

10-144

Chapter 240

STATE OF MAINE

**RULES FOR APPOINTMENT AND ADMINISTRATION OF
LOCAL PLUMBING INSPECTORS**



**DEPARTMENT OF HEALTH AND HUMAN SERVICES
MAINE CENTER FOR DISEASE CONTROL AND PREVENTION
DIVISION OF ENVIRONMENTAL HEALTH
11 STATE HOUSE STATION
AUGUSTA, MAINE 04333**

LAST AMENDED: January 18, 2011

Appropriation 014-10A-2426-012-2658

**RULES FOR APPOINTMENT AND ADMINISTRATION
OF LOCAL PLUMBING INSPECTORS**

10-144 CMR 240

SUMMARY

These rules provide for the appointment and administration of Local Plumbing Inspectors. In addition, these rules deal with the eligibility, application, examination, and re-certification requirements; as well as administration of the permit process.

BASIS STATEMENT: These Rules set the standards for local plumbing inspector appointment and administrative action.

LAST AMENDED: JANUARY 18, 2011

AUTHORITY: 22 M.R.S.A. §§ 42(3), (3-A), and (3-B), 22-A M.R.S.A. §§ 205 & 210, and 30-A M.R.S.A. §§ 4211(5), 4212(1), 4215 (4), 4221, and 4451

**Department of Health and Human Services
Maine Center for Disease Control and Prevention
Division of Environmental Health
11 State House Station
Augusta, Maine 04333-0011
Telephone (207) 287-5689**

Appropriation 014-10A-2422-012-2658

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10-144 DEPARTMENT OF HUMAN SERVICES**Chapter 240: APPOINTMENT AND ADMINISTRATION OF LOCAL PLUMBING INSPECTORS**

SUMMARY: These rules provide for the appointment and administration of Local Plumbing Inspectors. In addition, these rules deal with the eligibility, application, examination, and re-certification requirements; as well as administration of the permit process.

SECTION 1. DEFINITIONS

- A. **Department:** The Department of Health and Human Services.
- B. **Internal Plumbing Rules:** 10-144 Code of Maine Regulations, Chapter 238, referred to as Plumbing Rules.
- C. **Local Plumbing Inspector:** A municipal or Department-appointed official charged with implementing the Rules and carrying out the duties required by 30-A M.R.S.A. §§ 4201 & 4210 to 4223.
- D. **LPI:** Abbreviation for Local Plumbing Inspector.
- E. **LURC:** Abbreviation for Land Use Regulation Commission.
- F. **Permit:** An official written authorization, issued by an LPI to install plumbing or to construct a subsurface wastewater disposal system.
- G. **Certification:** The certification of an LPI is based on standards determined by the State Planning Office, set forth in 30-A M.R.S.A. §4451, (6).
- H. **Rule 80K Certification:** Written notification from the State Planning Office that a particular individual has shown a familiarity with District Court procedures for the prosecution of alleged land use violations pursuant to 30-A M.R.S.A. §4453.
- I. **SPO:** Abbreviation for the Maine State Planning Office.
- J. **Subsurface Wastewater Disposal Rules:** 10-144 Code of Maine Regulations, Chapter 241, referred to as SSWD Rules.
- K. **Temporary Authorization:** A mechanism whereby a person may be temporarily authorized to hold a position as LPI, in order to obtain proper credentials for appointment. See Section 2 of these Rules.

SECTION 2. TEMPORARILY AUTHORIZED LOCAL PLUMBING INSPECTORS

- A. An individual may be temporarily authorized in writing by the Department to be employed as an LPI for a period not to exceed 12 months. The Department will coordinate appointments with the Maine Department of Professional and Financial Regulation, Plumbers' Examining Board, and SPO, prior to temporary authorization.
- B. This waiver request must not be granted to a non-certified individual, unless the municipality has demonstrated that no certified LPI is available. Should the municipality demonstrate that no certified LPI is available, the Department may grant temporary certification, based upon the documented credentials of the individual, on a form prescribed by the Department, depending upon the following, in this order:
 - (1) Formal training obtained from the State Planning Office;
 - (2) Formal training and/or licensure from another body within Maine;
 - (3) Formal training and/or licensure from another body outside Maine; and
 - (4) On the job training.

SECTION 3. APPOINTMENT OF LOCAL PLUMBING INSPECTORS

- A. **Municipal Appointment.** The municipal officials of each municipality must appoint one primary LPI, and, if they so choose, one or more alternate LPI(s) who may or may not be residents of the municipality for which they are appointed, and must hold the office for a period of at least one year.
- B. **Appointments in Unorganized Areas.** The Department must appoint one primary LPI, and, if available, one or more alternate LPI(s) who may, or may not, be residents of the affected township(s) in the Unorganized Territories (LURC Territories), pursuant to 22 M.R.S.A. §42(3-B).
- C. **Considerations for Appointment.** The municipality or Department must appoint LPI's with consideration of the following criteria:
 - (1) Eligibility/experience. The individual seeking appointment must be duly certified by the SPO and eligible to be appointed as LPI.
 - (2) Availability. The LPI must provide adequate service and have sufficient time to serve the territory.
 - (3) Ability to inspect. The LPI must be physically able to access work sites to provide inspection and follow-up of violations for both internal and subsurface projects.
- D. **Notification.** Written notification of the appointment must be supplied to the Department and SPO within 30 calendar days of the appointment. Failure to notify the Department within the prescribed time must terminate the LPI appointment. Notification must be made to: Division of Environmental Health, Department of Health and Human Services, 11 State House Station, Augusta, Maine 04333-0011.

