

# 2010 Site Evaluator Workshop

March 26<sup>th</sup> and April 16<sup>th</sup>



*Maine Center for Disease  
Control and Prevention*

*An Office of the  
Department of Health and Human Services*

*John E. Baldacci, Governor*

*Brenda M. Harvey, Commissioner*

# Introduction

## Workshop Topics

### Professional Ethics for Site Evaluators

### Code of Ethics per the S.E. Rules (144 CMR 245)

#### Summary

#### General Principles

#### Relations of Site Evaluator to the Public

#### Relations of Site Evaluator to Employer and Client

#### Relations of Site Evaluator to Each Other

#### Duty to the Profession of Site Evaluator

# Introduction

## Workshop Topics

### Technical Issues for Site Evaluators

**Engineered Systems and Multi-User Systems**

**Calculation of Fill and Fill Extensions**

**Easements**

**Filled Sites**

**On-Site Monitoring of Seasonal High Groundwater**

# Introduction

## Workshop Presenters

### Professional & Ethical Topics

**Knud Hermansen, Ph.D.**

- **Professional Land Surveyor**
- **Attorney at Law**
- **Professional Engineer**

### Technical Topics

**Douglas Coombs, State Site Evaluator**

# **RULES FOR SITE EVALUATORS OF SUBSURFACE WASTEWATER DISPOSAL SYSTEMS**

**(144 CMR 245)**

## **200. Code of Ethics**



**Maine Department of Health and Human Services  
Division of Environmental Health  
Subsurface Wastewater Program**

# Ethics in Practice

## Practical Situations for Discussion

1. A site evaluator is aware that another site evaluator goes to Florida for the winter months. A contractor asks the first site evaluator to complete another design for a property that has an HHE-200 form dated January 15, 2010 and signed by site evaluator that was in Florida. The first site evaluator was told by the contractor that the first site evaluation and necessary paperwork were performed by the daughter of the site evaluator that was in Florida and who is not licensed as a site evaluator.
2. A site evaluator purchases a tract of undeveloped land. The site evaluator plans to develop the tract into four house lots. The site evaluator completes passing preliminary soils reports for the four lots for the property. The soil conditions on the site are marginal and another Site Evaluator had told the previous owner the site could not be developed.

## Practical Situations for Discussion

3. Three years ago a site evaluator did an extensive evaluation of a site for the placement of on-site septic systems. Unfortunately, the developer went bankrupt and the site was not developed. The site evaluator was paid \$1,500 and owed another \$1,000 by the developer that was never paid. Recently, the site evaluator received a call from a new developer who bought the property and wants to go ahead with the development plans. The site evaluator can complete the designs necessary for the development to proceed for less than \$400 if the site evaluator charges their typical hourly rate. Another site evaluator would have to charge \$3500 for the same services since other evaluators have not done the site evaluations. The site evaluator can ethically charge what fee (i.e., \$400, \$1,400, \$3500)? Does the Site Evaluator charge for a complete design or give a discount for the work already completed?

## Practical Situations for Discussion

4. A site evaluator is on the client's vacant lot checking the soil conditions. The neighbor comes out of their house and starts screaming the lot should not be developed at the site evaluator. The neighbor calls the police who detain the site evaluator for over an hour until the neighbor's claims are worked out (the neighbor was wrong). There are several locations on the vacant lot to locate a septic system. The site evaluator locates the system right next to the neighbor's boundary as close to the neighbor's house as possible.

5. A landowner and site evaluator agrees to a lump sum fee of \$400 for site evaluation. In the course of performing the site evaluation, the client asks the site evaluator to flag a wetland within 100' of the septic system. After the services are complete, the site evaluator submits a bill for \$400 for the site evaluation and \$200 for the flagging of the wetland. The client feels the \$600 bill is extraordinarily high and should have been part of the site evaluation since the setback to the wetland had to be checked.

## Practical Situations for Discussion

6. A client seeks site evaluation services. Site evaluator-1 is aware that another site evaluator (site evaluator -2) has examined the property and told the client that an on-site system cannot be placed on the site. The client would be willing to double site evaluator-1's fee if a system can be located on the client's property.

7. At a local meeting of several site evaluators they all complain about the current lack of work. They then all agree to not charge less than a certain amount for site evaluations within the three counties that they work.

## Practical Situations for Discussion

8. A single practitioner site evaluator is aware that another site evaluator that owns a large firm and employs several other licensed site evaluators and apprentices failed to discover several errors by a site evaluator and apprentice employed by the large firm resulting in costly remedial work by the client later. At a recent Rotary meeting, a Rotary friend informs the site evaluator that last week he had hired the large firm to provide services on his behalf. Should the site evaluator tell the Rotary member that the other site evaluator that owns the large firm doesn't check his/her employee's work and often allows problems to go undiscovered?

