

**TOWN OF CHILMARK**

**BOARD OF HEALTH**

**REGULATIONS**

**Adopted  
June 3, 1992**

**P.O. Box 119  
Chilmark MA 02535  
USA**

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**Record of Revisions**

- Section 6. Camping ..... rev. May 27, 1994
- Section 9. Tobacco (Sale of) ..... rev. February 2, 1995
- Section 9. Tobacco (Smoking) ..... rev. March 7, 2001
- Section 6. Camping ..... rev. June 6, 2001
- Section 2. Wells ..... rev. June 6, 2001
- Section 3. Disposal Works Separation Table ..... rev. February 4, 2004
- Section 11. Transportation, Cremation, Burial, Entombment, or Exhumation of Human Remains ..... rev. April 15, 2009
- Section 3. Disposal Works Separation Table ..... rev. December 2, 2009
- Section 3. Onsite Sewage Treatment and Disposal ..... rev. January 18, 2012
- Section 10. Turf Fertilizer ..... adopted. April 28, 2014
- Section 1. General Provisions ..... rev. *forthcoming*
- Section 2. Wells ..... rev. *forthcoming*

## SECTION 1. GENERAL PROVISIONS

### 1.01 Purpose:

The purpose of these regulations is to protect public health and general welfare, to maintain the quality of groundwater and surface waters, prevent pollution of potable water supplies, and to maintain the viability of fishing and shellfishing areas.

### 1.02 Authority:

Authority to adopt these public health regulations is granted under Chapter 111, Section 31 of Massachusetts General Laws.

### 1.03 Severability:

Each portion of this Regulation shall be construed as separate to the end that if any portion of sentence, clause, or phrases thereof shall be held invalid for any reason, the remainder of that regulation and all other regulations herein shall continue in full force.

### 1.04 Variances:

The Board of Health may vary the application of any of its Rules and Regulations when an emergency exists, or when, in its opinion, a) the enforcement thereof would do manifest injustice and b) the applicant has proven that the same degree of protection can be achieved without strict application of the particular provision.

Every request for a variance shall be made in writing and shall state the specific variance sought and the reasons therefore. In instances involving specific properties, no variance shall be granted until the applicant has notified all abutters within 300' of the locus by certified mail, return receipt. Abutter notification(s) must be postmarked to the addressee no less than 10 days prior to the meeting at which the variance request will be on the agenda. Abutter notices shall be prepared, mailed and posted by the applicant.

### 1.05 Application/Plan Review Consultant Fees

When reviewing an application or plan the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project or because of a project's potential impacts. The proponent shall bear the costs incurred by the Board.

The Board may engage engineers, planners, lawyers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, ordinances/bylaws and regulations.

Funds received pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Board.

Expenditures from this special account shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project, shall be repaid to the applicant or the applicant's successor in interest. Failure of an applicant to pay a review fee shall be grounds for denial of the application or permit.

Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an appropriate educational degree, professional registration with the Commonwealth, or equivalent work experience. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

#### 1.06 Fee Schedule

Application fees for permits issued by the Board of Health are shown on the Fee Schedule which is posted in the Town Hall and appended to these Regulations.

**SECTION 2. PRIVATE WATER SUPPLY WELLS**

## **SECTION 3. ON-SITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS**

### **3.01 PURPOSE AND AUTHORITY**

3.01(1) Title 5 Approving Authority: The Chilmark Board of Health is the Approving Authority for 310 CMR 15.000, "THE STATE ENVIRONMENTAL CODE, TITLE 5: STANDARD REQUIREMENTS FOR THE SITING, CONSTRUCTION, INSPECTION, UPGRADE AND EXPANSION OF ON-SITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS AND FOR THE TRANSPORT AND DISPOSAL OF SEPTAGE" ("Title 5"), all provisions of which are hereby incorporated into these regulations by reference.

3.01(2) Power to Regulate: Local Boards of Health are further empowered by Massachusetts General Laws c.111, s.31, as reflected in 310 CMR 11.02, to enact their own regulations to protect public health, safety, welfare and the environment, which may exceed, but not fall below, the minimum requirements set forth in Title 5. The regulations outlined below are therefore additional to Title 5 requirements.

### **3.02 PERMITS**

3.02(1) Fee Schedule: Application fees for permits are shown on the Fee Schedule which is posted in the Town Hall.

3.02(2) Disposal System Installer Permit (15.019): No individual shall engage in the construction, upgrade, modification, emergency repair, or expansion of any sewage disposal system without first obtaining a Disposal System Installer Permit from the Board of Health. Such a permit shall expire at the end of the calendar year in which it is issued unless earlier revoked for cause by the Board of Health. The Board of Health reserves the right to require that an applicant for a Disposal System Installer Permit pass an installer's test.

3.02(3) Septage Hauler Permit (15.502): No person shall remove and/or transport septage through the streets of Chilmark without first registering with and obtaining a Septage Hauler Permit from the Board of Health. Such permit shall expire at the end of the calendar year in which it was issued. Duly registered persons may transport septage through the streets of Chilmark in which said substances were not collected. A pumpout permit must be in possession of the duly registered septage hauler when transporting septage through the streets of Chilmark. The hauler shall submit record of pumpouts originating in Chilmark to the Board of Health within two months or less.

3.02(4) Disposal System Construction Permit (15.020):

- (a) No individual sewage disposal system or other means of sewage disposal shall be constructed, repaired, upgraded, modified, or expanded until a Disposal



System Construction Permit has been issued by the Board of Health. Such permit shall be invalidated if conditions different than those set forth in the application are found prior to or during construction of the sewage disposal system.

- (b) An application for a Disposal System Construction Permit shall be submitted to the Board of Health accompanied by three (3) copies of a plan of the proposed sewage disposal facility, and a Soil Suitability Assessment for On-site Sewage Disposal duly witnessed by an agent of the Board. Permits so granted shall expire three years from the date of issue unless construction of the system is complete and a Certificate of Compliance has been issued.
- (c) No application for Disposal System Construction Permit will be given final approval until a well has been installed, tested and approved. However, approval may be granted prior to well installation in those instances in which the applicant wishes to have confirmation that the proposed sewage disposal system is acceptable prior to going to the expense of installing a well. The construction permit will be released only after well installation, water and pump testing and final Board of Health review.
- (d) No Disposal System Construction Permit shall be issued until a representative of the Board of Health has performed a site examination and witnessed a Soil Suitability Assessment for On-Site Sewage Disposal.

### 3.02(5) Building and Plumbing Permits

- (a) New Construction: No building permit or plumbing permit shall be issued until a Disposal System Construction Permit has first been approved.
- (b) Alteration of existing Structure: In the case of an alteration to an existing structure, when the proposed volume of sewage is greater than the existing volume, the Board of Health reserves the right to determine whether the existing sewage disposal system is adequate for the proposed alteration before a building permit or plumbing permit is issued.

### 3.03 SEWAGE TREATMENT AND DISPOSAL SYSTEM PLAN

3.03(1) Plan Preparation: The disposal system plan must be prepared by a professional engineer or other professional authorized by law to prepare such plan. The sewage disposal system plan must be drawn to scale and must show at a minimum:

- a) Locus;

- b) Location and dimensions of the sewage disposal system (including reserve area);
- c) Profile of the sewage disposal system;
- d) Design calculations for the sewage disposal system;
- e) Maximum groundwater elevation in the area of the leaching system;
- f) Existing and proposed contours;
- g) Location of existing and proposed dwellings;
- h) Location, log, date and witnesses for deep observation holes;
- i) Location, results, date and witnesses for percolation tests;
- j) Location of any existing or proposed well to serve the lot;
- k) Location of existing or proposed water lines on the property, indicating whether such lines are suction or pressure lines;
- l) Location of existing and proposed driveways;
- m) Location of any streams, open or subsurface drains and wetlands (as defined by 310 CMR 10.02(1) and Chilmark Wetlands Bylaw, inclusive) within 175 feet of the sewage disposal system;
- n) All wetlands flags as specified in 3.07(2), below;
- o) Location of Chilmark Coastal District Shore and Inland Zone, if proposed system is within 175 feet of the Chilmark Coastal District;
- p) Location of Squibnocket Pond District if proposed system is within 525 feet of the shore of the pond or if the proposed system is within 225 feet of any stream or wetlands (as defined in m), above) draining into the pond;
- q) All water supplies and sewage facilities within 150 feet of the sewage disposal system;
- r) All underground utilities and fuel storage tanks within the proposed construction area; and
- s) All variances required to Title 5 and to Chilmark Board of Health Regulations.

