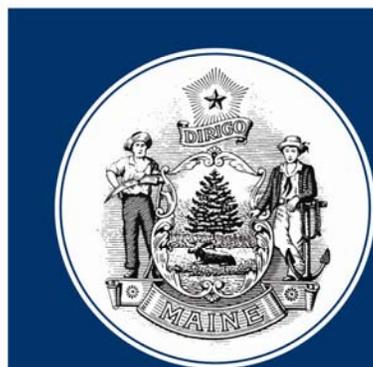


Post Rules Revision Reality

Observations after one year with the new
Subsurface Wastewater Disposal Rules.



*Maine Center for Disease
Control and Prevention*

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

Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Post Rules Revision Reality

Background

As the Rules have been revised over the past 37 years, they had reached a point in the 2009 version in which they contained numerous errors, several omissions, and internal conflicts and contradictory requirements.

The Division of Environmental Health conducted an internal review of the Rules and determined that further revision was necessary, which would entail a significant rewriting.

The Division had several goals for these revisions, notably: to correct errors and inaccuracies, to create a more user-friendly and readable document, and to reflect the Department's statutory responsibilities more plainly.

Post Rules Revision Reality

Major Issues Identified

1. Wetlands/DEP/etc.

2. Usability

3. Internal Consistency and Omissions

4. Inability to Update Without Hearing

Post Rules Revision Reality

Major Issues Identified

1. Wetlands/DEP/etc.

The Rules were not wholly in conformance with other State Rules regulating development adjacent to regulated wetlands and water bodies.

The Rules have been revised to meet DEP, NRPA, Shoreland Zoning, and LURC requirements, so that no additional permitting is needed for the installation of a subsurface wastewater disposal system.

Post Rules Revision Reality

Major Issues Identified

2. Usability

The 2009 version of the Rules was poorly organized, difficult for some to read, and had incorporated some conflicting suggestions from that version's public rulemaking process.

The revised Rules reorganized the Chapters and information more logically by subject area. For example, all of the First Time System requirements are now in one chapter.

Post Rules Revision Reality

Major Issues Identified

3. Internal Consistency and Omissions

The prior Rules were the subject of a Task Force which considered changes to various aspects of the Rules, from 2006 to 2008. The Task Force was comprised of Site Evaluators, Local Plumbing Inspectors, industry professionals (pumpers, etc.), and regulators.

The Task Force was divided into several working groups which considered issues, such as proprietary devices or permitting, in detail.

Post Rules Revision Reality

Major Issues Identified

3. Internal Consistency and Omissions

The Task Force produced 19 position papers on various aspects of the Rules. These position papers were presented to the Division for incorporation into a draft revision of the Rules.

The prior Rules became effective in August of 2009, and problems surfaced very quickly. Most of the problems originated with conflicts between various position papers which had been incorporated. This resulted in a document which was difficult to interpret and to administer.

Post Rules Revision Reality

Major Issues Identified

4. Inability to Update Without Hearing

A long standing and significant issue for the Division was the inability to make minor updates to the Rules without going through a costly and time consuming public hearing. For example, since the forms were part of the Rules, any changes to them would require going to public hearing to incorporate the updated form(s) in the Rules.

The forms and approved product lists were removed from the Rules and incorporated into the Guidance Manual. This allows updating as needed without a public hearing.

Post Rules Revision Reality

Time Line

November of 2009: the Division of Environmental Health began the process of revising the Subsurface Wastewater Disposal Rules by distributing the first revision for internal review and comment.

December of 2009: the Division held the first of many meetings with the Maine Association of Site Evaluators, Technical Review Committee (TRC).

January of 2010: a list of 20 stakeholder groups was established, of which 16 participated. The Division held three stakeholder groups meetings, one each in February, March, and April of 2010.

Post Rules Revision Reality

Time Line

June to November of 2010: Division staff drafted 12 major revisions of the Rules prior to submission to the Office of the Attorney General for review and comment.

December of 2010: a public hearing for the proposed Rules revision was held.