The site evaluator that owns the large firm signs all of HHE-200 forms completed by the firm even if the work is performed by other site evaluators employed by the firm.

## Practical Situations for Discussion

9. Can a site evaluator perform a preliminary soils test on a lot with payment contingent upon the preliminary soil test leading to a request for a complete site evaluation?
  
10. The site evaluator who is also the local plumbing inspector has been asked to inspect the installation performed by a contractor. The site evaluator finds the installation meets specifications but notices that the contractor is violating several OSHA safety standards.

## Practical Situations for Discussion

11. A company hires a site evaluator to prepare preliminary soils reports for the placement of septic systems on lots for a proposed residential subdivision . The site evaluator recommends against going ahead with the project because of poor soil conditions. The Board of Directors for the company thanks the site evaluator and pays for the services. The company passes on buying the land. Later, the site evaluator discovers another site evaluator passed the site and permits have been granted allowing the project to begin. The site evaluator hears that the company that passed on the site may sue for damages.

- Using the previous facts, the original site evaluator first turned down the project is now asked to do a site evaluation on a lot in the now approved development and goes back once again and fails several lots in the project.

## Practical Situations for Discussion

12. A site evaluator has a part-time position as a Local Plumbing Inspector in the town that he lives. The site evaluator is asked by a client in another town to come look at site for a site evaluation, the site evaluator discovers the client has erected a building and is living in it without a building permit and permitted HHE-200 form. What are the site evaluator's ethical obligations?

13. There is a site evaluator that does a great deal of work in a town – so much so that this “inside” site evaluator knows the town officials very well. The “inside” site evaluator has been asked by this town’s planning board to do a peer review of another site evaluator’s work that was submitted to the town’s planning board. The “outside” site evaluator that is being reviewed believes that the “inside” site evaluator doing the peer review is making an issue of parts of the “outside” site evaluator’s design that “inside” site evaluator is often remiss on and never gets called on when “inside” site evaluator does his work in that town.

## Practical Situations for Discussion

14. A client has purchased a small lakeside lot between two other undeveloped small lots. The client has placed his well next to the easterly boundary and wants the site evaluator to locate his septic field next to his westerly boundary. The soil and its profile would allow a septic field along the westerly boundary. However, the soils are better near the road and a disposal field could be located in this area and not restrict development on the neighbor's lot should that owner ever decide to develop the neighboring lot.

15. A landowner approaches a site evaluator with a HHE-200 form dated prior August 1, 2009, completed by another site evaluator who is known to do very good work but is in Florida for the winter. When the landowner went to get a permit from the local plumbing inspector the local plumbing inspector demanded the landowner get an updated HHE-200 before he would issue a permit (citing a recent Department advisory ruling requiring any HHE-200 dated prior to August 1, 2009 Rules revision be reviewed prior to permitting) . The landowner assures the site evaluator that nothing has changed and would like the site evaluator to simply take the information on the old form and put it on a new form and sign the form because he needs to start the project now.

## Practical Situations for Discussion

16. A site evaluator is called by a camp owner to perform a site evaluation for an existing seasonal two bedroom camp. It is a small lot and the system has been in place since the 1960's. The system is clearly malfunctioning. The soils and setbacks to site features would never allow a new system but a replacement system is allowed. Three months after performing the necessary services and completing the forms for replacement of the existing septic system, the site evaluator goes by the camp and is surprised to see the old camp torn down and a large residential dwelling being built on the neighboring lot. The site evaluator stops and talks to the building contractor and discovers the camp owner bought the neighboring lot six months ago and was issued a building permit for a new full-time use two bedroom residence and is using the septic system that he had designed for the old camp with several replacement system variances.

## Practical Situations for Discussion

17. A site evaluator conducts a site evaluation and provides an HHE-200 form. Three weeks later the site evaluator stops by to pick up a check from the landowner for his previous services. When the site evaluator stops by, he discovers the landowner has rented a backhoe and is constructing the septic system himself. It is apparent to the site evaluator that the system is not being built to the design and that the landowner is violating several construction procedures that could cause the system to prematurely fail. The site evaluator also knows that the local plumbing inspector seldom checks on a system as it is being constructed.

18. Referring to the previous fact pattern would the site evaluator react differently if the site evaluator knew the landowner was going to convey the property as a spec property?

## Practical Situations for Discussion

19. A site evaluator prepares a proposal and bid for several site evaluations for a subdivision. A competitor is selected based on the competitor's low bid. In the past the site evaluator is aware the competitor often provides substandard HHE-200 forms. The competitor is used for the project. Later, after the project begins, the project's owner contacts the site evaluator and admits to some concerns with the competitor and asks if the site evaluator would be willing to step in and finish the development at the same price as the competitor.