3.03(2) Installer's Use of Plan: Before commencing any excavation, the installer shall obtain from the Board of Health a copy of the latest approved plan for the disposal system.

3.03(3) Installation Changes: Any change from the approved plan shall require written approval of a design engineer and the Board of Health prior to construction of the system.

3.03(4) As-Built Plan: Installation of any septic tank, distribution box and leaching trench in a location different from that shown on the approved plan shall require submittal of an "as-built" plan which has been signed by the design engineer.

### 3.04 VARIANCES (Subpart E)

3.04(1) Title 5 Variances: Variances from Title 5 require approval by the Massachusetts Department of Environmental Protection (DEP) in accordance with 310 CMR 15.412, as well as approval from the Board of Health.

3.04(2) Variances and waivers from Chilmark Board of Health Regulations: The Board of Health may vary any section of its regulations to the standards set forth in Title 5. Public hearings on variances of Chilmark regulations shall be held for any new construction. In the case of repairs/upgrades, a public hearing shall be held for:

- (a) any increase in septic flow;
  
- (b) repairs/upgrades that affect an abutter in the following:
  - i. septic to property line setback reduction;
  - ii. septic to wetland setback reduction to <100 feet;
  - iii. septic to well setback reduction

3.04(3) Variance Requests and Notification: Every request for a variance for which a public hearing is required shall be filed with the Board of Health and shall state the specific regulation for which relief is sought and the reasons for the request. Once the notice is approved by the Board of Health, the applicant shall formally notify (with proof of mailing) all abutters within 300 feet of property lines of the subject lot. Included in the notice shall be a plot plan, locus, street names and abutters' parcels. Abutters must receive notice 10 days before the meeting at which the variance request is scheduled to be heard.

3.04(4) Mitigating Measures: In considering whether to vary any section of these regulations, the Board of Health may consider mitigating measures<sup>1</sup> which lead to the same degree of environmental protection as is required under these regulations.

3.04(5) Written Record: Any variance request granted by the Board of Health shall be in writing. Any variance request denied by the Board of Health shall also be in writing and shall contain a clear statement of the reasons for the denial. A copy of a variance or

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<sup>1</sup> Among mitigating measures considered may be the imposition of a requirement for having 15,000 square feet of non-wetland lot area for each bedroom. (Wetlands as defined by 310 CMR 10.02(1) and the Chilmark Wetlands Bylaw, inclusive)

the denial of a variance shall be available at the Town Office during regular business hours.

### **3.05 SYSTEM INSPECTION (Subpart D)**

3.05(1) Prior Notification and Inspection: The Board of Health reserves the right to require notification 24 hours prior to the beginning of construction of any sewage disposal system and prior to the covering of any subsurface disposal system. The Board of Health reserves the right to inspect the system at any stage of construction.

3.05(2) Pump System Inspection: The engineer shall conduct a "wet" operational inspection of all new or repaired septic systems which employ a pump prior to issuance of the Certificate of Compliance.

3.05(3) Final Inspection (15.021(2), (3)): Final inspection shall be performed within a reasonable period of time by the system designer, or the Board of Health or its agent.

### **3.06 CERTIFICATE OF COMPLIANCE**

3.06(1) As-Built Letter and Plan (15.021(3), 15.220): The applicant shall furnish the Board of Health with an as-built letter and plan from the design engineer following the final inspection of the system prior to issuing the Certificate of Compliance.

3.06(2) Certificate of Compliance Required for Occupation: A new sewage disposal system and alteration or repairs to an existing system shall not be placed in service, nor shall new dwellings or buildings or additions thereto which must rely on new sewage disposal systems for sewage disposal, be occupied until the Board of Health has issued a Certificate of Compliance.

### **3.07 LOCATION AND SEPARATIONS**

3.07(1) General Requirements: The location and installation of each individual sewage disposal system, or other means of disposal, shall be such that with responsible maintenance it will function in a satisfactory manner and will not create a nuisance or discharge into any watercourse of the Commonwealth. In determining a suitable location for the system, consideration shall be given to the size and shape of the lot, slope, natural and adjusted drainage, existing and known future water supplies, depth to ground water, presence of impervious material, soil classifications, and reserve area.

3.07(2) Specifications for Location of Sewage Disposal Systems:

- (a) All wetlands<sup>2</sup> within 175 feet of the leaching facility must be flagged.
- (b) If within twenty-five (25) feet of Squibnocket Pond Zone B1, the Zone B1 and Zone B2 shall be flagged.
- (c) If within one-hundred seventy-five (175) feet of Squibnocket Pond Zone C, then Zone C shall be flagged.
- (d) No sewage disposal system shall be located closer to a coastal bank or cliff than either one-hundred (100) feet or a distance equal to twenty (20) times the average annual shoreline erosion, whichever is greater.
- (e) The leaching system must be installed in close proximity to the percolation test site. No Disposal System Construction Permit shall be issued until a representative of the Board of Health has performed a site examination and witnessed a Soil Suitability Assessment.
- (f) If, in the view of the Board of Health, the soils in the general area of the proposed leaching facility are irregular and largely unpredictable, the Board may specify that the engineer perform an on-site verification at the time of excavation and prior to installation of any septic system components (tank, pit liner, pipe, gravel, etc.). In these cases, the plan shall not be given final approval until it is revised and resubmitted incorporating a highlighted note stating the requirement for soil verification.
- (g) High seasonal groundwater may be determined only between December 1<sup>st</sup> and April 30<sup>th</sup> unless it can be demonstrated to the Board of Health's satisfaction that an out-of-season groundwater determination provides assurance that adequate separation exists between the bottom of the leaching system and the high seasonal groundwater level.
- (h) The leaching facility shall be installed in close proximity to the location of the deep observation holes upon which system approval was based. The location of all deep observation holes identified on the plan must be staked and numbered on the site. They must also be dimensioned from two fixed landmarks, if possible.
- (i) If the soils found during excavation are different from those found at the test hole upon which the system approval was based, the Board of Health must be notified. In such instances the Board of Health reserves the right to require additional test holes and engineering re-design and re-approval before proceeding with installation.

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<sup>2</sup> If there is a wetland in the locale of the proposed work area, the applicant is advised to coordinate with the Chilmark Conservation Commission. Areas subject to protection under the Chilmark Wetlands Bylaw (CWB) are specified in the CWB 1.02(1).

- (j) The Board of Health reserves the right to require that stakes be set marking the proposed location for the center of any proposed septic tank, distribution box and for the end points of any leaching trenches. If these stakes are required, they must also be dimensioned on the plan from two fixed landmarks, if such is possible.

3.07(3) Minimum Setback Distances:<sup>3</sup> (15.211)

All systems must conform to the setback distances set forth in Table 3.1, below, including reserve area, measured in feet. Where more than one setback applies, all setback requirements shall be satisfied.

