



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: Representative Warren Kitzmiller
From: Cameron Wood
CC: Michael O'Grady; Virginia Renfrew
Date: November 10, 2014
Subject: Drinking Water Regulations

QUESTION PRESENTED

How are public drinking water sources regulated in New England, including what recreational uses are allowed?

DISCUSSION

The regulation of public drinking water varies across the New England states. Some, like Connecticut, have a top down approach where the regulation is administered by a State agency or department. Others, like Maine, have a more decentralized approach where the local municipality or regulatory authority has power. Regardless of where the regulations come from, all states in New England strictly regulate their public drinking water when it comes to recreational activity.

I. Connecticut

The Connecticut Department of Public Health regulates drinking water sources under broad authority granted in Connecticut General Statutes § 25-32(a). This section states that the department “shall have jurisdiction over all matters concerning the purity and adequacy of any water supply source used by any municipality ... for obtaining water.”¹ According to Eric McPhee with the Connecticut Department of Public Health there is no provision to delegate this authority to a municipality.

Specific recreational prohibitions can be found in Conn. Gen. Stat. § 25-43. These include prohibitions on bathing, swimming, washing (animals or clothes), and use of aircraft.² Some recreational uses may be allowed on watersheds and reservoirs. These are found in Conn. Gen. Stat. § 25-43c. Sport fishing *may* be allowed from designated areas

¹ Conn. Gen. Stat. § 25-32(a).

² Conn. Gen. Stat. § 25-43(a), (b), (c).

of the shoreline or from boats.³ This may be permitted by the water company.⁴ A “water company” is defined as “any entity ... who or which owns, maintains, operates, manages, controls or employs any pond, lake, reservoir, well, stream or distributing plant or system that supplies water to two or more consumers or to twenty-five or more persons on a regular basis ...,” and may include a municipality.⁵ All additional recreational activities must be authorized by permit from the Department of Public Health.⁶

II. Maine

Maine has a somewhat confusing, potentially overlapping regulatory framework. Under Maine Revised Statutes tit. 22, § 2642 municipalities may adopt regulations governing the surface use of public water supplies.⁷ However, in 22 M.R.S.A. § 2647 any water utility, municipality and the Department of Health and Human Services are authorized to take reasonable steps to protect a public water source.⁸ This power is constrained in that it cannot limit any laws granting a water utility or municipality greater controls to protect their sources.⁹ This is why regulations may overlap because the State has granted authority to some water districts to govern certain water supplies.¹⁰

Whether or not recreational use is allowed on public drinking water sources depends on the local circumstances. For instance, the Auburn Water District allows some boating but no body contact whereas the Bangor Water District does not allow recreational use at all (no boating, fishing, swimming).¹¹

Although municipalities are given regulatory authority, one issue that I am not confident about is the relationship between municipalities, water districts, and the Department of Health and Human Services. When they disagree about a specific regulation, who wins? Two people in Maine have informed me that the municipalities

³ Boats must be propelled by oars or by electric motors *with sealed storage batteries*.

⁴ Sports fishing is the only recreational activity specifically mentioned in Conn. Gen. Stat. § 25-43c. However, this is not a guaranteed recreational activity as it is up to the “water company” to permit it.

⁵ Conn. Gen. Stat. § 25-32a.

⁶ Conn. Gen. Stat. § 25-43c(b). To be clear, if someone wants to be allowed recreational use on or near a public water supply, they seek authority from the water company who would then petition the Department of Public Health for permission.

⁷ Me. Rev. Stat. tit. 22, § 2642 states that “the municipal officers of each municipality, after notice and public hearing, may adopt regulations governing the surface uses of sources of public water supply ... located within that municipality in order to protect the quality of such sources of public water supply and the health, safety and welfare of persons dependent upon such supplies.”

⁸ Me. Rev. Stat. tit. 22, § 2647-A states that “any water utility or municipality and the department are authorized to take reasonable steps to protect a public water source from pollution consistent with section 2642.”

⁹ Me. Rev. Stat. tit. 22, § 2647-A (6) “nothing in this section may be construed to limit in any way any private and special or other law granting a water utility or municipality greater controls for protecting its public water source than those set forth in this section.”

¹⁰ For example, the Auburn Water District provides water to the town of Auburn Maine from Lake Auburn. The district was given a legislative charter in 1923 which gave the water district the power “to adopt by-laws, not inconsistent with the general laws of the state, to prevent pollution of the water of Lake Auburn and to preserve the purity of said water.” Found on Lake Auburn Watershed Protection Commission website at http://lakeauburnwater.org/?page_id=68.