20. A partnership is formed between two people. One is a licensed site evaluator (Smith) and the other is not licensed (Jones). They have elected to name the partnership using their last names. An outdoor sign and letterhead are prepared.

- a. Is there any problem with "Smith and Jones, Site Evaluation Services?"
- b. Is there any problem with "Smith and Jones, Site Evaluation Professionals?"
- c. Is there any problem with "Smith and Jones, Site Evaluators?"

## Practical Situations for Discussion

21. A potential client asks a site evaluator to explain their site evaluations are superior to a competitor's site evaluations. What is an acceptable response?
  
22. A site evaluator has created a new innovative filtration system for an on-site system. It is a little more expensive than the current systems but the site evaluator believes it is worth the extra cost. However, the site evaluator is well aware that other competitors do not believe the innovations are worth the extra cost. The site evaluator wants to incorporate the innovations in the site evaluator's designs that are provided to clients. What should the site evaluator do?
  
23. You have performed a site evaluation for a landowner and been paid. Two weeks later the landowner calls to ask if you would modify your design to incorporate a newly approved proprietary device. The proprietary device was suggested by the local plumbing inspector. The owner does not want any problems with the LPI. It is your opinion that proprietary device does not work as well as the current design and is also much more expensive.

## Practical Situations for Discussion

24. A site evaluator does a first time site evaluation and HHE-200 form for a lot owner. The landowner gets a permit for the system and a building permit for a house. After construction begins the lot owner calls the site evaluator and informs the site evaluator that the contractor wants to lower the disposal field 12 inches “or so” to eliminate the need for an effluent pump and save the owner \$1200. The contractor then gets on the phone and gives the site evaluator the elevation of the bottom of the bed he needs to eliminate the pump. After hanging up the phone with the landowner and contractor, the site evaluator reviews his original soils log and finds that no limiting factor was found to the bottom of the four foot test pit. The site evaluator based the original design on an elevation 12 inches above the bottom of the test pit. The site evaluator pulls up the documents on the computer, revises the design to locate the bottom of the septic field to the elevation suggested by the contractor. The site evaluator adds a note to the revised HHE-200 form stating “elevations of disposal field by contractor” and sends the revised documents to the landowner.

25. During the company’s Monday morning meeting, your supervisor, a site evaluator, takes credit for some excellent work done by an employee who is absent.

## Practical Situations for Discussion

26. A site evaluator keeps track of his services by location on his computer (improve his marketing). The site evaluator notes that he only gets about 60% of the work in one locality as compared to the surrounding localities. After some investigation he realizes that the local plumbing inspector only recommends two site evaluators (he is not one of them). One site evaluator that the plumbing inspector recommends helped the plumbing inspector in a lawsuit two years ago. The other site evaluator the plumbing inspector recommends is a long time friend of the plumbing inspector.

27. A proprietary device company pays to send you to a national conference that is widely attended by more than 800 people from a broad range of companies. Conference attendees are invited to participate in a drawing for several door prizes. You win two round-trip airline tickets to any destination in the United States. From that point on you stop designing stone beds and only design the proprietary devices that are sold by the company that paid for your trip to national conference.

## Practical Situations for Discussion

28. As part of a site evaluator's business the site evaluator offers wetland delineation services. While performing these services the site evaluator discovers a septic system being built on an adjacent property in an area that clearly lacks the site attributes necessary for the system being built. When the site evaluator queries the contractor installing the system, the contractor shows the site evaluator a design that shows a system design that is located where the system is being built.

29. A site evaluator performs a feasibility study for a client. As part of the study, the site evaluator has mapped several locations that did not have soil conditions that would pass for septic systems in the proposed project area. The municipality wants to hire the site evaluator to map septic suitability in the same area for the municipal GIS.

30. A site evaluator finds passing soil conditions for each lot in a proposed subdivision with very limited soil conditions. The client demands the site evaluator not report to the planning board the test pits that did not meet minimum soil requirements within the their proposed subdivision and only send in the logs that pass.

## Practical Situations for Discussion

31. The site evaluator is giving a presentation at a public hearing on a first time septic system for a client who owns an undeveloped lot in an ecologically sensitive area. The client has opted for the minimally acceptable system in an effort to keep costs constrained. There are systems that have a lower chance of contamination of the environment but are much more expensive. The municipal plumbing inspector is asked at the public hearing if there are other systems that can be used that would be less adverse to the environment. The site evaluator knows that if the answer acknowledges that other systems are available, the municipality will require the much more expensive system.