	Septic tank, holding tank, pump chamber, treatment unit, grease trap	Soil Absorption System
Property Line	10	<b>30</b>
Cellar or Crawl space wall, in-ground Swimming Pool foundation drain	10	20
Slab Foundation	10	10
Public Water Supply Well	<i>Not permitted in Zone 1<sup>4</sup></i>	<i>Not permitted in Zone 1</i>
Public Water Supply Well in the Coastal District		greater of <b>600</b> or Zone I
Onsite Water Supply Well or Suction Line	50	<b>150</b>
Onsite Water Supply Well or Suction Line in Inland Zone of Coastal District	<b>200</b>	<b>200</b>
Water Supply Line (pressure)	10	10
Water Supply Line (pressure) VERTICAL <sup>5</sup>	18"	
Irrigation Well	10	25
Leaching Catch Basins & Dry Wells	10	25
Leaching Facility (Inland Zone of Coastal District)		<b>300</b>

<sup>3</sup> Separations are shown in feet unless otherwise noted. Separations shown in **bold** are BOH regulations that exceed Title 5 requirements

<sup>4</sup> Zone I radius in feet =  $[150 \times \log \text{ of pumping rate in gpd}] - 350$ .

<sup>5</sup> Disposal facilities shall be at least 18 inches below water supply lines. Wherever sewer lines must cross water supply lines, both pipes shall be constructed of class 150 pressure pipe and shall be pressure tested to assure water-tightness.



Seasonal High Water Table (VERTICAL)		5
Surface Waters (except wetlands)	25	150
Saltwater Body (Coastal District)	100	200
Bordering Vegetated Wetland	50 <sup>6</sup>	100
Vernal Pools	50	150
Coastal Bank or Cliff		Greater of 100 or 20x avg. annual erosion
Tiasquam River or Edge of Associated Wetland	50	200
Squibnocket Pond	50	500
Squibnocket Pond Associated Wetland, Stream, or Pond	50	200

3.07(4) Separations in the Coastal District: The boundaries of the Chilmark Coastal District <sup>7</sup> are set out in Section 11.6.A of the Chilmark Zoning By-laws, which were adopted by the Town on December 15, 1976, and approved by the Martha's Vineyard Commission on December 16, 1976.

(a) Separation between septic systems in the Inland Zone of the Coastal District: In order to control the quantity of sewage disposal system leachate release into the ground in the Coastal District, there shall be not less than a three-hundred (300) foot separation between onsite sewage disposal system measured from any portion of the leaching area. The Board may permit in particular cases, lesser separation by variance under Section 3.05 of these Regulations, after public hearing; provided however, that there shall be a minimum separation of two-hundred (200) feet and the applicant must prove to the Board's satisfaction that there will be no pollution of ground- or surface waters, domestic water supply or fisheries.

(b) Separation between septic systems and onsite wells in the Inland Zone of the Coastal District: There shall be not less than a two-hundred (200) foot separation between septic systems and onsite wells (including wells on adjacent or near-by properties).

<sup>6</sup> All sewer lines (either gravity flow or pumped pressure line) are prohibited within 50 feet of any land subject to protection under MGL c.131, s.40 and described in 310 CMR 10.02, as amended from time to time.

<sup>7</sup> A map showing Coastal District Inland and Coastal Zones, Eroding Coastal banks or cliffs, Squibnocket Zones A, B, C and D, Zones I and II of Public Water Supply wells, surface waters, wetlands and certified vernal pools, is attached, and is also available on the Chilmark Town website, [www.chilmarkma.gov](http://www.chilmarkma.gov).

The Board may permit in particular cases, lesser separation by variance under Section 3.05, after public hearing; provided however, that there shall be a minimum separation of one-hundred fifty (150) feet.

### **3.08 ALLOCATION OF FLOW**

#### **3.08(1) Volume of sanitary sewage: flow allocation:**

- a) A room used as a den, study, library, office, or any comparable use that is capable of being used as a bedroom under the definition given in 310 CMR 15.002 shall be considered as a bedroom in calculating design flows.
  
- b) Where the total number of rooms for a single family dwelling exceeds eight, not including bathrooms, hallways, unfinished cellars and unheated storage areas, the number of bedrooms presumed shall be calculated by dividing the total number of rooms by two, then rounding down to the next lowest whole number. For the purpose of determining the total number of rooms referenced in the prior sentence, spaces of over 500 square feet shall be considered in the total room count as multiple rooms if areas within these spaces serve discernable separate functions (in the Board's sole discretion)—such as kitchens, dining rooms, or living rooms. In those circumstances, each discernable area serving a separate function shall count as a separate room without regard to the presence of walls and doors.
  
- c) A studio or other workspace, not for habitation, in a building having plumbing, but not having a kitchen, will be deemed to generate 5 gallons per day (gpd) of sewage for each 100 square feet of area and 10 gpd per studio room occupant.<sup>8</sup>

### **3.09 SYSTEM MAINTENANCE AND SYSTEM FAILURE**

3.09(1) General Provisions: The proper operation and maintenance of all systems is essential to their proper functioning, to the avoidance of public health hazards and to the protection of the environment. Any person owning or operating a facility on which an on-site subsurface sewage treatment and disposal system is installed shall be responsible for the inspection and maintenance of, and any necessary upgrades to, the system.

3.09(2) Treatment Additives: No cleaners, root killers, yeast, drain-field de-cloggers or other chemical, nutrient, enzymatic or bacterial additives or any other chemical

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<sup>8</sup> An occupant is a person who makes regular use of, but does not dwell in, the workspace.



treatment of subsurface disposal systems shall be permitted for use, including acid or hydrocarbon products.

3.09(3) Tight Tank Operation and Maintenance: The owner/operator shall demonstrate to the Board of Health upon request:

- (i) a functioning alarm system, audible inside the dwelling, set to alarm at 3/5 tank capacity;
- (ii) a water meter at the entrance to the plumbing system;
- (iii) records of past year pump-outs, including date(s) pumped and septic hauler.

3.09(4) Innovative/Alternative System Operation and Maintenance: The Board of Health must be in possession of a valid Operation and Maintenance Agreement between the owner and a Massachusetts certified operator where one is required by 257 CMR 2.00, or otherwise with a person qualified to operate and maintain the system, prior to issuing a certificate of compliance. Inspection reports shall be filed with the Board of Health office.

3.09(5) Sewage Disposal System Failure (15.303): A system requiring more than 3 emergency pump-outs in one year will be deemed to have failed. The homeowner is responsible for informing the Board of Health when failure conditions become apparent. A system which has failed shall be deemed to be an imminent health hazard, and shall be upgraded within 90 days of discovery.

A system requiring two or more emergency pump-outs within a six-month period shall be inspected by a licensed System Inspector within 40 days of the second pump-out. The inspection report shall be sent to the Board of Health without delay.

SECTION 4. SCALLOP SHANTIES

4.01 Construction.

- (1) Floors. Floors shall be constructed in a manner which provides for adequate drainage and easy maintenance of cleanliness.
- (2) Walls And Ceilings. Walls and ceilings shall be smooth, washable, light colored, free from cracks and uneven surfaces, and in good repair.
- (3) Shucking Benches. The tops and backs of shucking benches shall be made from a smooth, impervious, nonabsorbent, nontoxic material which is free of cracks. They shall be constructed so that drainage is complete and directed away from all scallops. Corners shall be rounded. Material shall overlap the edges and seams shall be soldered or otherwise sealed and sanded smooth.

4.02 Waste Receptacles. A suitable number of waste containers shall be provided and no waste shall be allowed to accumulate except in these containers. Waste containers shall be thoroughly cleaned at the end of each day's use.

4.03 Cleaning Utensils and Equipment.

- (1) Parts of utensils coming in contact with scallops shall be of corrosion-resistant, nonabsorbent, nontoxic, smooth material which will not readily crack or disintegrate. All seams and joints shall have a smooth surface for easy cleaning. Knives shall be so constructed so as to seal the joint between blade and handle. At the end of each day, all implements shall be scalded with at least 180° F water or disinfected with a chlorine solution or a sanitizer.
- (2) After each day's operation all benches shall be either scalded with 180° F hot water or washed with a chlorine solution or a sanitizer.

4.04 Water. Water shall be from a source approved by the Board of Health.

4.05 Lavatory Facilities.

(1) Adequate and convenient lavatory facilities shall be provided. Persons shall wash their hands thoroughly prior to commencing work and before resuming work after each interruption. A sink or wash basin with hot and cold water, soap and paper towels shall be provided conveniently located. Signs directing employees to wash hands after each work interruption shall be conspicuously placed.

4.06 Refrigeration. Adequate refrigeration, either ice or mechanical refrigerators, shall be provided to maintain a temperature of 40° F, or less, as soon as possible after shellfish are open.

4.07 Packing Containers. All shucked meats shall be packed in new or previously unused containers of metal or such material as may be approved by the Board of Health. These containers shall be clean and adequately sealed at time of packing. Prior to use, containers shall be stored in a sanitary manner and protected from contamination. Metal containers shall be sealed by a friction-type cover. Sealing of other containers shall be adequate to protect scallops from contamination and shall be approved by the Board of Health. The metal containers shall have impressed, embossed or otherwise permanently recorded on the side, the permit number of the shipper, preceded by the state abbreviation and the words "Bay Scallops". Labelling of other approved types of containers shall be by a method approved by the Board of Health. Bay Scallop producers shall pack scallops in containers bearing their own permit numbers.

SECTION 5. PETROLEUM-BASED FUEL STORAGE TANKS

5.0 Underground Petroleum-Based Fuel Storage Tanks. Every owner of an underground petroleum-based fuel storage tank in Chilmark must file with the Board of Health the size, type, age, contents and location of their underground fuel storage tanks by July 1, 1990.

(1) No additional petroleum-based fuel storage tanks shall be buried underground. All additional petroleum-based fuel storage tank must be above ground, in a garage or in a cellar.

5.1 Above Ground, In-Cellar and In-Garage Petroleum-Based Fuel Storage Tanks.

(1) Base. All above-ground, in-cellar or in-garage petroleum-based fuel storage tanks shall be placed on a solid, sound, level, non-combustible material which will not settle or become unlevel.

(2) Wall Clearance. All above-ground, in-garage and in-cellar petroleum-based fuel storage tanks shall have at least a 3-inch clearance from the walls of any building.

## SECTION 6. CAMPING

6.1 Permits. Permits to camp must be obtained in writing from the Board of Health. Tent permits will be issued to property owners for the exclusive use of the property owners and their guests. A sketch of the parcel and surrounding area must accompany the application. The sketch must show lot lines, all existing structures, the camp site and toilet facility. The water supply must also be shown, if on-site. The tent must be a canvas, or equivalent, material. The camp site must have access to toilet facilities within 300 feet. Toilet facility may be a bathroom in an adjacent building, or a chemical toilet. The camp site must be at least 100 feet from any lot line. If the camp has electricity, the electrical source must be protected by ground fault interrupt. If the parcel has the maximum number of residential structures allowed by zoning, no platform, electrical service, or gas service is permitted. Camping season is May 1 through October 31.

The use of a porta pottie is required and a service agreement for maintenance must be submitted prior to issuing a tent permit. All refuse must be properly contained and must be disposed of weekly at an approved collection site. At the end of the camper's stay, the site is to be cleaned-up, the sanitary facility secured, or removed, and all refuse and equipment removed from the site.

Inspections of camp sites may be made at any time by a member of the Board of Health or its agent. A fine of \$25 per day may be imposed for violation of Board of Health Tent permit regulations.

6.2 Fees. The fee for a camping permit is shown on the Approved Board of Health Fee Schedule which is posted in the Town Hall.

SECTION 7. RECYCLING

7.0 Recycling. Recycling in Chilmark is mandatory.

7.1 Separation. Recyclables shall not be placed in the same refuse container with other forms of solid waste, but separated according to category and brought to the Local Drop-Off facility where they will be placed in areas as directed by the attendant.

7.2 Styrofoam. No styrofoam plates or containers are to be used by Food Establishments.

SECTION 8. FOOD ESTABLISHMENTS

8.0 Classification and Inspection. Food Establishments are subdivided into five classes. At a minimum, each Food Establishment shall be available for inspection as shown in TABLE 8.1 FOOD ESTABLISHMENT CLASSIFICATIONS AND INSPECTIONS.

TABLE 8.1 FOOD ESTABLISHMENT CLASSIFICATIONS AND INSPECTIONS

CLASSIFICATION	CHARACTERISTICS	INSPECTIONS
Small Residential Kitchen	Low Volume Small Variety	2 Annual Inspections
Large Residential Kitchen	High Volume Larger Variety	3 Annual Inspections
Restaurant Store Market		3 Annual Inspections
Bed & Breakfast		2 Annual Inspections
Shucking Shanty		1 Annual Inspection

**SECTION 9:  
SALE OF TOBACCO AND TOBACCO PRODUCTS;  
SMOKING IN CERTAIN PLACES**

**9.01 RESTRICTING THE SALE OF TOBACCO PRODUCTS & NICOTINE DELIVERY PRODUCTS:**

9.01(1) Statement of Purpose:

**Whereas**, tobacco is one of the leading causes of death in the United States and lung cancer, which has a correlation to smoking, is a leading cause of cancer death among Chilmark residents;

**Whereas**, tobacco and nicotine delivery products are currently sold in health care institutions such as pharmacies and drug stores;

**Whereas**, the sale of tobacco and nicotine delivery products is incompatible with the mission of health care institutions because it is detrimental to the public health and undermines efforts to educate patients on the sale and effective use of medication;

**Whereas**, existing and future educational institutions in Chilmark are currently not prohibited from selling tobacco or nicotine delivery products to the younger population they serve, which is particularly at risk for becoming smokers;

**Whereas** more than 80% of all smokers begin smoking before the age of 18 years, 69% of middle school age children who smoke at least one a month were not asked to show proof of age when purchasing cigarettes;

**Whereas**, despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco and Nicotine Delivery products is a major public health problem;

**Whereas**, there are certain tobacco products such as blunt wraps that are frequently marketed and sold to the youth and are also known to be used as drug paraphernalia;

**Therefore:** the Chilmark Board of Health, in recognition of the harmful effects of tobacco on vulnerable populations, believes that it is important that the sale of tobacco products be banned by educational and health care institutions in the Town of Chilmark and that blunt wraps also be banned in furtherance of its mission to protect, promote and preserve the health and well-being of Chilmark residents and citizens.

9.01(2) AUTHORITY:

This regulation is promulgated pursuant to the authority granted to the Chilmark Board of Health by Mass. General Laws Chapter 111, Section 31 that “Boards of Health may make reasonable health regulations”.

9.01(3) DEFINITIONS:

For the purpose of the regulation contained in Section 9.01 *et seq*, the following words shall have the following meanings:



Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Mass. General Law, Chapter 64C, Section 1, and Paragraph 1.

E-Cigarette: Any electronic Nicotine Delivery Product composed of a mouthpiece heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing by the Mass. Dept. of Public Health under M.G.L c. 112 or a retail establishment that provides pharmaceutical goods and services subject to the provisions of 247 CMR 6.00. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

Minor: Any individual who is under the age of twenty-one (21).

Nicotine Delivery Product: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine, including, but not limited to, e-cigarettes, that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the US Food & Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose.

Permit Holder: Any person engaged in the sale or distribution of tobacco or nicotine delivery products directly to consumers who applies for and receives a tobacco and

nicotine delivery product sales permit or any person who is required to apply for a tobacco and nicotine delivery products sales permit pursuant to these regulations, or his or her business unit.

Retail Tobacco Store: an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Chilmark Board of Health.

Roll-Your-Own (RYO) Machine: A mechanical device by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products.

Self-Service Display: Any display or RYO machine from which customers may select or make a tobacco product or a Nicotine Delivery Product without assistance from an employee or store personnel.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes, any other tobacco product or Nicotine Delivery Product.

