effects on drinking water sources by increased concentrations of nitrates that can violate safe drinking water standards.
- C. Degradation of the quality of water resources can have significant negative impacts to the local and regional economy, and the fiscal well-being of the Town.
- D. The Town has significant amounts of glacially deposited coarse, sandy soils that are subject to rapid water infiltration, percolation, and leaching of nutrients.
- E. The Town's soil characteristics mean that agronomic practices of soil fertilization common in other parts of the region, state and country may not always apply in the Town, as these practices vary by soil type.
- F. Scientific literature demonstrates that a significant potential source of nutrient loading to water resources is from inappropriate and/or improper use of turf fertilizer.

§ 119-2. Purposes.

It is the overarching goal of the Town of Brewster to provide a regulatory framework that results in the planting and maintenance of minimally managed turf areas. Consistent with this goal, and based on the findings provided in § 119-1, the Town provides this bylaw to achieve the following purposes.

- A. To ensure application of fertilizer shall be performed in a manner consistent with best management practices (BMPs), which from time to time may undergo changes in response to scientific research.

- B. To provide a legal mechanism for enforcement against the inappropriate and/or improper use of fertilizer.
- C. To incorporate, by reference, the University of Massachusetts Extension's Turf Management BMPs as the primary standard for the content and application practices related to turf fertilizer.
- D. To provide a regulatory tool that will help Brewster to achieve compliance with the total daily maximum loads (TMDL) for the Town's water resources prescribed by the Commonwealth of Massachusetts.
- E. To provide standards that will allow reasonable use of fertilizers for the enhancement and maintenance of turf quality.
- F. To conserve valuable waterways and other resources that increase property values, protect the unique environment vital to our economy, and reduce the financial burden on taxpayers and property owners by regulating the outdoor application of nitrogen on turf.
- G. To help achieve the goals of the Brewster Water Protection DCPC, the Cape-Wide Fertilizer Management DCPC, and the Local Comprehensive Plan.

§ 119-3. Authority.

This bylaw is adopted by the Town of Brewster as implementing regulations pursuant to and as authorized by the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07, and by Section 9 of Chapter 262 of the Acts of 2012.

§ 119-4. Applicability.

- A. This bylaw shall apply to and regulate any and all applications of nitrogen through fertilizer on managed turf areas within the Town of Brewster with the exception of public and private golf courses.
- B. Applications of fertilizer for agriculture and horticulture uses are exempt from the provision of this bylaw as they are regulated by the MDAR fertilizer regulations.
- C. Applications of fertilizer to vegetated areas that do not include managed turf areas are not subject to the provisions of this bylaw as they are regulated by the MDAR fertilizer regulations.

§ 119-5. Definitions.

For the purposes of this chapter, the following terms are defined as provided below:

AGRICULTURE/AGRICULTURAL USE — Includes farming in all its branches, generally as the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, floricultural, viticultural or horticultural commodities, and shellfishing, including preparations and delivery to storage or to market or to carriers for transportation to market.

BEST MANAGEMENT PRACTICES (BMP) — A sequence of activities designed to

limit a nonpoint pollution source. For the purposes of this bylaw, BMP means the "Best Management Practices for Soil and Nutrient Management in Turf Systems," prepared by University of Massachusetts Extension, Center for Agriculture, Turf Program. The version of this document that applies to this bylaw shall be that which was most recent at the time of the adoption of this bylaw or any subsequent versions that are adopted as an amendment to this bylaw through a majority vote at Town Meeting.

COMBINATION PRODUCTS — Sometimes known as "weed and feed," any product that, in combination with fertilizer, contains pre- or post-emergence herbicides, insecticides other pesticides or plant growth regulators.

COMPOST or ORGANIC COMPOST — The biologically stable, humus-like material derived from composting or the aerobic, thermophilic decomposition of organic matter.

ENFORCEMENT AUTHORITY — The party designated by the Select Board to oversee and enforce the provisions of this bylaw. **[Amended 11-13-2017 FYTM, Art. 13]**

FERTILIZER — A substance that enriches the soil with elements essential for plant growth, such as nitrogen, phosphorus, potassium or other substances; fertilizer does not include those nutrients that are normally excluded from fertilizer such as chemicals that are part of horticultural gypsum, dolomite, limestone, lime, Jersey greensand, grass clippings, or compost topdressing.

FERTILIZER APPLICATOR — Any person who applies fertilizer to turf and soils.

HEAVY RAIN — A rainfall greater than 0.25 inch per hour during a given twenty-four-hour period or a rainfall of greater than one inch total in the next twenty-four-hour period.

IMPERVIOUS SURFACE — Any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes concrete, asphalt, paver blocks, gravel, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

LANDSCAPE PROFESSIONAL — A person, either as a sole proprietor or as part of a company, who, in exchange for money, goods, services, or other consideration, performs landscaping services. A landscape professional can include turf management staff at a private golf course operation or other private entity.

MANAGED TURF AREA — An area of turf that is periodically maintained through mowing, fertilizing, aerating, irrigation or other similar activities designed to maintain or enhance the health, functionality and/or aesthetic appeal of the turf.

MDAR FERTILIZER REGULATIONS — The most recent regulations of the "Plant Nutrient Application Requirements for Agricultural Land and Land Not Used for Agricultural Purposes," developed by the Massachusetts Department of Agricultural Resources (MDAR) pursuant to its authority under MGL c. 128, §§ 2(k) and 65(A), as amended by Chapter 262 of the Acts of 2012, 330 CMR 31.00.

