



*Department of Health
and Human Services*

*Maine People Living
Safe, Healthy and Productive Lives*

Department of Health and Human Services
Maine Center for Disease Control and Prevention
286 Water Street
11 State House Station
Augusta, Maine 04333-0011
Tel: (207) 287-2070; Fax: (207) 287-4172
TTY: 1-800-606-0215

BOARD OF LICENSURE OF WATER SYSTEM OPERATORS

**PROCEDURE FOR FILING A COMPLAINT
AGAINST A WATER SYSTEM OPERATOR**

Date April 1, 2004
(revised 1-20-2011)

PURPOSE: To assure complaints concerning operator activity are addressed to the Board in a consistent manner.

SCOPE: The jurisdiction of the Board of Licensure of Water System Operators (Board) extends to those persons either licensed or seeking licensure from the Board.

ORIGINATOR/OWNER: Teresa Trott, Operator Certification Officer, Board Policy

DEFINITIONS:

RESPONSIBILITIES: Complainant – submits clear issues and participates in the process and return, respond appropriately to process
Board Clerk – maintain records, Form availability, and correspondence
Operator Licensing Officer – investigation and reporting of the complaint and findings.
Board- review of the complaint, action determination
Attorney General – administrative procedures as necessary

AUTHORITY:

- The Board has authority to suspend or revoke licensure of a water system operator determined to have committed fraud or deception; to have been negligent in the reasonable care, judgment, application or knowledge in the performance of his or her duties, or to have been determined either incompetent or unable to properly perform the duties of a water treatment plant operator.
- The Board has authority to either refuse to issue or suspend the license of an operator determined to have committed the following described conduct in this Section, or to have committed conduct described in 22 M.R.S.A. §2625. Conduct hereinafter described is not meant to be all-inclusive and other acts of negligence could result in enforcement actions against an operator's license.

Title: **WOB PROCEDURE FOR FILING A COMPLAINT AGAINST A WATER SYSTEM OPERATOR**

SOP ID:
Revision Number:
Date of Revision:
Maine Drinking Water Program

Prepared By: T.Trott
Date: 1-20-2011

Accepted By:
Date:

Offenses Providing a Basis for Enforcement Action

Falsification of Records and or Credentials

The Operator intentionally, knowingly or recklessly provides such false statements or credentials on required records or applications, including but not limited to Water Quality Monitoring Reports, Operation and Maintenance Reports, Safety Documentation, Educational Credentials, or Job Experience.

Selective Sampling or Sample Tampering

The Operator intentionally or knowingly alters a sampling period or tampers with the collection, preparation, or analysis of a sample to yield results not representative of actual water quality.

Dangerous Acts or Failure to Report Environmental Damage

The Operator fails to provide a safe, healthful workplace or he/she performs or supervises the performance of activities without the use of proper safety equipment or training. Fails to operate the water system or equipment in a safe responsible manner, to prevent harm to the environment, public, property, or fellow workers. Fails to document or report environmental or safety violations or incidents.

False or Misleading Statements

The Operator intentionally or knowingly makes false or misleading statements (verbal or written) relative to the operation or condition of the water system or fails to submit required operational documentation in a timely manner.

Failure to Utilize Proper Process Control

The Operator fails to use professional standards of process control to properly operate the water system.

Lack of Maintenance

The Operator fails to properly maintain the water system, facilities and/or equipment despite having the resources and means for him/her to do so.

Violating Statute or Rule

The Operator intentionally or knowingly violates a federal, state or local regulatory statute or rule relating to water system operation.

Commission of a Crime

The Operator either commits or attempts to commit a crime which may affect the water utility including, but not limited to: acts of sabotage, theft of water, finances, equipment, materials or supplies.

Coercion, Bribery, or Extortion

The Operator forces another person to undertake an inappropriate or illegal act relating to the water system. Accepts or offers bribes related to the ownership status, operation or management of the water system, or uses his/her position to extort money or services from others.

Title:
SOP ID:
Revision Number:
Date of Revision:
Maine Drinking Water Program

Prepared By:
Date:

Accepted By:
Date:

PROCEDURE:

All procedures are subject to applicable confidentiality laws.

1. Complainant submits complaint to the Water Operator Board on attached form, stating the infraction, date(s) of infraction and possible or actual public health implications.
2. Board clerk records the complaint, gives it a record number.
3. Board clerk informs the Operator Licensing Officer, Board and Assistant Attorney General representing the Board.
4. Board clerk sends Complainant written acknowledgement of the filed complaint
5. Board Clerk forwards a copy of the complaint to the Licensee with notice of an investigation.
6. Licensee is asked to respond within 30 days.
7. Board Clerk receives copy of Licensee response and forwards response to Complainant and Board
8. Complainant is asked to respond within 10 days
9. Complainant reply shared with Licensee and Board
10. Notice of hearing date and time is issued to Complainant and Licensee.

Investigation

Licensing Officer may investigate beyond flow of correspondence to and from clerk. The Board may also employ or contract with a specialized investigator who reports to the Licensing Officer. On occasion an investigator from the Attorney General's office may be engaged. The licensing officer or other investigator as part of an expanded investigation, may personally contact the Complainant and Licensee. All correspondence generated by and to the Licensing Officer for the purposes of investigation is copied to the Complainant, Licensee and Board.