#### 9.01(4) TOBACCO AND NICOTINE DELIVERY PRODUCT SALES TO MINORS PROHIBITED:

(a) No person shall sell tobacco or nicotine delivery products or permit tobacco or nicotine delivery products to be sold to a minor; or not being the minor's parent or legal guardian, give tobacco or nicotine delivery products to a minor.

(b) Required Signage:

(i) In conformance with and in addition to Mass. General Law, Chapter 270, Section 7, a copy of Mass. General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Mass Dept. of Public Health and made available from the Chilmark Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. The owner or other person in charge of a

shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Mass Dept. of Public Health.

(ii) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the Chilmark Board of Health that discloses current referral information about smoking cessation.

(iii) The owner or other person in charge of a shop or other place used to sell nicotine delivery products at retail shall conspicuously post a sign stating "The sale of nicotine delivery products to minors under age 21 years of age is prohibited." The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating that "The use of e-cigarettes at indoor establishments may be prohibited by local law." The notice shall be no smaller than 8.5" by 11" and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. These notices shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

(c) Identification: Each person selling or distributing tobacco or nicotine delivery products shall verify the age of the purchaser by means of valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.

(d) All retail sales of tobacco or nicotine delivery products must be face to face between the seller and the buyer.

#### 9.01(5) TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PERMIT:

(a) No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail within the Town of Chilmark without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Chilmark Board of Health. Only owners of establishments with a permanent, non-mobile location in the Town of Chilmark are eligible to apply for a permit and sell tobacco products or nicotine delivery products at specified locations in Chilmark.

(b) As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Chilmark Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco and nicotine delivery product sales regarding both state laws regarding the sale of tobacco and this regulation.

- (c) Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Mass. Dept. of Revenue before a Tobacco and Nicotine Delivery Product Sales Permit can be issued.
- (d) The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Chilmark Board of Health and shall be specified in the License and Permit fee schedule of the Town of Chilmark, Board of Health Rules and Regulations. The established annual fee for a Tobacco and Nicotine Delivery Product Sales Permit may remain in effect from one year to another and will remain in effect until such time as the Chilmark Board of Health adopts and posts a revised fee in the Town of Chilmark, Board of Health Fee Schedule. All such permits shall be renewed annually by December 31<sup>st</sup>.
- (e) A separate permit is required for each retail establishment selling tobacco or nicotine delivery products.
- (f) Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
- (g) No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell tobacco products or nicotine delivery products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.
- (h) A Tobacco and Nicotine Delivery Product Sales Permit shall be non-transferable. A new owner of an establishment that sells tobacco or nicotine delivery products must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
- (i) Issuance of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/or her retail establishment to ensure compliance with this regulation.
- (j) Issuance of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's agreement to abide by the current Mass. Dept. of Revenue list for minimum retail prices of tobacco products, including multiple pack sales.
- (k) A Tobacco and Nicotine Delivery Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired.
- (l) Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits: At any given time, there shall be no more than 3 (three) Tobacco and Nicotine Delivery Product Sales Permits issued in the Town of Chilmark. No permit renewal will be denied based on the requirements of this subsection except any permittee who fails to renew his/her

permit by January 31 will be treated as a first time permit applicant. Applicants who purchase a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and/or Nicotine Delivery products. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a “first- come, first- serve” basis as issued permits are either not renewed or are returned to the Board.

(m) A Tobacco and Nicotine Delivery Product Sales Permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises. Applicants who purchase a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit at the time of the sale of said business must apply within sixty (60) days of such sale for the permit held by the Seller if the Buyer intends to sell tobacco products and/or Nicotine Delivery products.

9.01(6) CIGAR SALES REGULATED:

(a) No person shall sell or distribute or cause to be sold or distributed a single cigar except as outlined in subsection (b)(i) in this section. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at five dollars (\$5.00) or more.

(b) This section shall NOT apply to:

(i). The sale or distribution of any cigar having a retail price of more than two dollars and fifty cents (\$2.50).

(ii) A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Chilmark.

(c) The Chilmark Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

9.01(7) PROHIBITION OF SALE OF BLUNT WRAPS:

No person or entity shall sell or distribute blunt wraps within Chilmark or possess blunt wraps within Chilmark with the intent to sell or distribute them.

9.01(8) FREE DISTRIBUTION AND COUPON REDEMPTION:

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products. No means, instruments or devices that allow for the redemption of tobacco products for free or at a reduced price below the minimum retail price determined by the Mass. Dept. of Revenue shall be accepted by any permittee.

9.01(9) OUT-OF-PACKAGE SALES:

No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

9.01(10) SELF-SERVICE DISPLAYS:

All self-service displays of tobacco products and/or nicotine delivery products are prohibited. All humidors including, but not limited to, walk in humidors must be locked.

9.01(11) VENDING MACHINES: All tobacco and/or nicotine delivery product vending machines are prohibited.

9.01(12) PROHIBITION OF THE SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS BY HEALTH CARE INSTITUTIONS:

No health care institution located in Chilmark shall sell or cause to be sold tobacco or nicotine delivery products. No retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

9.01(13) PROHIBITION OF THE SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS BY EDUCATIONAL INSTITUTIONS:

No educational institution in Chilmark shall sell or cause to be sold tobacco or nicotine delivery products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

9.01(14) VIOLATIONS:

- (a) It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco and/or nicotine delivery products. The violator shall receive:
  - i. In the case of a first violation, the holder of the permit shall be fined two hundred dollars (\$200) and shall be notified in writing of penalties levied for future violations.
  - ii. In the case of a second violation within twenty four (24) months of the date of a previous qualifying first violation, a fine of two hundred (\$200.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive days.



iii. In the case of three or more violations within twenty four (24) months of the first violation, the holder of the permit shall be fined three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for one hundred eighty (180) consecutive days.

(b) Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco and Nicotine delivery products sales permit for thirty (30) consecutive business days.

(c) In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine delivery products directly to a consumer while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.

(d) A permit may be suspended, after notice and opportunity to be heard, for violations of the Board of Health regulations that specifically call for the suspension of a permit for sale of tobacco products. The Chilmark Board of Health shall provide notice of the intent to suspend a Tobacco and Nicotine Delivery Product Sales Permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of the said notice. The permit holder or its business agent shall have the opportunity to be heard at such a hearing and shall be notified of the Board of Health's decision and the reasons therefore in writing. After a hearing, the Chilmark Board of Health shall suspend the Tobacco and Nicotine Delivery Product Sales permit if the Board finds that a sale to a minor occurred. For the purpose of such suspensions, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Mass. General Law for the same offense. All tobacco products and nicotine delivery products shall be removed from the retail establishment upon suspension of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

#### 9.01(15) NON-CRIMINAL DISPOSITION:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in General laws, Chapter 40, Section 21 D or by filing a criminal complaint at the appropriate venue. Each day a violation exists shall be deemed to be a separate offense.

#### 9.01(16) ENFORCEMENT:

Enforcement of this regulation shall be by the Chilmark Board of Health or its designated agent(s). Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Chilmark Board of Health or its designated agent(s) and the Board shall investigate.

#### 9.01(17) SEVERABILITY:

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

**9.01(18) CONFLICT WITH OTHER LAWS OR REGULATIONS:**

Notwithstanding the provisions of Section 4 of this regulation nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire health or other regulations.

**9.01(19) EFFECTIVE DATE:**

The regulations in Section 9.01, as amended, shall be effective as of May 17, 2017.

**9.02 PROHIBITION ON SMOKING IN WORKPLACES AND PUBLIC PLACES:**

9.02(1) **PURPOSE:** The purpose of this regulation is to protect the health of the employees and general public in the town of Chilmark.

9.02(2) **AUTHORITY:** This regulation is promulgated under the authority granted to the Chilmark Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “[b]oards of health may make reasonable health regulations.” It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that “[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth.”

