

PART V

Article 2

**REGULATION ON THE CONTENT AND APPLICATION OF
TURF FERTILIZER IN THE TOWN OF PROVINCETOWN**

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Section 1. Authority and Purpose

1.1. This Regulation is adopted by the Town of Provincetown Board of Health as authorized by G. L. c.111, §31, Chapter 262,§9 of the Acts of 2012 (as amended), and Barnstable County Ordinance 13-07 which, pursuant to Section 10 of the Cape Cod Commission Act, St. 1989, c. 716 (“the Act”), established a Fertilizer Management District of Critical Planning Concern and, pursuant to Section 11(d) of the Act constitutes an Implementing Regulation pursuant to the Fertilizer Management District of Critical Planning Concern designation.

1.2. This Regulation incorporates by reference UMass Amherst Extension’s Turf Management Best Management Practices which from time to time may be amended in response to scientific research. The practices and standards set out herein are intended to protect the public health, assist in improving water quality and in achieving compliance with the Total Daily Maximum Loads (TMDL) for the Town’s water resources prescribed by the Commonwealth of Massachusetts while allowing reasonable use of fertilizers.

Section 2. Applicability

2.1. It is necessary and desirable to control by regulation the application of fertilizer to turf within the Town of Provincetown that contains phosphorus and nitrogen for the purposes set out herein.

2.2. This Regulation incorporates and requires use of Best Management Practices as defined herein for application of Fertilizer.

Section 3. Definitions

3.1 AGRICULTURE/AGRICULTURAL USE: Farming in all of its branches including the cultivation and tillage of the soil, the production, cultivation, growing, and harvesting of any agricultural, floricultural or horticultural commodities, including but not limited to cranberries.

3.2 BEST MANAGEMENT PRACTICE (BMP): For purposes of this Regulation, the most current version of University of Massachusetts Extension Center for Agriculture Best Management Practices for turf application , as published on the website of the Massachusetts Department of Agricultural Resources <https://extension.umass.edu/turf/publications-resources/best-management-practices> and as used to limit a nonpoint pollution source.

3.3 COMBINATION PRODUCTS: Substances of mixed composition, including Fertilizer and other products including but not limited to pre- or post-emergence herbicides, insecticides other pesticides, plant growth regulators or mixtures for lawn restoration containing a blend of grass seed, Fertilizer and mulch and which are regulated by this Regulation in the same manner and to the same extent as Fertilizer.

3.4 COMPOST: Biologically stable humus-like material derived from composting or the aerobic, thermophilic decomposition of organic matter.

3.5 EXPECTATION OF FLOODING OR HEAVY RAINFALL: Conditions including, but not limited to a prediction of heavy rain within a 24-hour forecast.

3.6 FERTILIZER: A commercially produced substance used for soil amendment that contains a guaranteed analysis of primary nutrients and not including dolomite, limestone, or lime, grass clippings, or organic compost or natural organic fertilizer.

3.7 FERTILIZER APPLICATOR: Any person who applies fertilizer to turf or soils.

3.8 IMPERVIOUS SURFACE: A structure or other improvement or surface, including earth material in its natural state or compacted or otherwise altered that is highly resistant to infiltration by water or its ability to absorb storm water, including without limitation concrete, asphalt, paver blocks, compacted gravel, and structures such as decks, patios and other on-grade or elevated structures.

3.9 NUTRIENT: One of 17 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 sulfur; and the eight (8) micronutrients: boron, copper, iron, chloride, manganese, molybdenum, nickel and zinc.

3.10 NUTRIENT MANAGEMENT means the systematic control of the application and availability of nutrients to plants in order to minimize nutrient loss and to maintain the productivity of the soil.

3.11 PROVINCETOWN: The land and waters of the Town of Provincetown.

3.12 WATER-SOLUBLE NITROGEN: Any form of Nitrogen that is quickly made available to Turf or other vegetation by means of becoming dissolved in water.

3.13 SLOW-RELEASE, CONTROLLED-RELEASE, TIMED-RELEASE, OR SLOWLY SOLUBLE/ AVAILABLE NITROGEN (SRN): Nitrogen that is not Water-Soluble and is in a form that delays its availability for uptake and use after application, and is not rapidly available to vegetation.