Presentation to the Board

The complaint will be scheduled for presentation to the Board when the investigation is complete. How quickly the presentation can be scheduled depends on the complexity of the investigation, the Board's overall workload, the number of other pending investigations and the frequency which the Board meets.

The Licensing Officer makes the presentation in open session at a regular meeting of the Board. Following the presentation of recommendations, the Licensing Officer may not participate in the Board's deliberations or vote, but may respond to Board questions regarding the complaint. The Complainant or Licensee may be present during the presentation to the Board but may not address the Board during the hearing unless requested to do so by the Board.

Recommendation of Licensing Officer

The Licensing Officer or the Assistant Attorney General may contact the Complainant prior to the meeting to discuss the recommendation that the Licensing Officer intends to present to the Board. The Board is not bound to accept the recommendation of its Licensing Officer. The Board may request the Licensing Officer investigate the matter further and present the complaint again at a later date. The Licensing Officer will recommend one of the following courses of action:

Dismissal - If there is insufficient evidence to determine whether or not a violation of the Board's statute or rules occurred, if the Licensee's conduct does not appear to constitute a violation of the

Title:
SOP ID:
Revision Number:
Date of Revision:
Maine Drinking Water Program

Prepared By:
Date:

Accepted By:
Date:

Board's statute or rules, or if the Licensing Officer believes that no violation occurred, the Licensing Officer may recommend dismissal of the complaint. The Complainant cannot appeal a dismissal. However, the Board has authority to reopen a prior dismissal upon the receipt of new evidence which could not have been discovered earlier with the exercise of due diligence.

Letter of Reprimand –The Licensing Officer may draft a letter of Reprimand for Board approval when, in the determination of the Licensing Officer, the offense(s) are best reviewed and approached through correspondence directly from the Board. This may take place at step 2 or step 9 above. A letter of reprimand is appropriate when sufficient evidence is found and the licensee has been appropriately reprimanded through the Drinking Water Program violation/non-compliance process and further time spent on the offense is deemed unnecessary. The Complainant cannot appeal a the Letter of Reprimand decision. However, the Board has authority to use this record in future complaints received as a pattern of practice of the licensee.

Board Conference - When it appears that a Licensee may have violated the Board's statutes or rules, the Licensing Officer may recommend that the Board hold an Board conference. If the Board accepts this recommendation, the Licensee is afforded the opportunity to come before the Board in an effort to resolve the complaint. The goal of an Board conference is negotiation of a consent agreement with the Licensee. (see below) If the Board conference is unsuccessful, the matter may be scheduled for a formal adjudicatory proceeding. Statements issued in a board conference are confidential and cannot be used against a licensee at a later time. (see below)

Consent Agreement - If a settlement can be reached which is acceptable to the Board, the settlement may be referred to the Attorney General's office for legal review and comment and to the Licensee, the terms of which are set forth in a written consent agreement. A consent agreement may be recommended by the Licensing Officer directly, or may be reached during the course of the board conference described above. A consent agreement should identify any and all violations, which occurred, and may be referred to in the future if the Licensee commits further violations of the Board's statute or rules. Consent agreements are a matter of public record.

Formal Adjudicatory Proceeding - If the Licensing Officer believes that the Licensee has violated the Board's statutes or rules, and that disciplinary action may be warranted, the Licensing Officer may request the Board to schedule a formal adjudicatory proceeding. The Licensing Officer may ask the Complainant to testify against the Licensee at the hearing. The Licensing Officer may recommend the Board either suspend or revoke an operator's license. (An adjudicatory proceeding is an adversarial hearing that is open to the public. A formal notice containing specific allegations against the licensee commences the proceeding. The notice is usually sent at least 30 days prior to the hearing date. The Assistant Attorney General represents the Licensing Officer; private counsel may represent the Licensee if the Licensee so chooses. The Board decides the case on the basis of the oral testimony and documentary evidence presented by the Licensing Officer, the Licensee and their respective witnesses. All witnesses are sworn, and all witnesses are subject to cross-examination. The Board deliberates and votes in public at the conclusion of the hearing, and later prepares a written decision. The Licensee can appeal the Board's decision to Superior Court. The Licensing Officer and the Complainant have no right to appeal an adverse decision.)

Title:
SOP ID:
Revision Number:
Date of Revision:
Maine Drinking Water Program

Prepared By:
Date:

Accepted By:
Date:

ASSOCIATED DOCUMENTS:

Rules relating to the Licensure of Water System Operators
Complaint form –attached as Appendix A.

SUPERCEDED DOCUMENTS:

Procedure for filing a Complaint against a Water System Operator April 2004

RETENTION:

1. This document is retained per the DWP Documentation Control Procedure.
2. Deregulation records are retained per the DWP Record Control Procedure
3. The document refers to Board of Licensure of Water System Operators and is revised and accepted by the Board.

REVISION LOG

Section	Page	Rev.	Date	Description Of Change	Approved by:
		1	1-20-2011	Formatted to fit policy template, added letter of reprimand.	Board 1-20-2011

Title:
SOP ID:
Revision Number:
Date of Revision:
Maine Drinking Water Program

Prepared By:
Date:

Accepted By:
Date: