

RULES FOR SITE EVALUATORS OF SUBSURFACE WASTEWATER DISPOSAL SYSTEMS

10-144 CMR 245

SUMMARY

These rules describe the administration,
examination and licensing requirements
for persons who perform
subsurface wastewater disposal evaluations
for the purpose of designing onsite
subsurface wastewater disposal systems.

BASIS STATEMENT: These Rules provide
minimum State requirements for
administration, examination and licensing
for persons who design onsite subsurface
wastewater disposal systems to assure
environmental sanitation, public health, and
safety. These Rules are intended to
complement municipal planning, zoning,
and land use control.

EFFECTIVE DATE: June 1, 2006

AUTHORITY: Title 22 MRSA § 42

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**10-144 DEPARTMENT OF HEALTH AND HUMAN SERVICES
MAINE CENTER FOR DISEASE CONTROL & PREVENTION
DIVISION OF ENVIRONMENTAL HEALTH**

**Chapter 245: RULES FOR SITE EVALUATORS OF SUBSURFACE WASTEWATER
DISPOSAL SYSTEMS**

Summary: These rules describe the administration, examination and licensing requirements for persons who perform subsurface wastewater disposal evaluations.

100. Definitions

- A. **Code.** Subsurface Wastewater Disposal Rules.
- B. **Department.** The Department of Health and Human Services.
- C. **Disposal Systems.** Subsurface Wastewater Disposal as defined in Title 30-A MRSA, Sec. 4201, sub-sec. 5.
- D. **Disposal System Evaluation (Evaluation).** The service of investigating, evaluating, and reporting soil and site conditions pertinent to subsurface wastewater disposal and the design of a disposal system which will conform to the Code.
- E. **Professional Development Hour.** A contact hour (50 minutes or more) which is part of a formal program designed to increase a participant's knowledge of the site evaluation process including, but not limited to, soils identification, field data collection and analysis, rule interpretation and application, system design, manual or computer aided drafting techniques, system construction techniques, system inspection techniques, and programs relating to the legal and ethical practice of the profession of Site Evaluation.
- F. **Site Evaluator.** Any person licensed under these rules.
- G. **Rules.** The Rules for Site Evaluators of Subsurface Wastewater Disposal Systems.

200. Code of Ethics

Summary: Whereas the Site Evaluators' Licensing Program was established to ensure that Site Evaluators have and hold high standards in their practice, the Department has promulgated this Code of Ethics to assist in the protection of the public welfare and to safeguard life, health, property, and environment in the practices of Site Evaluation. Each Site Evaluator is expected to place these protections and safeguards first in their consideration when practicing their profession. The Code sets forth the principles and practices necessary for the ethical conduct of Site Evaluators.

A. General Principles

1. When the profession of site evaluation is practiced, it requires professional ethical conduct and professional responsibility as well as scientific knowledge on the part of the practitioner.
2. A site evaluator shall be guided by the highest standards of ethics, personal honor, and professional conduct.

B. Relations of Site Evaluator to the Public

1. A site evaluator shall avoid and discourage sensational, exaggerated and unwarranted statements regarding their work or the product of their work.
2. A site evaluator shall not knowingly permit the publication of his or her reports, maps or other documents for any unsound or illegitimate undertaking.
3. A site evaluator having or anticipating having a beneficial interest in a property on which the site evaluator is reporting shall state in the report the existence of such interest or future interest.
4. A site evaluator having a beneficial interest in a company or concern that sells or distributes proprietary devices on which the site evaluator is reporting shall state in the report the existence of such interest.
5. A site evaluator shall not give a professional opinion or submit a report without being as thoroughly informed as what might be reasonably expected, considering the purpose for which the opinion or report is requested.
6. A site evaluator shall not engage in false or deceptive advertising, or make false, misleading or deceptive representations or claims in regard to the profession of site evaluation or in regards to others in the practice of the profession of site evaluation, or which concern his or her own professional qualifications or abilities.
7. A site evaluator shall not make a false statement or issue false information even though directed to do so by an employer or client.

C. Relation of Site Evaluators to Employer and Client

1. A site evaluator shall protect, to the fullest possible extent, the interest of his or her employer or client so far as is consistent with the law and the site evaluator's professional obligations and ethics.
2. A site evaluator who finds that his or her obligations to an employer or client conflict with his or her professional standards or ethics shall have such objectionable employment conditions corrected or terminate his/her client business.