3.14 SOIL: The upper-most layer of the earth’s surface, comprised of mineral and organic matter, which can host biological communities.

3.15 SOIL TEST: A technical analysis of soil conducted by a soil testing laboratory that is performed in accordance with the University of Massachusetts Amherst Extension Program BMPs, including a Modified Morgan soil testing procedure and extractable nutrient values.

3.16 TURF: A form of vegetation consisting of grass-covered soil held together by the roots of the grass, also known as “sod” or “lawn.”

3.17 WATERBODY or WETLAND: Without limitation, streams, including intermittent streams, creeks, rivers, freshwater and tidal wetlands, ponds, lakes, marine waters, canals, lagoons, and estuaries within the Town, including without limitation all lands and waters included within the definition of “wetland” in either Massachusetts General Laws Chapter 131, Section 40, the Town of Provincetown Wetland By-law, or Regulations promulgated pursuant to either law.

Section 4. Performance Standards

4.1 Best Management Practices

The Best Management Practices (“BMP”), as defined herein and attached hereto, is hereby incorporated into and made part of this Regulation.

4.2 Prohibitions

No person may, directly or by authorization by contract or otherwise, apply Fertilizer, cause it to be applied or allow it to remain in place under the following conditions:

1. To turf or soil that is frozen, snow-covered, saturated, frequently subject to flooding; when there is an Expectation of Flooding or Heavy Rainfall or during heavy rainfall;
2. Between November 12 and the following April 14;
3. To any Impervious Surface, or fail to immediately remove any applied, spilled, or deposited Fertilizer, in which case the Applicator shall then either contain, dispose of legally or apply the Fertilizer in a manner compliant with this Regulation;
4. In a manner that allows Fertilizer to enter into a storm drain;
5. Within 100 feet of any Waterbody or Wetland s, or within the Zone of Contribution to a public drinking water well. In the case of Compost, when applied as a fertility source for turf, it may not be applied within 50 feet of any Waterbody or Wetland, or within the Zone of Contribution to a public drinking water well.
6. Fertilizer that contains phosphorus, unless a soil test taken not more than three years before the proposed fertilizer application indicates that, consistent with BMP, additional

phosphorus is needed for growth, in which case the application shall be in compliance with the BMP.

7. Fertilizer that, in any single application, contains Nitrogen in excess of 1.0 pound of actual Nitrogen per thousand square feet, or contains less than 20% slow-release Nitrogen or more than at an annual rate of 3 .2 pounds of actual Nitrogen per thousand square feet or at intervals of less than four weeks until the annual maximum is reached.
8. In an amount that is inconsistent with the annual recommended application rate established by BMP.

4.3 Exemptions

The following activities shall be exempt from this Regulation:

1. Application of Fertilizer in compliance with BMP for Agriculture/ Agricultural Use.
2. Application of Fertilizer in compliance with BMP to home gardens, landscape ornamentals, shrubs, trees bushes, vegetables, fruit and container plants.

Section 5. Enforcement and Penalties, Education, Certification

5.1 Enforcement

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

5.2 Non-Criminal Disposition

This Regulation may be enforced by the Provincetown Board of Health, or its agents. 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. 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.

5.3 Education

As a policy matter, the Board of Health is committed to public education as to this and all matters affecting public health and safety. For that reason, the Board of Health will maintain pertinent educational information available for public inspection and copying, including a copy of the BMP as a source of reference, and shall make its best efforts to announce any amendments to the BMP as it receives notice of such amendment.

Section 6. Severability Clause

6.1 Severability

Should any section, part or provision of this Regulation be deemed invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining terms of this Regulation as a whole or any part thereof, other than the section, part or provision held invalid, which shall remain in full force and effect.

Section 7. Amendment

In addition to the procedures required for regulations of the Board of Health pursuant to G. L. c. 111, §31, adoption of this amendment and any future amendment of this Regulation are subject to the requirements of Sections 10 and 11 of the Cape Cod Commission Act.

Section 8. Effective Date

The effective date of this Regulation shall be the publication date pursuant to G.L. c. 111, §31, provided the Regulation has been certified by the Cape Cod Commission as consistent with the Guidelines of the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07.