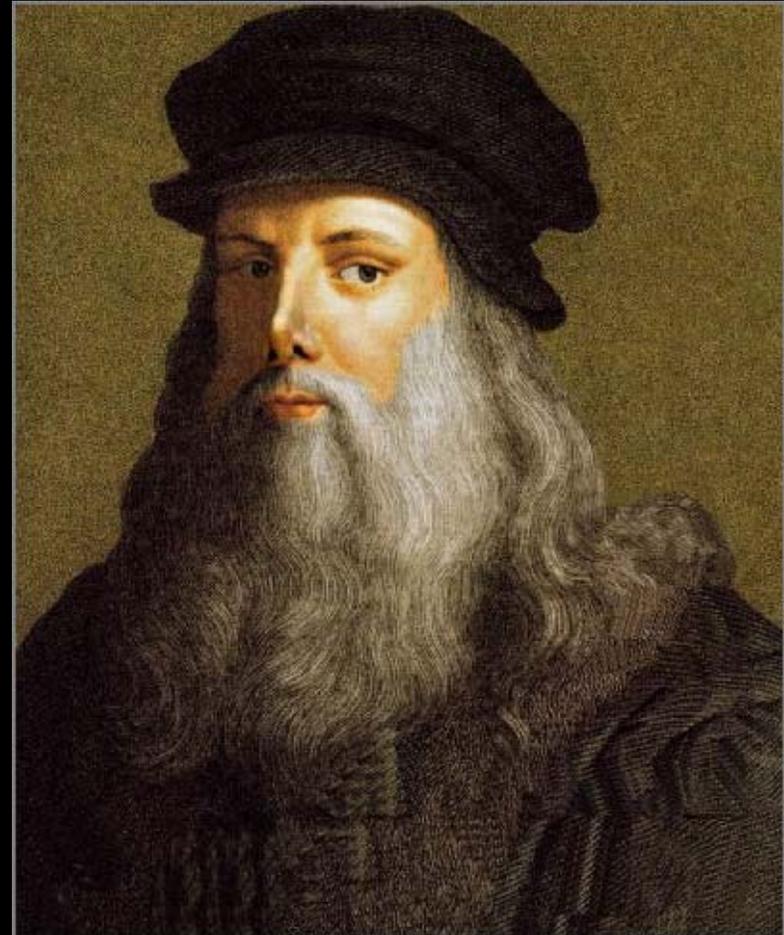
January of 2011: the revised Rules were adopted and became effective after incorporating hearing comments.

Post Rules Revision Reality

What worked.

"Although nature commences with reason and ends in experience it is necessary for us to do the opposite, that is to commence with experience and from this to proceed to investigate the reason."

Leonardo da Vinci



Post Rules Revision Reality

What worked: Consolidation of Information

One goal which was successfully implemented is consolidation of formerly dispersed information, based upon specific subject matter.

For example, in the current Rules, everything related to First Time Systems is now collated, including basic design considerations, variance criteria, and holding tanks. This eliminated the need to search throughout the Rules when dealing with First Time System design criteria.

This process also was applied to general design criteria, installation procedures, Replacement Systems and Expanded Systems.

Post Rules Revision Reality

What worked: Wetlands & Permitting

Section 1 H created “one stop shopping” for environmental permits. This section, and all of the associated language found in the rules, is the result of extensive discussions with LURC and the MeDEP.

For one stop shopping to be realized, the rules must meet the most restrictive criteria of LURC, NRPA and Shoreland Zoning. The rules have been reviewed by the other state agencies and found to meet their criteria.

It should be noted that these are not new criteria. Although these criteria have not been included in previous versions of the subsurface rules, they have been required by the agencies with jurisdiction.

Post Rules Revision Reality

What worked: Pre-1974 Systems

The rules now specify that pre-1974 subsurface disposal systems which are not malfunctioning may continue to be used provided that no expansion is proposed and the structure served by the system is not replaced.

The reasoning is that if a structure constructed prior to 1974 is being replaced with one that meets current standards for plumbing, electricity, energy efficiency, air quality, etc., the septic system should be modernized as well. This is particularly true for systems that lack any documentation, which is very common for pre-1974 systems.

Post Rules Revision Reality

What worked: Fill outside the Shoreland Area

The LPI may now review and approve the use of existing fill soils as the equivalent to original soils for design purposes when the fill was placed on the site no later than October 31, 1995, is sandy loam or coarser and relatively free of foreign material including organic material, and was placed in compliance with all pertinent regulations.

This reflects that fill soils of a generally suitable quality placed between 1974 and 1995 will have settled and consolidated enough to work with septic systems. It also accommodates a quicker local decision as opposed to a State variance.

