

Massachusetts Department of Environmental Protection
REGULATORY IMPROVEMENTS FOR RESERVOIRS

Enforcement of 310 CMR 22.20B

The Massachusetts Drinking Water Regulations set forth in 310 CMR 22.20B land use prohibitions and controls within certain distances from all public drinking water reservoirs. Most of the provisions were written in the 1930s and, until recently, did not adequately reflect current source protection issues. With the help of suppliers and others, this section was updated, effective January 5, 2001, to address that gap in protection. Many communities also have more stringent controls in place in the form of local watershed protection bylaws, ordinances or regulations, and suppliers may own or control significant portions of their watersheds.

Although DEP may take enforcement actions against any persons violating 310 CMR 22.20B, public water suppliers have always been the primary enforcers of these land use controls. Section 22.20B(7)(a) requires the following:

- a public water system shall conduct regular and thorough inspections of Zones A, B and C to determine and enforce compliance with 310 CMR 22.20B; and
- the public water system shall take prompt enforcement actions against persons violating 310 CMR 22.20B and shall report all such enforcement actions and the results of the regular inspections made during the preceding calendar year to the Department in the system's Annual Statistical Report. The report shall include the number and dates of the inspections, the number, nature and outcome of violations found and enforced against by the public water system and the general condition of the watershed at the time of the last inspection.

Regular inspections of the watershed not only help suppliers meet these requirements, but also allow them to keep up with changes in the watershed, especially where the reservoir and/or watershed lands extend into other communities. In addition, inspections can provide information for more effective planning for land acquisition, emergency response, public education and other source protection measures.

Enforcement Steps

Except in the case of an immediate public health threat, a visit or call to the owner(s) of the affected property with a request for cooperation and compliance, with specific actions to be performed and dates by which to perform them, should be the first step in an enforcement case. A follow-up letter, confirming the details of the conversation, should be sent to the owner(s) by certified mail (with a copy to the system's legal counsel). An inspection log, photographs and copies of all correspondence should be assembled for each enforcement case.

If the owner is not cooperative and does not follow through with the actions and timetable set forth by the supplier (and does not request a reasonable revision of the schedule), it may be necessary to involve the system's legal counsel in pursuing a more formal enforcement action.

Enforcement Authority

The scope and nature of a public water supplier's enforcement authority depends, in large part, on the status of the supplier - e.g., whether it is a municipal water system or a private entity acting as a public water system. Accordingly, suppliers should consult with their legal counsel to ensure that any relevant bylaw, ordinance or penalty provision is properly enacted and enforceable, and that specific compliance and enforcement activities and actions that a supplier may undertake are within the scope of their authority. With that cautionary note in mind, the Department has the following guidance.

- Under M.G.L. c. 40, s.21, municipalities have broad authority to adopt ordinances and bylaws, including for the regulation of the use of reservoirs connected with its water supply and "land and driveways appurtenant thereto." At present, M.G.L. c. 40, s.21 provides for a penalty not exceeding \$50 for each violation of a "use of reservoir" bylaw authorized under subsection (8), which are recovered by a municipality on complaint before a district court or by non-criminal disposition in accordance with M.G.L. c. 40, s.21D.
- Water boards or boards of water commissioners of municipalities or water districts, any executive officer or agent of such board or of a public institution or water company, and any police officer employed by such suppliers, have the authority to enter any premises, excluding dwelling houses, within the watershed of a public water supply source to determine compliance with the requirements of 310 CMR 22.00. See M.G.L. c. 111, s.173B. In addition, police officers employed by the above referenced suppliers have all the powers and duties of municipal police officers in the cities and towns served by the supplier. See M.G.L. c. 111, s.173A.
- An independent water commission, established pursuant to M.G.L. c. 40N, is authorized to adopt rules and regulations in connection with the performance of its functions and to enforce and collect penalties for violation of its regulations. Such commission also has the authority to enter lands within the commission's service area for inspection purposes.
- Finally, private water districts and other private entities that act as public water systems must rely on other sources of authority to regulate and enforce against land uses consistent with 310 CMR 22.20B (e.g., special legislation, the terms of its contract with users). In addition, non-municipal suppliers should use their best efforts to request the relevant municipality to use its zoning and other regulatory authority, including ordinances and bylaws established pursuant to M.G.L. c. 40, s.21(8), to implement and enforce the land use prohibitions in 310 CMR 22.20B.

Enforcement Examples

Swimming in drinking water reservoirs is prohibited by 310 CMR 22.20B. The Board of Water & Sewer Commissioners in Town A posted drinking water signs indicating “no swimming” and conducted regular inspections of the reservoir. The Water Superintendent found that swimming was occurring. The town had a bylaw regulating the use of the reservoir and, under authority from MGL Chapter 40, section 21, the Commissioners voted to fine swimmers \$50 for repeat violations (i.e. persons identified swimming a second time). They also decided to issue a press release explaining the Commission’s need to take such action; increase inspections at the reservoir during the summer; and expand their public education program.

Water District B’s watershed extends into another community that does not receive water from that reservoir. Responding to a complaint, the Water Superintendent observed that a new underground storage tank was being installed within Zone A at a facility in the other community in violation of 310 CMR 22.20B. While talking with the Building Inspector (the zoning enforcement officer) in the other community, the Water Superintendent learned that the tank was also being installed in violation of that community’s ground water protection zoning bylaw. The Building Inspector, who had been unaware of the violation, spoke with the facility owner. The owner was not cooperative and continued with the installation. The Building Inspector offered to take the lead on pursuing enforcement in this matter and to keep the District informed of any actions related to the case. The Water District spoke with their legal counsel and retained the option of pursuing the case in the future if necessary.

Water Company C observed that a resident had established two horses in his backyard between 60 ft. and 200 ft. of the bank of a tributary to the Company’s reservoir. Keeping horses within 100 ft. of a tributary is a violation of 310 CMR 22.20B. Under the authority of the terms of the contracts with the users of the water, the supplier met with the resident, explained the violation and outlined the steps that the resident needed to take to come into compliance. The resident agreed to move the horses back 40 ft. (outside Zone A) and to allow the vegetation that had been altered within Zone A to grow back. As a follow-up to the meeting, the supplier sent a letter, by certified mail, to the resident describing the violation, outlining the agreed-upon resolution and thanking him for his cooperation. She also included, with the letter, copies of DEP’s fact sheet on manure management and other fact sheets related to backyard horses within drinking water supply areas. Through re-inspection, the supplier confirmed compliance with her orders.

Massachusetts Watersheds That Extend Into Other States

Massachusetts regulations cannot be enforced in other states. Suppliers with watersheds that extend into another state should maintain contact with local officials in the other state, review and comment on relevant new projects in the watershed and conduct public education about protection measures.

Contact Kathy Romero, Drinking Water Program, 617-292-5727

This information is available in alternate format by calling DEP’s ADA Coordinator at 617-574-6872.