9.02(3) **DEFINITIONS:** As used in the regulation contained in Section 9.02 *et seq.*, the following words shall have the following meanings, unless the context requires otherwise:

Compensation: money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

E-Cigarette: Any electronic device, not approved by the United States Food and Drug Administration, composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Employee: an individual or person who performs a service for compensation for an employer at the employer’s workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer’s workplace for more than a *de minimus* amount of time.



Employer: an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the town of Chilmark.

Enclosed: a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

Outdoor space: an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

Smoking (or smoke): the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Workplace: an indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, §22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 and 105 CMR 661, the definition contained in this regulation shall control.

#### 9.02(4) SMOKING PROHIBITED:

(a) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace as well as those workplaces listed in subsection (c) below.

(b) Smoking is hereby prohibited in Chilmark in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law").

(c) Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited on public mass transit, including busses and taxis, and public mass transit indoor platforms.

(d) The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

#### 9.02(5) ENFORCEMENT:

(a) An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:

- i. \$100 for the first violation;
  - ii. \$200 for a second violation occurring within two (2) years of the date of the first offense; and
  - iii. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
- (b) Each calendar day on which a violation occurs shall be considered a separate offense.
- (c) This regulation shall be enforced by the Board of Health and its designees.
- (d) Violations of Section 4(b) shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.
- (e) Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
- (f) If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend any Board of Health-issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.
- (g) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

*Adopted May 17, 2017*

## **Section 10: THE CONTENT AND APPLICATION OF FERTILIZER FOR TURF ON MARTHA'S VINEYARD, TOWN OF CHILMARK**

### **SECTION 1. FINDINGS**

1.1 This Section details the public health and ecological foundations for the regulation of the use of fertilizer on turf in Chilmark.

1.2 In appropriate concentrations, nitrogen in the form of oxides plays a critical role in the nitrogen cycle and is essential to life. In excess, these forms of nitrogen represent an environmental pollutant that has the potential to harm our water resources, and ultimately damage human health. Excessive amounts of nitrogen, as well as phosphorus, contribute to undesirable algal and aquatic plant growth, and degrade the water used for drinking and shellfishing as well as swimming and boating.

1.3 Algal blooms cause our ponds and harbors to become increasingly anaerobic, with seabeds robbed of oxygen and devoid of aquatic life, and cloudy water columns filled with dense algal and aquatic plant growth. The algal bloom brings with it human health risks. Depending on the type, quantity and route of exposure, symptoms from algae blooms vary from skin and eye irritations to gastrointestinal and asthma-like symptoms, with children and pets being particularly susceptible.

1.4 Chilmark's groundwater is also at risk from nitrogen infiltration. Rising nitrogen levels in our Island ponds are caused in major part by rising nitrogen content in our groundwater. The groundwater/aquifer underlying Chilmark is the source of its existing and future drinking water supply and should be preserved and protected from excess nitrate infiltration. Ingested nitrates are converted by the body into nitrites, which are capable of converting hemoglobin into an oxidized form that does not bind tightly to blood oxygen. Infants, young children, pregnant women and some people with compromised immune systems who drink water with nitrate/nitrite in excess of established Safe Drinking Water Standards are particularly vulnerable and may become seriously ill if untreated. The Island's municipal and well water supply is an outstanding asset, one that is safe now and should be protected going forward.

1.5 The Island of Martha's Vineyard in its entirety has significant amounts of glacially deposited coarse, sandy soils that are subject to rapid water infiltration, percolation, and leaching of nutrients into its groundwater that flow ultimately into the Island's harbors,

embayments, salt ponds and coastal resources, including the water and wetland resources of Chilmark. Additionally, soils associated with terminal moraine and glacial till contribute to rapid runoff into streams feeding coastal water bodies. These unique geologic, topographic and hydrographic characteristics require innovative soil management practices. The adoption of specific turf and soil fertilization requirements across the Island, including Chilmark, is necessary to protect the water and wetland resources of the Island, including Chilmark's.

1.6 The six towns comprising Martha's Vineyard have engaged the Massachusetts Estuaries Project ('Estuaries Project') to undertake analyses of many of the harbors, embayments, salt ponds and coastal resources in the Island towns and to prepare reports detailing the nutrient loading from multiple sources, including fertilizers. The Estuaries Project considers fertilizers a locally controllable source of water degradation. This is very significant as it is anticipated that the State will require all Massachusetts towns to bring the nutrient levels of their coastal ponds, harbors and other water resources to within recognized acceptable water quality standards established in the federal Clean Water Act.

1.7 As of the date of the enactment of this Regulation, Estuaries Project reports have been completed for Edgartown Great Pond, Farm Pond, Lagoon Pond, Sengekontacket Pond and Tisbury Great Pond. In addition, the Massachusetts Department of Environmental Protection has established the maximum amount of a pollutant that four of these ponds can receive and still safely meet water quality standards (known as "Total Maximum Daily Loads" or "TMDLs"). (TMDLs for Tisbury Great Pond are under consideration as of the date of the enactment of this Regulation.) Similar studies are currently underway for Cape Pogue, Chilmark Pond, Katama Bay, Menemsha Pond, Oak Bluffs Harbor, Oyster Pond, Pocha Pond, Squibnocket Pond and Tashmoo Pond. In due course, TMDLs will be established for all of these participating water bodies.

1.8 Of the fourteen coastal ponds and harbors participating in the Estuaries Project, eight have watersheds that encompass portions of more than one town, suggesting that an Island-wide, coordinated approach is necessary for effective management of water quality in these ponds.

1.9 The responsible application of fertilizers rests not only with property owners, but also with professional landscapers whose work takes them across the Island without regard to town or watershed boundaries. Coordinated regulation of fertilizers across the Island will facilitate the educational process for landscapers and will avoid confusion that might arise if fertilizer regulations were materially different from town to town.

1.10 The Chilmark Board of Health, recognizing that excessive use of fertilizers is part of the overall problem of nutrient pollution, promulgates this Regulation regarding the use of fertilizer on turf. As a parallel effort, the BMPs Working Group has assisted the Island town Boards of Health in drafting the *Best Management Practices for Landscape Fertilizer Use on Martha's Vineyard*, which is based on the *UMass Amherst Extensions' Best Management Practices for Soil and Nutrient Management in Turf Systems*, both of which from time to time may undergo changes in response to scientific research.

1.11 The practices and standards set out herein are deemed necessary to protect the public health, including the maintenance of drinking water quality and the preservation of our water and wetland resources. They also represent an early step in achieving compliance with applicable water quality standards. This Regulation is intended to allow our Island's waters to be both sustainable and sustaining, while affording reasonable use of fertilizers for the enhancement of lawn quality.

1.12 It is anticipated that compliance with this Regulation will be achieved primarily as a community responsibility and as consequence of the adoption of a common standard of turf care in respect of both the sale and application of Fertilizer. This regulation provides for educational initiatives to enable this process to occur. To supplement these community-based activities, this Regulation also provides for an enforcement process applicable to those who apply Fertilizer in violation of the standards set out in this Regulation.

## **SECTION 2. PURPOSE**

This Regulation provides for a reduction of nitrogen and phosphorus going into Chilmark's Water Resources by means of an organized system of education, licensure, regulation of practice, and enforcement. The Regulation is intended to contribute to

Chilmark's ability to protect, maintain, and ultimately improve the water quality in all its Water Resources and assist in achieving compliance with any applicable water quality standards relating to controllable nitrogen and phosphorus.

### **SECTION 3. AUTHORITY**

This Regulation is adopted by the Chilmark Board of Health as authorized by Massachusetts General Laws, Chapter 111, Section 31 and is further authorized pursuant to the Fertilizer Management District of Critical Planning Concern designation, [detail authority], and by section 9 of Chapter 262 of the Acts of 2012, as amended.

### **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 production for commercial sale.

"Application Fee" means a fee in the amount of \$100.

"Best Management Practices for Landscape Fertilizer Use on Martha's Vineyard" or "Martha's Vineyard BMPs", means a sequence of activities designed to minimize Fertilizer use while also promoting healthy vegetative growth, as prepared by a working group of Island landscape professionals, golf course superintendents, Health Agents, landscape retailers, and conservationists.

"Board of Health" means the Chilmark Board of Health whose members are elected by the voters of Chilmark to oversee public and environmental practices through the actions of its Health Department.

"Buffer Zone" means the area abutting a Resource Area within which no alteration (as that term is defined in Commonwealth's Wetland Protection Act or the Chilmark Wetland Protect Bylaws and Regulations) is permitted without an Order of Conditions or a Negative Determination from the Chilmark Conservation Commission.

"Compost Tea" means a liquid infusion of Organic Compost but, for the purposes of this Regulation, is not considered a Slow Release Fertilizer.

"Fertilizer" means a substance that enriches the Turf or Soil with elements essential for plant growth, such as nitrogen, phosphorus, or other substances. Fertilizer also includes 'combination products', sometimes referred to as 'weed and feed', which contain Fertilizer in combination with pre- or post-emergence herbicides, insecticides, other pesticides or plant growth regulators. Fertilizer does not include those substances that are normally excluded from Fertilizer such as dolomite, limestone, or lime.

"Golf Course" means the managed (i.e. mowed and fertilized) Turf at each of Chappaquiddick Golf Club, Farm Neck Golf Club, Edgartown Golf Club, Mink Meadows Golf Club, and Vineyard Golf Club.

"Health Agent" means the individual who has direct oversight of the daily activities of the Board of Health.

"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.

"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, but does not include compacted areas on athletic fields, such as baseball infields, and intensely trafficked Turf.

"Landscape Professional" means a person, either as a sole proprietor or as an employee of a company or a municipality, who in exchange for money, goods, services, or other consideration applies Fertilizer to Turf. A Landscape Professional includes Turf management staff at a Golf Course.

"License" means that documentation issued by Chilmark authorizing the individual or commercial entity holder to apply Fertilizer in Chilmark.



"Licensee" means a Landscape Professional who has a valid License.

"Liquid Fertilizer" means a form of Fertilizer which typically is sprayed directly onto a plant.

"Martha's Vineyard Lawn Fertilizer Working Group" means the group of individuals from the six Island towns, including landscape professionals, golf course superintendents, Conservation Commissioners, Selectmen, Board of Health Commissioners and Health Agents, and Martha's Vineyard Commission members, who met and consulted with members of the public representing these and other constituencies to draft this Regulation.

"Organic Compost" is a Slow Release form of Fertilizer comprised of the biologically stable, non-pelletized, humus-like material derived from composting or the aerobic, thermophilic decomposition of organic matter.

"Participating Town" means an Island town that has voted to adopt regulations governing the use of Fertilizer that are substantially similar to this Regulation.

"Property Owner" means the owner of record of the Turf or Soil to which Fertilizer is applied (and, for the avoidance of doubt, includes Chilmark).

"Relevant Employee" means a person engaged (as an employee, agent, contractor or otherwise) by a Landscape Professional who applies Fertilizer to Turf or Soil.

"Resource Area" means an area subject to protection under the Commonwealth's Wetland Protection Act or the Chilmark Wetland Protection By-Laws or Regulations.

"Slow Release" in relation to nitrogen, means nitrogen in a form that delays its availability for uptake and use after application, and is not rapidly available to Turf. Slow Release is also sometimes referred to as 'controlled-release', 'timed-release' or 'slowly soluble/available'.

"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 a Soil testing laboratory that measures extractable nutrient values using a Modified Morgan soil testing procedure



and making recommendations based on values as determined by the University of Massachusetts Extension Soil and Plant Tissue Testing Lab.

"Town of Chilmark" encompasses the land and water of the Town of Chilmark on the island of Martha's Vineyard, County of Dukes County.

"Turf" means grass-covered Soil held together by the root system, and includes turf used for sports and recreational activities as well as for lawns and utility areas.

"Water Resource" includes, without limitation, groundwater, streams, including intermittent streams, creeks, rivers, freshwater and tidal wetlands, ponds, lakes, marine waters, canals, lagoons, embayments, estuaries and all waters defined in Massachusetts General Laws, Chapter 131, Section 40 and the Chilmark Wetland By-Laws or Regulations.

## **SECTION 5. TURF PERFORMANCE STANDARDS**

### **5.1 General Turf Performance Standards**

5.1.1 No person shall apply Fertilizer between November 15<sup>th</sup> and the following April 15<sup>th</sup>.

5.1.2 No person shall apply Fertilizer to Turf or Soil immediately before or during heavy rainfall when the Lawn or Soil is likely to be saturated with water, when the Turf or Soil has the characteristics of an Impervious Surface or when they are showing signs of stress due to drought, or any other time when the Fertilizer is unlikely to be taken up by the Turf root structure.

5.1.3 No person shall apply or deposit Fertilizer on any Impervious Surface or on any place or in such a manner as would allow the Fertilizer to enter into storm drains or other storm flowage receptacles and/or channels. If a person inadvertently applies or deposits Fertilizer to an Impervious Surface by spill or otherwise, or applies or deposits Fertilizer as prohibited in this section, that person must immediately remove the Fertilizer.

5.1.4 No person shall apply Fertilizer containing more than 0.5 pounds of nitrogen per 1000 square feet of Turf *per application*. (provided, however, that a single

application of Fertilizer between April 15 and June 1 and a single application of Fertilizer in September may contain up to .75 pounds of nitrogen per 1000 square feet of Turf). Cumulative applications of Fertilizer must not exceed 3.0 pounds of nitrogen per 1000 square feet of Turf per year Fertilizer shall not be applied within 4 weeks of a prior application. For the purposes of this Regulation, Fertilizer applied by all persons to the same Turf will be aggregated.

5.1.5 No person shall apply Fertilizer unless it contains at least 50% of its nitrogen in the Slow Release form. Compost Tea and Liquid Fertilizer are exempt from this standard, provided that no single application exceeds 0.1 pounds of nitrogen per 1000 square feet over a 4-week period.

5.1.6 No person shall apply Fertilizer that contains phosphorus, unless a Soil Test taken within the prior 3 years indicates a phosphorus deficiency of less than 14ppm, in which case phosphorus may only be applied in accordance with the applicable UMass Extension guidelines. A Soil Test is not required for the application of:

- (a) Organic Compost;
- (b) specially labeled 'starter' Fertilizer products intended for use in establishing Turf or in repairing damaged Turf when applied in conjunction with Turf seed;
- (c) Compost Tea; and
- (d) pelletized organic Fertilizer whose phosphate content by weight is no greater than 25% of its nitrogen content by weight.

## **5.2 Fertilizer in the Buffer Zone**

5.2.1 The Turf performance standards set out in Sections 5 (not including Section 5.1.4) apply to the Buffer Zone, except as modified in this Section 5.2.

5.2.2 No Fertilizer may be applied in the 10-foot wide strip running parallel and immediately adjacent to a Resource Area. In the remainder of the Buffer Zone, no person shall apply Fertilizer containing more than 0.25 pounds of nitrogen per 1000 square feet of Turf *per application*, with cumulative applications not to exceed an

annual maximum of 0.5 pounds of nitrogen per 1000 square feet of Turf, except that where there is a continuous 25-foot wide strip of Fertilizer-free, non-Turf vegetation running parallel to the Resource Area, Fertilizer may be applied to the area beyond the 25 foot strip to an annual maximum of 1.0 pound of nitrogen per 1000 square feet of Turf.

5.2.3 No person shall apply Fertilizer that contains phosphorus in the Buffer Zone, unless a Soil Test taken within the prior 3 years indicates a phosphorus deficiency of less than 14ppm, in which case phosphorus may only be applied in accordance with the applicable UMass Extension guidelines.

### 5.3 Fertilizer on Golf Courses

5.3.1 The performance standards set out in Section 5 (not including Section 5.1.6) apply to Fertilizer applied on Golf Courses except as modified in this Section 5.3.

5.3.2 Applications of Fertilizer to Golf Courses shall not be made between December 15 and the following April 15<sup>th</sup>.

5.3.3 Liquid Fertilizer may not be applied more often than biweekly, provided that it is applied at a rate not to exceed 0.1 pound of nitrogen per 1000 sq. ft. per application.

5.3.4 The performance standards set out in Section 5.2.2 do not apply to putting greens and tee boxes in the Buffer Zone in existence at the effective date of this Regulation.

5.4 **Exemptions:** The following activities are exempt from Section 5:

5.4.1 Application of Fertilizer to home vegetable and flower gardens, landscape ornamentals, shrubs, trees, bushes, and container plants.

5.4.2 Application of Fertilizer for Agricultural or Horticultural use.

5.5 **Precedence:** To the extent that the Commonwealth of Massachusetts or Chilmark has enacted, enacts, or issues any law, regulation, bylaw, order or permit concerning the

application of Fertilizer containing phosphorus or nitrogen on Turf or Soil which is more stringent than the performance standards set in this Section 5, those more stringent standards take precedence.

## **SECTION 6. EDUCATION, LICENSURE AND ADMINISTRATION.**

### **6.1 Education and Assessment**

6.1.1 The Board of Health shall:

(a) maintain and offer for a fee a general program of Fertilizer education for Property Owners and Landscape Professionals that is based on this Regulation and the Martha's Vineyard BMPs; and

(b) administer an assessment to determine a Professional Landscaper's or a Property Owner's proficiency with respect to this Regulation and the Martha's Vineyard BMPs following completion of the general education program.

6.1.2 The Board of Health shall make available to the public, including Property Owners, Landscape Professionals and Fertilizer retailers a summary of the Section 5 performance standards, as well as a copy of this Regulation, as amended from time to time.

### **6.2 Licensure**

6.2.1 No Landscape Professional shall apply Fertilizer in Chilmark without a License issued by the Board of Health in accordance with this Regulation. A Property Owner is not required to obtain a License, but may apply for one on the same terms as a Landscape Professional.

6.2.2 Subject to Section 6.2.3, an application for a License shall be accompanied by the Application Fee and documentation that the applicant has both completed the

general program of Fertilizer education referred to in Section 6.1.1(a) and achieved proficiency as set forth in Section 6.1.1(b).

6.2.3 Upon issuance of a License to an applicant, Chilmark shall forward a "Notice of Issuance of Fertilizer License" to each other Participating Town nominated by the Applicant.

6.2.4 When Chilmark receives a "Notice of Issuance of Fertilizer License" from any Participating Town, the Board of Health shall issue and mail (or email or otherwise forward) a License to the applicant. The payment of a fee and the production of additional documentation shall not be required.

6.2.5 A License shall indicate the License number and expiration date and shall be signed by the Licensee.

6.2.6 Licenses shall be effective on issue and shall continue in effect for three calendar years, expiring on the third December 31 after being issued.

6.2.7 Licenses may be renewed on application. Applicants for renewal must provide documentation of either re-completion of the general program of Fertilizer education or proficiency, as set out in Section 6.1.1, and pay the Application Fee.

6.2.8 A Landscape Professional licensed under this Regulation shall keep his/her License in their possession and shall display the License when requested to do so by any Chilmark enforcement officer.

6.2.9 A Relevant Employee does not need to obtain a License, provided his/her employer maintains a ratio of not less than 1 Licensee to 8 non-Licensed Relevant Employees (the License held by the employer/owner being included for this purpose) and:

(a) the employer has provided the Relevant Employee with training sufficient to ensure that the employee fully understands this Regulation and the Martha's Vineyard BMPs;

(b) the Relevant Employee has demonstrated proficiency with respect to this Regulation and the Martha's Vineyard BMPs in accordance with an assessment tool provided by the Board of Health and administered by the employer;

(c) the employer provides supervision appropriate to ensure that the Relevant Employee complies with this Regulation; and

(d) the employer retains documentation sufficient to establish compliance with subsections (a), (b) and (c).

These requirements set out in (a) and (b) above must be complied with not less often than every three years and within 6 months after any material amendments to this Regulation for each Relevant Employee.

**6.3 Services to be Performed by a Third Party:** The Board of Health may appoint from time to time a third party to perform on its behalf the responsibilities and services set out above in Sections 6.1 and 6.2.

#### **6.4 Liability**

6.4.1 A Property Owner is liable for violations of this Regulation by a Landscape Professional or its Relevant Employees, provided that the Property Owner knew or should reasonably have known that a violation would occur.

6.4.2 A Landscape Professional is liable for violations of this Regulation by its Relevant Employees.

6.4.3 Notwithstanding Sections 6.4.1 and 6.4.2, any person who applies Fertilizer in violation of this Regulation may be held liable.

#### **6.5 Enforcement**

6.5.1 The Health Agent and 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.

6.5.2 Subject to Section 6.5.3, a person who violates any provision of this Regulation is subject to:

(a) in the case of a first violation within a consecutive 36-month period, a written warning;

(b) in the case of a second violation within a consecutive 36-month period, a fine in the amount of \$50.00;

(c) in the case of three or more violations within a consecutive 36-month period, a fine in an amount of \$300.00 per violation, unless the Town proceeds by criminal complaint or indictment under Section 6.5.6, in which case the maximum fine for the third and subsequent violations is provided therein; and

(d) in the case of a Licensee (or a Relevant Employee), and subject to the notice and hearing provisions of Section 6.5.4, suspension of the License (or that of his/her employer, as the case may be) for 180 consecutive days or revocation of that License.

6.5.3 A person who applies Fertilizer without having a valid License is subject to:

(a) in the case of a first violation within a consecutive 36-month period, a written warning;

(b) in the case of two or more violations within a consecutive 36-month period, a fine in the amount of \$300.00 unless the Town proceeds by criminal complaint or indictment under Section 6.5.6, in which case the maximum fine for the second and subsequent violations is provided therein;

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

6.5.5 The Board of Health is authorized to penalize any person who violates these regulations by issuing a ticket under the noncriminal disposition process provided for in Massachusetts General Laws Chapter 40, Section 21D, and the Town's noncriminal disposition by-law, Sections 1-2, 1-3, 1-4, 1-5 and 1-6 of the Code of the Town of Chilmark. If noncriminal disposition is elected, then any person who violates any provision of this Regulation shall be subject to the penalties provided in Sections 6.5.2 and 6.5.3, as applicable, per violation or, in the case of a continuing violation, per day for each day of violation. Each day or portion thereof shall constitute a separate offense. If there is more than one violation, each shall constitute a separate offense.

6.5.6 A person who 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, 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 there is more than one violation, each shall constitute a separate offense.

## **SECTION 7. SEVERABILITY CLAUSE**

If any section, part or provision of this Regulation is deemed invalid or unconstitutional by a court of competent jurisdiction, that 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 or unconstitutional.

## **SECTION 8. AMENDMENTS**

8.1 This Regulation was 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 and County 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 the Board of Health.

8.2 Further, since these Regulations are also under Chapter 831 of the Acts of 1977, as amended, any amendments to the Regulations shall first be approved by the Martha's Vineyard Commission, as conforming to the guidelines for the Fertilizer Management District of Critical Planning Concern.

#### **SECTION 9. EFFECTIVE DATE**

This Regulation shall take effect on January 1<sup>st</sup> 2015 and 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 Board of Health, provided that they comply with Section 5 of this Regulation.

**Section 11. TRANSPORTATION, CREMATION, BURIAL, ENTOMBMENT OR EXHUMATION OF HUMAN REMAINS**

The Chilmark Board of Health shall designate a Burial Agent. The Town Clerk shall act as Alternate Burial Agent. The Burial Agent and Alternate shall fulfill the functions specified in M.G.L. c.114 on behalf of the Board of Health.