

ASK THE LEAGUE, NOVEMBER 2012

Can a municipality regulate the location of onsite water supply and septic systems?

Yes, but with limitations. On July 1, 2007, the State of Vermont took permit jurisdiction from municipalities over onsite water supply and septic systems. Any existing ordinances or bylaws that contained technical standards and criteria for the design, construction, operation, and maintenance of systems were and continue to be preempted by the Department of Environmental Conservation's (DEC) [Wastewater System and Potable Water Supply Rules](#) ("the Rules").

Even though municipal regulation is limited by state law – 10 V.S.A. § 1976(b) and 24 V.S.A. § 4414(13) – the Rules provide that a municipality can still adopt standards that regulate development generally. According to § 1-501(a)(1) "Municipalities may continue to have ordinances and/or bylaws that are not specifically regulating potable water supplies and/or wastewater systems, but rather regulating development in general, (ex: setbacks)[.]" To help explain its jurisdiction, DEC also issued [Guidance Document #2007-01, *Universal Jurisdiction's Impact on Town Authority over Water and Wastewater after July 1, 2007*](#), which states that "[a] town may adopt a local ordinance [and/or bylaw] that prohibits all types of construction in an area. This prohibition may prevent the installation of a water or wastewater system." Standards prohibiting the location of buildings, driveways, accessory structures, and other types of development could encompass a prohibition on the installation of an onsite septic within that regulating setback, buffer area, or even require that all development be conducted within a specified building envelope.

Another option for a municipality to regulate and enforce water and wastewater systems is to obtain [delegation](#) from the state (see www.anr.state.vt.us/dec/www/mundeleg.htm) and administer the state program locally in compliance with the state's Rules. 10 V.S.A. § 1976.

Save the Date: *Onsite septic and water system permitting and delegation will be a topic at the December 5, 2012, Fall Planning and Zoning Forum in Montpelier. Please visit the VLCT Event Calendar at www.vlct.org/events-news-blogs/event-calendar for more information.*

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