E. LPI Unavailability.

If no LPI is available, the following procedure must be utilized:

- (1) The Department will issue permits in compliance with the Maine Rules Relating to Drinking Water (10-144 CMR 231) and the Maine Subsurface Wastewater Disposal Rules (10-144 CMR 241).
- (2) Plumbing and/or septic systems must not be used until the plumber/installer has filed a statement with the Department stating that the system was completed in compliance with the Application and Rules.
- (3) The Department must issue a Certificate of Approval upon receipt of the Plumber/Installer Statement of Completion. The Department will establish an inspection protocol to insure follow-up review is completed. Follow-up inspections will be conducted by members of the Department or their appointed agents as prescribed by a separate Memorandum of Understanding.

SECTION 4. DUTIES AND POWERS OF LOCAL PLUMBING INSPECTORS

- A. The LPI must enforce all the provisions of the Plumbing Rules and the SSWD Rules. The LPI must respond to questions concerning the construction and the materials used in the installation of a system, except as may be specifically provided for by other requirements of the Plumbing or SSWD Rules.
- B. The LPI must receive and review applications for disposal system permits and plumbing permits which may include variance review. The LPI must issue permits for the installation of systems and fixtures, inspect the premises for which a permit has been issued, and enforce compliance with the provisions of the Plumbing and/or SSWD Rules.
- C. The LPI must issue all required notices or orders pertaining to removal of illegal or unsafe conditions, the requirement of necessary safeguards during construction, and compliance with all requirements of the rules for the safety, health, and general welfare of the public.
 - (1) Notice of violation. Such orders must direct the discontinuance of the illegal action or condition and, if appropriate, state procedures for the abatement of the violation.
 - (2) Prosecution. If the notice of violation and order are not complied with promptly, the LPI must request the legal counsel of the jurisdiction to institute the appropriate proceedings at law, or in equity, to restrain, correct, or abate such violation, or to require removal or termination of the unlawful use of any system in violation of the provisions of the rules or of the order or direction made pursuant thereto. Court Rule 80K (30-A M.R.S.A. §4453) may also be utilized, if the LPI is Rule 80K certified.
 - (3) Penalties. Any person who violates a provision of the rules, or who fails to comply with any of the requirements thereof, or who installs work in violation of an approved plan or directive of the plumbing inspector, or of a disposal system

or internal plumbing permit issued under the provisions of the rules, must be subject to the penalties in 30-A M.R.S.A. §4452.

- D. The LPI must make all the inspections as required by the Rules. The LPI may request expert opinions, as may be necessary to report upon technical issues that may arise, subject to the approval of the municipal officers.
- E. The LPI must carry proper credentials of the office while inspecting any and all systems and premises, in the performance of the LPI's duties.
- F. At least annually, the LPI must submit to the municipal officers of the municipality a written statement of Rule enforcement activities as prescribed by the municipality.

SECTION 5. PERMIT, INSPECTION FEES AND DISBURSEMENTS

- A. The minimum permit fees, assessed by municipalities, are listed in Table A. Municipalities may assess additional permit fees, above those listed in Table A, if authorized to do so by local ordinance, along with any monetary penalties assessed, pursuant to 30-A M.R.S.A. §4452(3). The entire additional permit and any penalty fees are retained by the municipality. Pursuant to Maine law, municipalities must retain 75% of the minimum permit fees and must forward 25% to the Department (75% : 25%).
- B. Special fees and disbursements. There are additional special fees, which may be received by the municipality. These fees are:
 - (1) Late permit fee. A person who starts construction without first obtaining a permit must pay double the permit fee. Double fees charged are considered a minimum permit fee, and, therefore, the 75% : 25% disbursement applies.
 - (2) Additional inspections and fees. Inspections and fees, in addition to those mandated by the Rules, may be required by the LPI, by the adoption of a local ordinance. Additional inspections may also be required by the LPI, when work is found to be incomplete, or in non-compliance, or when access cannot be obtained at a prearranged date and time. In such cases, additional inspection fees may be assessed by the municipality. The entire additional inspection fee is retained by the municipality.
 - (3) Local variance review fees. Fees assessed for review of local variances, as listed in the Subsurface Wastewater Disposal Rules, 10-144 CMR 241, are considered part of the total permit fees. The variance review fee must be included in the total permit fee and disbursed in the 75% : 25% proportion.
- C. Permit fees collected by LPIs appointed in unorganized territories. The appointed LPI for the unorganized territory retains 75% of the permit fee and forwards 25% of the fee to the Department. The LPI may retain the entire additional permit or inspection fee when such fee is required. All other special fees must be disbursed as stated above.

Table A: Permits for Internal Plumbing

Minimum fee, includes up to four fixtures	\$40.00
Individual fixtures, each, above four total	\$10.00
Hook up to public sewer	\$10.00
Hook up to existing subsurface system	\$10.00
Piping relocation with no new fixtures	\$10.00
Permit transfer	\$10.00

SECTION 6. DEPARTMENT LPI REVIEW

- A. The Department is responsible for ensuring the proper administration of the Subsurface Wastewater Disposal Rules and permitting processes by municipalities. The Department must assist municipalities in complying with these Rules.
- B. The Department must review the administration of the Subsurface Wastewater Disposal Rules and laws in each municipality, for compliance with these Rules and with 30-A M.R.S.A. §3428. This review must be made on a regular basis and may be made in response to a written complaint from any person, as necessary. The Department must inspect the municipality's records and discuss the administration of the program with the LPI. The LPI must be available during the Department's review and cooperate in providing all necessary information. The Department must report the results of its review in writing to the municipality and, when applicable, to the complainant. The written notice must set forth the Department's findings of whether the municipality is in compliance with these Rules and 30-A M.R.S.A. §3428.
- C. If, after review, the Department finds any violation of these Rules or 30-A M.R.S.A. §3428, it must notify the municipality that it has 30 days in which to take enforcement action and must specify what action must be taken in order to achieve compliance. The municipality must file a plan acceptable to the Department, setting forth how it will attain compliance. The Department must notify the municipality that it will review the municipality for compliance, within 60 days of accepting the plan and must conduct that review. Any municipality which fails to file an acceptable plan with the Department or which remains in violation at the expiration of the 60-day period, is subject to a civil penalty of at least \$500. The Department must enforce this Section in any court of competent jurisdiction. Every 30-day period that a municipality remains in violation after review and notification constitutes a separate offense.
- D. Proper administration means:
 - (1) Issuance of permits and collection of fees according to the Rules and procedures established by the Department.
 - (2) Inspection of internal plumbing and subsurface wastewater systems according to the Rules and procedures established by the Department.

- (3) Resolution of Rule violations and correction of malfunctioning disposal systems through use of appropriate enforcement actions. See 30-A M.R.S.A. §4452.
- E. The Department, in consultation with SPO, may, upon documentation of fraud, negligence, misconduct, or incompetence by the LPI, in the performance of the required duties, seek revocation or suspension of the LPI's certification through the District Court, pursuant to 30-A M.R.S.A. §§ 4221(2) and 4451(6).

SECTION 7. REPLACEMENT AND REMOVAL OF LOCAL PLUMBING INSPECTORS

- A. Replacement of Local Plumbing Inspectors. The municipality or the Department in the Unorganized Territories must appoint a replacement plumbing inspector for those LPIs which may have retired, resigned, or otherwise may no longer serve in that capacity. The appointment must be in accordance with Section 3 of these Rules.
- B. Removal of Local Plumbing Inspectors. Appointed LPIs may be removed from office, if the following occurs:
 - (1) Re-certification requirements, as established by SPO, were not completed. An individual LPI not meeting the re-certification requirements must be removed from office by the appointing municipality;
 - (2) Voluntary resignation. The LPI can voluntarily resign from the appointment; or
 - (3) Involuntary removal. An LPI may be removed from an appointment by the municipality/Department, due to disciplinary action or failure to perform duties and powers adequately, due to physical restrictions or incompetence, with due cause shown. If involuntarily removed, the LPI may request an administrative hearing, as provided by the Maine Administrative Procedures Act, 5 M.R.S.A., Chapter 375, by writing to the Department within 20 days of removal from appointment.
- C. Notification. Written notification of the change and/or dismissal in appointment of the LPI for any of the reasons noted above in Section 7(A) and (B) must be supplied to the Department and SPO within thirty (30) calendar days of the dismissal. Failure to notify the Department within the prescribed time must delay the effective date of the appointment for the replacement LPI. Notification must be made to: Division of Environmental Health, Department of Health and Human Services, 11 State House Station, Augusta, Maine 04333-011.

STATUTORY AUTHORITY: 30-A M.R.S.A. §4201

EFFECTIVE DATE:
August 2, 1986

AMENDED:
October 1, 1988 – filing 88-348

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 5, 1996

AMENDED:

October 1, 1998 – filing 98-393

NON-SUBSTANTIVE CORRECTIONS:

November 24, 1998; §1(G, K)

AMENDED:

October 1, 2002 – filing 2002-278; §7(C)

January 18, 2011 – filing 2011-6