MUNICIPAL APPLICATOR — A public employee of a town, the county, or the state or federal government (or an employee of a department of and within such public entity) who fertilizes and manages turf located on property owned or controlled by a town, the county, the state or federal government (including publicly owned golf courses and athletic fields) within the scope of their official public employment responsibilities.

NITROGEN — An element essential to plant growth. For the purposes of the bylaw, nitrogen may be available as slow-release, controlled-release, timed-release, slowly available, or water-insoluble nitrogen, which 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; and/or quick-release, water-soluble nitrogen which means nitrogen in a form that does not delay its availability for turf and other plant uptake and is rapidly available for turf and other plant uptake and use after application.

NUTRIENT — Any of the following 17 elements needed for growth of a plant: the three non-mineral elements: carbon, hydrogen, and oxygen; the six macronutrients: nitrogen, phosphorus, potassium, calcium, magnesium, and sulfur; and the eight micronutrients: boron, copper, iron, chloride, manganese, molybdenum, nickel and zinc.

SATURATED GROUND — Soil soaked with moisture so that it cannot absorb any more liquid.

TURF — Any non-crop land area that is covered by any grass species, excluding meadows, grasslands, flower or vegetable gardens, pasture, hay land, trees, shrubs, turf grown on turf farms or any form of agricultural production or use.

§ 119-6. Performance standards for fertilizer application.

All application of fertilizer to turf shall comply with the following standards:

- A. The application of fertilizer containing nitrogen is prohibited between November 15 and April 15 unless specifically permitted by the enforcement authority as set out below. Based on early spring or fall weather conditions, soil temperature and degree of turf emergence from dormancy, or other relevant condition, and using the guidelines of the BMP, the enforcement authority may permit earlier or later application of fertilizer containing nitrogen, in which case such extended period shall be announced by notice or publication. A working group may be established by the Select Board to assist in undertaking the duties referenced in this subsection. **[Amended 11-13-2017 FYTM, Art. 13]**
- B. Nitrogen from any fertilizer application shall not be applied to, or otherwise be deposited on, any impervious surface, including parking lot, driveway, roadway, sidewalk, frozen soil or ice. Any fertilizer applied, spilled, and/or deposited on any impervious surface, either intentionally or accidentally, must be immediately and completely removed and contained and either legally applied to turf or any other legal site or returned to an appropriate container.
- C. Fertilizer shall not be applied within 24 hours before or during a heavy rain event nor shall fertilizer be applied onto saturated ground.
- D. An application of fertilizer should be watered in with no more than 0.25 inch of irrigation or natural rain within the twenty-four-hour period following application. Where irrigation systems are used, the volume and rate of irrigation water applied shall be performed in a manner that reduces runoff to the greatest extent practicable. Where an irrigation system uses sprinkler heads or other similar spray devices, these devices shall direct irrigation water in a manner that reduces runoff to the greatest extent practicable.
- E. Unless the Town's existing laws and regulations, including its Wetland Bylaw or

Regulations,¹ contain a stricter standard or other enforcement or approval mechanism such as through the Town's Conservation Commission, which shall control, fertilizer shall not be applied closer than 100 feet to any water body, or within the Zone I of a public drinking water well (as defined in 310 CMR 22.02), unless permission is obtained through the enforcement authority set out in § 119-6A herein allowing such activity.

- F. Fertilizer that contains phosphorus shall not be used unless a soil test taken not more than three years before the proposed fertilizer application indicates that additional phosphorus is needed for growth of that turf, or unless establishing new turf or re-establishing or repairing turf after substantial damage or land disturbance, in which case the application shall be in compliance with the BMP.
- G. A single application of fertilizer that contains nitrogen shall not exceed 1.0 pound of actual nitrogen per 1,000 square feet, shall consist of at least 20% slow-release nitrogen fertilizer and the annual rate shall not exceed 2.0 pounds of actual nitrogen per 1,000 square feet. Single applications shall be done at intervals of no less than four weeks until the annual maximum is reached.
- H. The fertilizer application requirements of this subsection shall apply with the same limitations to combination products as defined by this bylaw.

§ 119-7. Noncriminal disposition; violations and penalties.

Whoever violates any provision of this regulation may be penalized by a noncriminal disposition process as provided in MGL c. 40, § 21D, and the Town's noncriminal disposition bylaw. 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 \$300 per day for each day of violation, commencing 10 days following day of receipt of written notice from the enforcement authority. A warning in lieu of a fine or other enforcement action for the first offense can be issued at the discretion of the enforcement authority. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

§ 119-8. Other remedies.

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

§ 119-9. Education.

- A. The Town may rely on Cape Code Cooperative Extension to assist in maintaining a program of fertilizer and turf management education that is based on BMPs.
- B. The Town may rely on Cape Cod Cooperative Extension to assist with or administer an assessment to determine an applicator's proficiency of BMPs.
- C. Fertilizer education may consist of, but is not limited to, collaboration with retailers to post in-store information on Town fertilizer regulations, the BMP requirements;

1. Editor's Note: See Ch. 172, Wetlands Protection.

mailings and flyers for the general public concerning Town fertilizer regulations, the BMP requirements; and outreach to landscape professionals and municipal applicators concerning fertilizer-related laws and the BMP requirements.

§ 119-10. Severability.

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