

TOWN OF MARBLEHEAD BOARD OF HEALTH

ORGANIC PEST MANAGEMENT REGULATIONS

Adopted: December 7, 2005

Effective: December 22, 2005

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**TOWN OF MARBLEHEAD
BOARD OF HEALTH**

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SECTION I – FINDINGS & PURPOSE

The Board of Health does hereby find that:

All pesticides are toxic to some degree and the commonplace, widespread use of pesticides is both a major environmental problem and a public health issue; and

All citizens, and in particular children, as well as other inhabitants of our natural environment, have a right to protection from exposure to hazardous chemicals and pesticides in particular; and

A balanced and healthy ecosystem is vital to the health of the town and its citizens; and as such is also in need of protection from exposure to hazardous chemicals and pesticides; and

When an activity raises threats of harm to the environment or human health, precautionary measures should be taken, even if some cause and effect relationships are not yet fully established; and

It is in the best interest of public health to eliminate the use of toxic pesticides on Town-owned land, ponds and waterways; to encourage the reduction and elimination of the use of toxic pesticides on private property; and to introduce and promote natural, organic cultural and management practices to prevent and, when necessary, control pest problems on Town-owned land.

Accordingly, the Board of Health finds and declares that the purposes of these Organic Pest Management Regulations are (1) to protect the public health by restricting the use of hazardous chemicals and pesticides on Town-owned land (2) to guarantee the right of the residents of the town of Marblehead the safe use of public land, (3) to encourage the reduction and elimination of the use of toxic pesticides on private property.

SECTION II – AUTHORITY

These Organic Pest Management Regulations are promulgated under the authority granted to the Marblehead Board of Health under Massachusetts General Laws Chapter 111, Section 31 providing that Boards of Health may make reasonable health regulations and under the authority granted to the Marblehead Board of Health under Massachusetts General Laws Chapter 111, Section 122 to make regulations for the public health and safety relative nuisances and causes of sickness.

SECTION III – DEFINITIONS

The following words and phrases, whenever used in these Organic Pest Management Regulations, shall be construed as defined in this section:

OPM shall mean Organic Pest Management.

Pests are and may be known as undesirable plants, insects, fungi, bacteria, and rodents, birds and other animals. Common examples in turf grass and the landscape can be, but are not limited to, crabgrass, knotweed, poison ivy, chinch bugs, grubs, and a variety of plant pathogens.

Pesticides are defined by the Massachusetts Department of Food and Agriculture Pesticide Bureau as “substances or mixtures of substances that prevent, destroy, repel, or mitigate pests, or defoliate, desiccate, or regulate plants.” Pesticides are poisonous substances that can have an adverse effect on the environment or impair human health. Herbicides, fungicides, insecticides, miticides, avicides and rodenticides are all considered pesticides. Pesticides that are classified as known, likely, or probable human carcinogens or probable endocrine disruptors, or those pesticides that meet the criteria for Toxicity Category I or Toxicity Category II, as defined by the United States Environmental Protection Act (EPA) in section 156.10 of Part 156 of Title 40 of the Code of Federal Regulations, are subject to these Regulations. A list of the pesticides in the EPA’s Toxicity Categories I and II will be periodically updated and maintained at the offices of the Town of Marblehead Board of Health.

Organic Pest Management is a problem-solving strategy that prioritizes a natural, organic approach to turf grass and landscape management without the use of toxic pesticides. It mandates the use of natural, organic cultural practices that promote healthy soil and plant life as a preventative measure against the onset of turf and landscape pest problems.

Essential OPM practices include, but are not limited to:

- regular soil testing;
- addition of approved soil amendments as necessitated by soil test results, following, but not limited to, the recommendations of NOFA/Mass (Northeast Organic Farmers’ Association/Mass) and/or the Organic Material Review Institute of Eugene, OR;
- selection of plantings using criteria of hardiness; suitability to native conditions; drought, disease and pest-resistance; and ease of maintenance;

- modification of outdoor management practices to comply with organic horticultural science, including scouting, monitoring, watering, mowing, pruning, proper spacing, and mulching;
- the use of physical controls, including hand-weeding and over-seeding;
- the use of biological controls, including the introduction of natural predators, and enhancement of the environment of a pest's natural enemies;
- through observation, determining the most effective treatment time, based on pest biology and other variables, such as weather and local conditions; and
- eliminating pest habitats and conditions supportive of pest population increases.

SECTION IV – PROHIBITION

The use and application of toxic chemical pesticides, by Town of Marblehead employees and/or by private contractors, is prohibited on all Town-owned lands.

SECTION V – CONTROL OF POTENTIAL PEST PROBLEMS

Organic Pest Management practices, i.e. natural, organic turf and landscape cultural practices and maintenance, shall be the method of choice to understand, prevent, and control potential pest problems;

Control products used under the terms of this Regulation shall be those products on the approved list of NOFA/Mass. (Northeast Organic Farmers' Association/Mass.) and/or the Organic Materials Review Institute of Eugene, Oregon, or such other lists or products as may be approved by the Director or by the Board of Health from time to time;

SECTION VI – ADVISORY COMMITTEE

An OPM Advisory Committee shall be formed which shall advise the Board of Health as to all matters arising out of or in connection with these Regulations. Whenever practical, the Director and/or the Board of Health shall consult with the Advisory Committee prior to the granting of any waivers under Section VIII. The Advisory Committee shall have such additional responsibilities as may be granted to it by the Board of Health. The OPM Advisory Committee shall be composed of representatives of the general public, elected town officials, appointed town officials, and town employees as the Board of Health may determine from time to time. Membership on the OPM Advisory Committee shall be at the pleasure of the Board of Health.

SECTION VII – INVENTORY OF PESTICIDES

A registry of all pesticides currently stored in or on Town-owned premises shall be compiled by the Director of Public Health who shall have authority to order the disposal of any such products that the Director deems unnecessary to be stored within the Town, such disposal to be through the Town's Hazardous Wastes Collection program or otherwise.

SECTION VIII – EXEMPTIONS

All outdoor pest management activities taking place on Town of Marblehead-owned land shall be subject to these Regulations, except as follows:

1. Pesticides otherwise lawfully used for the purpose of maintaining a safe drinking water supply at drinking water treatment plants and at wastewater treatment plants and related collection, distribution, and treatment facilities.
2. Pesticides in contained baits or traps for the purpose of rodent control.
3. Pesticides classified by the United States Environmental Protection Agency as exempt materials under 40CRF 152.25, or those pesticides of a character not requiring FIFRA regulation.
4. The use of chemical controls as approved in advance and in writing by the Director of Public Health or by the Board of Health in the event of a public emergency as determined by the Director or by the Board of Health; provided, however, that such authority to grant a temporary waiver shall be limited to a period of thirty days. Any waiver in excess of thirty days as to any one emergency may be extended for an additional period not to exceed six months but only by a vote of the Board of Health. All waivers granted by the Director shall be reported to all members of the Board of Health no later than one business day following the issuance of the waiver. Notice of all such waivers shall be posted, in the manner provided for notice of public meetings, within two business days following the issuance of the waiver. Any waiver granting the use of pesticides on Town land shall require the use of Integrated Pest Management protocol and shall specify the use of a specific pesticide(s) determined to be the least toxic material for the specific application. The Board of Health shall determine if such a waiver is warranted based on the following criteria: a) the pest situation poses a threat to human or animal health and/or environmental quality; b) reasonable OPM efforts, if any, have been attempted; and c) viable alternatives consistent with this Regulation do not exist.

Any Town department or contractor granted a waiver hereunder shall comply with all applicable laws, rules and regulations of the Commonwealth of Massachusetts including, but not limited to those requiring notification to site users, abutters, and the proper method for storage, application, and posting.

SECTION IX: TRAINING AND EDUCATION

All Town of Marblehead personnel involved in the evaluation, approval, or implementation of organic turf and landscape maintenance and/or outdoor pest control should receive training and education in natural, organic cultural and technical methods.

SECTION X: COMPLAINTS

A. The Director of Public Health shall investigate complaints received about any practices or acts that may violate any provision of these Regulations.

B. If the Director finds that an investigation is not required because the alleged act or practice is not in violation of these Regulations, the Director shall notify the complainant of such finding and the reasons upon which it is based. The Director shall provide a report to the Board of Health of all such complaints and findings.

C. If the Director finds that an investigation is warranted, the Director shall investigate and if the Director finds that there has been a violation of these Regulations, then the Director and/or Board of Health shall be authorized to take such action and institute such proceedings as are provided by law.

SECTION XI – VIOLATIONS AND PENALTIES

A. It shall be unlawful for any person to use or apply any toxic chemical pesticides on any town owned land except as specifically authorized in these Regulations.

B. Any person who violates any provision of these Organic Pest Management Regulations shall be subject to a fine of five hundred (\$500.00) dollars for a first offense and one thousand (\$1000.00) dollars for second and subsequent offenses.

C. Each application of a prohibited product shall be deemed to be a separate offense.

D. Citations for violations of these Organic Pest Management Regulations may be in such form as the Board of Health may determine.

E. In addition to the penalties provided for hereunder, the Board of Health shall have the authority to file a civil suit for damages to compensate the Town for all costs incurred as a result of violations of these regulations.

SECTION XII - OTHER APPLICABLE LAWS

These Organic Pest Management Regulations shall not be interpreted or construed to permit the application or use of pesticides or other hazardous materials where such use or application is restricted by other applicable health, environmental, safety or fire codes, regulations or statutes.

SECTION XIII – SEVERABILITY

If any provision, clause, sentence or paragraph of these Organic Pest Management Regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions of these Organic Pest Management Regulations that can be given effect without the invalid provision, clause, sentence, or paragraph, and to this end the provisions are declared to be severable.

SECTION XIV: EFFECTIVE DATE

These regulations shall be effective upon publication.

Adopted: December 7, 2005

By the Board of Health of the Town of Marblehead
Carl D. Goodman, Esq., Chairman
David B. Becker, D.M.D., M.P.H.
Helaine R. Hazlett, Secretary
Wayne O. Attridge, Director of Public Health