3. A site evaluator shall not use, directly or indirectly, any employer's or client's information in any way which is competitive, adverse or detrimental to the interest of that employer or client.
4. A site evaluator retained by one client shall not accept work from a second client without the written consent of both clients', if the interest of the two clients are conflicting.
5. A site evaluator who has made an investigation for an employer or client shall not seek to profit economically from the information gained, unless written permission to do so is granted, or until it is clear that there can no longer be a conflict of interest with the original employer or client.
6. A site evaluator shall not divulge information given or obtained in confidence.
7. A site evaluator shall engage, or advise an employer or client to engage and cooperate with, other experts and specialists whenever the employer's or client's interest would be best served by such service.
8. A site evaluator shall not accept referral fees from another professional person from whom she or he is referred; however, nothing herein shall prohibit a licensee from being compensated for consultation.
9. A site evaluator shall issue professional advice primarily within the site evaluator's expertise. An employer or client shall be notified if any professional advice outside the site evaluator's expertise is needed or required.
10. A site evaluator shall not affix their signatures to any document dealing with subject matter in which they lack competence and are not duly licensed.

D. Relations of Site Evaluators to Each Other

1. A site evaluator shall not falsely or maliciously attempt to injure the reputation or business of another.
2. A site evaluator shall give credit for work done by others and shall refrain from plagiarism in oral and written communications and shall not knowingly accept credit for work performed by another.
3. A site evaluator who is an employee shall not use his or her employer's resources for private gain without the prior knowledge and consent of his or her employer.
4. A site evaluator shall cooperate with others in the profession and encourage the ethical dissemination of site evaluator knowledge.

E. Duty to the Profession of Site Evaluator

1. Every site evaluator shall seek to discourage the licensure of those who have not followed these standards of ethics, or who do not have the required education and experience.

2. It shall be the duty and professional responsibility of a site evaluator not only to uphold these standards of ethics by their conduct and example but to also encourage and advise other site evaluators to adhere to the ethical standards.

300. Application Procedure

- A. A request for licensure as a Site Evaluator shall be on an application form furnished by the Department and requires the following information:
 1. Educational background with a description of any completed courses pertaining to soil evaluation or subsurface wastewater disposal.
 2. Work experience involving soil investigation or subsurface wastewater treatment design.
 3. Three (3) references shall be submitted by persons who have a professional knowledge of the applicant's work, one of which shall be a Maine Licensed Site Evaluator.
- B. An application fee of twenty-five (25) dollars shall be submitted with the application and is non-refundable. Checks shall be made payable to Treasurer of State.
- C. Applicants for licensure shall be notified in writing by the Department of the status of their application, and, if appropriate, advised of the next scheduled written and field exam dates.

400. Methods of Qualification

- A. Education
 1. Be a graduate from an accredited college or university with an undergraduate degree in engineering, geology, pedology, or similar discipline.
 2. Have twelve (12) months or more of work experience directly involved in the practice of site evaluation or which relates to the practice of site evaluation; or
- B. Experience
 1. Be a high school graduate or equivalent.
 2. Have four (4) years or more of work experience directly involved in the practice of site evaluation or which relates to the practice of site evaluation.

500. Examinations

- A. Only qualified persons will be admitted to the examination.

- B.** Examinations shall be held on dates and places as determined by the Department, but in no case shall the Department hold less than one [1] examination per calendar year.
- C.** The examination consists of written and field portions which focus on the principles and practices of Site Evaluation.

 - 1.** The written portion will test the applicant's knowledge of soils and familiarity with the Code and will consist of three parts: 1) Rule requirements, 2) Soils, and 3) System Design. A copy of the Code may be used as a reference during the examination. The fee for the written portion of the exam is \$25, payable prior to each exam session.
 - 2.** The field portion will test the applicant's ability to identify soils with regards to parent material, textural classification, drainage conditions, and depth to limiting factors in accordance with the Code. The fee for the field portion of the exam is \$75, payable prior to each exam session.
- D.** The passing grade for each of the three parts of the written exam shall be a score of seventy (70) percent, unscaled. The passing grade for the field portion shall be a score of seventy (70) percent unscaled.
- E.** Applicants failing two or more sections of the written exam must re-take the complete examination at the next scheduled date. Applicants failing one section of the written exam may re-take the failed section at a date scheduled by the Department. An applicant who fails to pass a failed section after two tries must re-take the complete written examination. An applicant who passes either the written or field portion of the exam, but fails the other portion, must take the entire exam again, unless the applicant successfully passes the failed portion within twenty-four (24) months.