¹¹ See Auburn Water District “Frequently Asked Questions” at <http://www.awsd.org/waterfaq.html> (Although boating is allowed it is strictly regulated. No bodily contact is allowed.) and Bangor Water District “Watershed Protection” at <http://www.bangorwater.org/water%20quality%20home/watershed.htm>.

and water districts tend to work well together and, therefore, this situation does not come up. However, neither of them was able to tell me what entity had the ultimate authority.¹²

III. Massachusetts

In Massachusetts, the Department of Environmental Protection has supervision of all inland waters.¹³ Under the Massachusetts Water Management Act, regulations are developed by the Department of Environmental Protection with the assistance of the Water Resource Management Advisory Committee (within the Department of Environmental Protection) and the Water Resource Commission (in the Executive Office of Environmental Affairs).¹⁴

The Massachusetts Department of Environmental Protection regulations can be found at 310 Mass. Code Regs. 22.00. There seems to be a general prohibition of any recreational use on the surface of drinking water sources. This includes no swimming, bathing, fishing, boating, or ice fishing.¹⁵

Municipalities can impact recreational use through local land use controls and also have input into their local management plans but, as far as I have researched, I do not believe that local municipalities have regulatory authority over the surface waters.

IV. New Hampshire

New Hampshire has a somewhat dual regulatory scheme. Local health officers or local health boards have authority to regulate water sources within their own town limits.¹⁶ However, drinking water sources are regulated by the Department of Environmental Services whenever local regulations are not sufficient or effective.¹⁷ The local town, or ten or more citizens, can petition the Department to provide more protection when they feel the local regulations are not sufficient enough.

Regulation of recreational uses on drinking water sources in New Hampshire will depend on the local circumstances. According to Paul Susca, with the Department of Environmental Service, the Department has adopted regulations for approximately one-half of the surface water sources in New Hampshire (not necessarily public drinking water sources). These regulations are compiled in the New Hampshire Code of Administrative Rules Env-DW 902. For those waters with regulations, each individual surface water source has its own set of rules. Most seem to prohibit all general recreational use (swimming, boating, fishing). The regulations state that if local

¹² I spoke with Nate Sanders at the Maine Department of Health and Human Services and Mike Koza with the Portland Water District.

¹³ Mass. Gen. Laws ch. 111, § 159 states that “the department of environmental protection ... shall have the general oversight and care of all inland waters ...”

¹⁴ Mass. Gen. Laws ch. 21G, § 3.

¹⁵ 310 Mass. Code Regs. 22.20B. There seems to be an outright ban on swimming and bathing. However, with regards to some other activities, like boating and fishing, permits may be issued by the Board of Water Commissioners or like body having jurisdiction.

¹⁶ N.H. Rev. Stat. Ann. § 147:1.

¹⁷ N.H. Rev. Stat. Ann. § 485:23 & § 485:24.

ordinances are more stringent than they will apply. Additionally, a person can apply for a waiver from the rules.¹⁸

As stated above, municipalities do have some regulatory authority over systems within their own town through health regulations. If their water system is not located within their town, or if they want additional protection, then they must go through the Department.

V. Rhode Island

My search of the Rhode Island General Laws leads me to believe that the authority to regulate public drinking water sources lies with the Department of Health. The Department has the power to provide rules and regulations for minimum standards consistent with human health for quality of public drinking water.¹⁹ Furthermore, the Director of the Department of Health has the authority to adopt regulations consistent with that chapter (Public Drinking Water), the federal Safe Drinking Water Act and federal regulations.²⁰ However, I have not received an answer from the Rhode Island Department of Health. Therefore, I am not sure where municipalities fit into this regulatory framework.

Additionally, in Rhode Island, there is a Water Resource Board which is given some authority to “protect the quality and safety of the public drinking water supply.”²¹ I am under the impression that the WRB and its powers relate to protecting and regulating the drinking water supply system as opposed to the drinking water itself. Either way, the powers of the Department of Health are not affected by the WRB.²²

Rhode Island General Laws § 46-14-1 prohibits bathing, swimming or any activity which can lead to discharge of sewage, drainage, refuse or polluting matter is prohibited in, or on, or in the immediate vicinity of any public drinking water source. Additionally, any other activity that the director of the Department of Health deems “to render the water supply injurious to health or to pose a potential significant risk to public health shall be prohibited or restricted.”²³ I have searched the regulations on the Department of Health website that refers to public drinking water but found no additional recreational prohibitions.²⁴

¹⁸ N.H. Code Admin. R. Env-Dw 902.

¹⁹ R.I. Gen. Laws § 23-1-18(8).

²⁰ R.I. Gen. Laws § 46-13-18.

²¹ R.I. Gen. Laws § 46-15.3-3.

²² R.I. Gen. Laws § 46-15-9.

²³ R.I. Gen. Laws § 46-14-1.

²⁴ R46-13-DWQ. Rules and Regulations Pertaining to Public Drinking Water.