32. A site evaluator is preparing a septic treatment design for a large development. The site evaluator reads an article in the local newspaper that is very critical of the developer and the shortcuts the developer and professional consultants the developer has hired are taking. The site evaluator writes an op-ed response refuting the article. The site evaluator does not identify herself as the site evaluator on the project.

## Practical Situations for Discussion

33. Five years ago a site evaluator, prior to their licensure as a site evaluator was employed by an environmental engineering and design firm that designed an onsite septic system. At that time the site evaluator did some minor calculations and drafting for the system on behalf of the firm's licensed site evaluator. The system has since failed and the landowner is making legal claims against the site evaluator's former employer. The landowner wants to hire the site evaluator to be an expert witness on the landowner's behalf.

34. A site evaluator places an advertisement in the Bar Harbor Times that states the following:

Need a septic design? Septic system designs provided by a licensed site evaluator. I will find a design that works for your property. A permit is guaranteed or your money back. Call 1-207-555-1212.

## Practical Situations for Discussion

35. A site evaluator places an advertisement in the Portland Herald Press that states the following:

Has your septic system failed? I can provide a design that won't fail or your money back. Call 1-207-555-1212.

36. A site evaluator receives a call from a contractor who is unable to locate the elevation reference point. The site evaluator is working in the area so drives to the construction site. The site evaluator does not remember ever being at the site. When he asks to see the paperwork the site evaluator is shocked to see someone has taken the site evaluator's design from another property and altered the paperwork to make it appear it is for this lot.

## Practical Situations for Discussion

37. A site evaluator investigates a site for a client and finds the site is not suitable for an on-site septic system unless the client spends considerable money. The client decides to cancel plans to build on the site and places the property for sale. Two months later a former client tells the site evaluator he is considering purchasing the property and would like the site evaluator to assess the property for an on-site septic system.

38. Referring to the previous fact pattern. What if the former client had called to tell the site evaluator that he has purchased the property because the landowner had assured the former client that an on-site system could be employed on the site based on the advice of the site evaluator?

## Practical Situations for Discussion

39. A site evaluator is employed by a developer in preparation of a large single family residential subdivision. The developer has spent over a \$100,000 on feasibility, planning, and permitting. During a visit to the site, the site evaluator discovers what appears to be a vernal pool that would significantly alter the current design of the development (and reduce the profits realized from developing the property).

40. Referring to the previous fact pattern. The site evaluator has made known his concerns to the developer who has ignored them to proceed with the development as planned.

41. A contractor who does a lot of septic systems offers to recommend a site evaluator for all his client's site evaluations if the site evaluator will provide a 20% fee reduction for all services performed directly on the contractor's behalf.

## Practical Situations for Discussion

42. A site evaluator is sought by a landowner to review another site evaluator's septic system location and design on the neighboring lot. The landowner does not want a septic system developed on the neighboring lot or at least not anywhere near the landowner's property. After review of the other site evaluator's design, the site evaluator can find nothing obviously at fault. However, the site evaluator does feel that there is room to argue that certain innovative interpretations of the rules or conservative applications of the rules would prevent a septic system and serve his client's interest in preventing development on the neighboring lot. (The site evaluator does not apply these same innovative interpretations or conservative application of the rules when he locates and designs a septic system.)

## Practical Situations for Discussion

43. A site evaluator is in the field doing a site evaluation. As the site evaluator approaches the neighboring lot to find and locate the neighbor's well, the neighbor comes out and tells the site evaluator to "get the hell off my land" and lets his Doberman out of the house. The site evaluator stays away from the neighbor's property but ends up locating the septic field near the neighbor's lot. The neighbor calls to complain that the septic field is located too near his well and threatens to file a complaint against the site evaluator and a lawsuit against the site evaluator and his client.

44. A site evaluator receives a call from a contractor who is unable to locate the elevation reference point. The site evaluator is working in the area so drives to the construction site. The site evaluator does not remember ever being at the site. When he asks to see the paperwork the site evaluator realizes that he did a site evaluation on the wrong lot.

## 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.**

**The Code sets forth the principles and practices necessary for the ethical conduct of Site Evaluators.**

# 200. Code of Ethics

## 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.**

## 200. Code of Ethics

### 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.

## 200. Code of Ethics

### **B. Relations of Site Evaluator to the Public continued:**

- 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.**

## 200. Code of Ethics

### C. Relations of Site Evaluator 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.**

## 200. Code of Ethics

### C. Relations of Site Evaluator to the Public continued:

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.

## 200. Code of Ethics

### **C. Relations of Site Evaluator to the Public continued:**

- 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.**

## 200. Code of Ethics

### **C. Relations of Site Evaluator to the Public continued:**

- 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.**

## 200. Code of Ethics

### 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.

## 200. Code of Ethics

### 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.**