600. Licensure

- A.** The Department shall issue a license to an applicant who passes both portions of the examination.
- B.** Licenses shall be renewed the first day of March of each odd numbered year. The licensee shall return an address correction card provided by the Department, licensing fee, and beginning with March 1, 2009 acknowledge by signature on the card the total number of professional development hours completed during the previous license period,.
- C.** A Site Evaluator who allows a license to lapse may renew it any time during the following two (2) year period, provided he or she complies with the requirements of Section 600.B. Failure to renew a license after the two (2) year grace period shall require a re-examination.
- D.** A Site Evaluator shall not perform site evaluations with an expired license.
- E.** The license fee is one hundred dollars [\$100] for a two [2] year period. Make checks payable to Treasurer of State.

- F. Beginning with the 2007-2009 licensing period, each licensee shall earn a minimum of twelve {12} professional development hours within each license period in order to obtain license renewal.

700. Conduct

- A. The Site Evaluator shall be objective, accurate and truthful in all reports, statements, and testimony.
- B. All information required by the Code and/or any other laws or ordinances regarding disposal systems or requested as part of a Departmental project review shall be included in reports, statements or testimony submitted by the Evaluator.

800. Complaints and Investigations

- A. A person who alleges charges of fraud, deceit, negligence, incompetence or violation of the following Rules against any Site Evaluator shall do so in writing to the Department.

CMR 241 – Maine Subsurface Wastewater Disposal Rules

CMR 242 – Rules for Conversion of Seasonal Dwelling Units into Year-round Residences in the Shoreland Zone

CMR 243 – Minimum Lot Size Rules

CMR 245 – Rules for Site Evaluators of Subsurface Wastewater Disposal Systems

- B. The Department shall investigate all written charges, and all appearances of fraud, deceit, negligence, incompetence or violation of the abovementioned Rules arising from Departmental project reviews.
- C. Complaint Response
 1. Scope: This Section governs the means of responding to complaints made to or by the Department pertaining to allegations of fraud, deceit, negligence, incompetence or violation of these Rules against any Site Evaluator.
 2. Complainant: For the purpose of this Section, the “complainant” is any party lodging a written complaint with the Department, including the Department, in regard to the conduct of a Site Evaluator, or a person lawfully acting on the behalf of such person(s).
 3. Settlement: Parties to a Formal Conference or a Formal Administrative Hearing may negotiate a mutually acceptable settlement at any point during the proceedings.
 4. General: The Department shall inform the complainant and the Site Evaluator in writing of its findings and conclusions resulting from its investigation of a complaint, and its intention, if any, to amend, modify, or refuse to issue or renew

the Site Evaluator's license in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter V.

D. Progressive Discipline Procedure

1. General: The complaint investigation procedure shall consist of four (4) levels of investigation. It shall proceed in the following sequence:

Step 1: An informal conference between the Department and the Site Evaluator;

Step 2: A formal conference between the complainant, the Department and the Site Evaluator;

Step 3: A formal administrative hearing; and

Step 4: Revocation or suspension of a Site Evaluator's license through District Court pursuant to 22 MRSA, §42(3-A).

E. Basis for Informal Conference

1. An informal conference may be scheduled upon receipt of a written complaint or upon the Department's initiative. A person who alleges charges of fraud, deceit, negligence, incompetence or violation of the Rules against any Site Evaluator shall do so in writing and the complaint shall be filed with the Department. The complaint shall include the following:
 - A. Intention: The intended/ requested action; and
 - B. Reason(s): The reasons that support the intended action, including but not limited to: (1) violation of the law or rules; (2) misapplication of the law or rules; and/or (3) factual mistake that is likely to affect the decision.
2. Limiting the issues: Before the informal conference, the complainant shall raise all issues upon which he or she bases the complaint; the Department may raise additional issues.

F. Informal Conference

1. Intent: This section sets forth the procedures to be used for informal conferences in response to complaints received by the Department, or investigations conducted pursuant to the Department's initiative.
2. Written notice: The Department shall forward a written notice for an informal conference to the Site Evaluator by first class mail. Failure to appear at the conference without just cause shall not be cause for a delay in action on the part of the Department.
3. Scheduling the conference: As soon as practicable, the Department shall notify the Site Evaluator of the date, time, and place of the informal conference.

4. Informal conference officer: The informal conference will be conducted by the Director of the Subsurface Wastewater Program of the Division of Environmental Health, or his or her designee.
5. Informal conference location: The Conference Officer shall schedule a conference in Augusta, Maine. If the complainant resides greater than 75 miles away from Augusta, the conference may be located at a mutual DHHS office location or via telephone conference call.
6. Representation: At the informal conference, the Site Evaluator may be represented by legal counsel. The Site Evaluator may bring other interested persons to the informal conference provided the Department is informed in advance.
7. Written decision: Following the informal conference, the Director of the Subsurface Wastewater Program shall issue a written decision to the Site Evaluator which shall specify the Department's findings and conclusions resulting from its investigation and shall provide a copy of that decision to the complainant.

G. Basis for Formal Conference

1. A formal conference may be scheduled upon receipt of a written complaint or upon the Department's initiative. A person who alleges charges of fraud, deceit, negligence, incompetence or violation of the Rules against any Site Evaluator shall do so in writing with the Department. The complaint shall include the following:
 - A. Intention: The intended/ requested action; and
 - B. Reason(s): The reasons that support the intended action, including but not limited to: (1) violation of the law or rules; (2) misapplication of the law or rules; and/or (3) factual mistake that is likely to affect the decision.
2. Limiting the issues: Before the formal conference, the complainant shall raise all issues upon which he or she bases the complaint; the Department may raise additional issues.

H. Formal Conference

1. Intent: This section sets forth the procedures to be used for formal conferences in response to complaints received by the Department, or investigations conducted pursuant to the Department's initiative.
2. Written notice: The Department shall forward a written notice for a formal conference to the Site Evaluator by first class mail. Failure to appear at the conference without just cause shall not be cause for a delay in action on the part of the Department.

3. Scheduling the conference: As soon as practicable, the Department shall notify the Site Evaluator and the complainant of the date, time, and place of the formal conference.
4. Formal conference officer: The formal conference will be conducted by the Director of the Subsurface Wastewater Program of the Division of Environmental Health, or his or her designee.
5. Formal conference location: The Conference Officer shall schedule a conference in Augusta, Maine. If the complainant resides greater than 75 miles away from Augusta, the conference may be located at a mutual DHHS office location.
6. Representation: At the formal conference, the Site Evaluator and the complainant may be represented by legal counsel. The Site Evaluator or the complainant may bring other interested persons to the formal conference provided the Department is informed in advance.
7. Written decision: Following the formal conference, the Director of the Subsurface Wastewater Program shall issue a written decision to the Site Evaluator which shall specify its findings and conclusions resulting from its investigation and shall provide a copy of that decision to the complainant.

I. Formal Administrative Hearing

If the complainant is dissatisfied with the written decision of the formal conference, the complainant may request an administrative hearing pursuant to the Maine Administrative Procedure Act, Title 5 M.R.S.A. Chapter 375, Subchapter IV., and the Department of Health and Human Services' Administrative Hearings Regulation, 10-144 CMR Ch. 1.

900. Suspension and/or Revocation

Revocation or suspension of a Site Evaluator's license shall be initiated after sufficient documentation of misconduct has been obtained by the Department. The Department shall pursue either emergency or permanent license suspensions or revocations pursuant to 4 M.R.S.A. §184(6), 5 M.R.S.A. §1004, 5 M.R.S.A. §10051 and 22 M.R.S.A. § 42 (3-A).

1000. Roster of Licensees

A list of Site Evaluators shall be maintained by the Department, and made available to the public. Site Evaluators shall advise the Department of changes in their personal contact information as it relates to the preparation of this list.

1100. Public Hearing

Public hearings shall be held as prescribed by the Administrative Procedure Act, Title 5 MRSA Chapter 375, Subchapter II for the purpose of considering changes to these Rules.

1200. Severability Clause

The provisions of these Rules are severable. If any provision of the Rules is invalid, or if the application of the Rules to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

STATUTORY AUTHORITY: 22 MRSA Section 42 Sub-section 3A

EFFECTIVE DATE:

September 1, 1979

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March 1, 1980

October 1, 1988

EFFECTIVE DATE

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