Post Rules Revision Reality

What worked: Key for Groundwater Depth

Table 400.1 in the 2009 revision, *Key to Drainage Classes*, was replaced with a key that reflects drainage conditions determined by the soils' limiting factors for the design of subsurface wastewater disposal systems.

This key can be used by all disciplines that practice site evaluations, not just soil scientists. The new key accommodates differences in redoximorphic features between various soil textures and drainage classes. This should result in greater consistency in site evaluations based upon standardized criteria.

Post Rules Revision Reality

What worked: Appeal process streamlining

Prior versions of the Rules had a 3 step appeal process: (1) a formal conference, (2) a formal administrative hearing, and (3) a judicial review.

Holding a formal conference did not conform with Department of Health and Human Services practice. On that basis, the formal conference was eliminated.

Although the formal conference was eliminated, the Division remains open to holding informal meetings to resolve complaints and concerns.

Post Rules Revision Reality

What didn't work.

"Aim at perfection in everything, though in most things it is unattainable. However, they who aim at it, and persevere, will come much nearer to it than those whose laziness and despondency make them give it up as unattainable."

*Phillip Stanhope,
Lord Chesterfield*



Post Rules Revision Reality

What didn't work.

Despite our best efforts, there were 12 errors and 2 omissions in the final document. Also, some parts were technically correct but generated confusion.

Since the Rules were adopted in January of 2011, the Division met twice with the MASE TRC and agreed to take more comments on the revised rules, with the understanding that we would work with the new rules through the current field season to make sure we have found all the problems.

An errors and omissions rule making will be scheduled as a result. What follows are some of the more notable errors and omissions, in no particular order.

Post Rules Revision Reality

What didn't work: Errors and Omissions

Section 1H(6) is generally correct, but includes criteria for “minor water bodies” that should be removed in subsequent rule making.

The new rules omitted the prohibition of septic systems in a flood plain. This will be addressed in upcoming rule making.

Table 8A allows setbacks from columns to be reduced from 20 feet for first time systems to 10 feet for replacement systems by the LPI. Reductions to less than 10 feet require a state variance. Some anticipated this requirement would create more state variances. In practice this did not occur, but the setbacks still will be clarified.

Post Rules Revision Reality

What didn't work: Errors and Omissions

Section 2.E.2 clarifies that to qualify as a “replacement system”, there must actually be a system to replace. The terms “currently functional” and “not currently functional” frequently have been confused with “malfunctioning”.

A system in use that is malfunctioning can be replaced using replacement system criteria as always. A system that lacks all of the components required to perform subsurface wastewater disposal is not a currently functional system, and triggers first time system criteria.

Clarifying language will be introduced in upcoming rule making to minimize confusion over the terminology.

Post Rules Revision Reality

What didn't work: Errors and Omissions

There has been confusion over Section 8.C.1 (g) which states that to qualify for replacement criteria, the system in the ground must have been legal when it was installed. Either it pre-dates the Rules (July 1, 1974), it is a legally permitted post July 1, 1974 system, or it is an OBD.

Section 8.C.1 (g) should only become an issue when the LPI has reason to believe that a system had been installed or modified illegally. In all other cases, it should be treated as a replacement system.

Post Rules Revision Reality

What didn't work: Errors and Omissions

Section 13 has an incorrect definition for "Water body/course, minor" which states "Tributary streams within the shoreland zone" instead of "outside the shoreland zone". The requirements in the body of the rules are correct, so setbacks and other criteria of the "one stop shopping" are correct.

It also has been pointed out that there is no definition for "Tributary Stream". When no definition exists in regulations the word is defined by the dictionary.

Post Rules Revision Reality

What didn't work: Errors and Omissions

Under Table 8A setback reductions for septic tanks serving less than a 1,000 gpd design flow should be 50 feet down to 25 feet.

Section 9 should have specified that expanded uses related to pre-1974 and illegally installed post-1974 systems must use first time criteria for expansions, if the expansion is more than 1 bedroom or 25 % of the design flow, etc.

There were several typographical errors which will be corrected in upcoming rule making.

Post Rules Revision Reality

Where do we go from here?

The Division has submitted to the Administration a request to hold a public hearing for revisions to the Rules.

This hearing will be held specifically to consider corrections and clarifications. This is known as an “errors and omissions” rulemaking procedure.

No substantive changes to the Rules will be proposed or considered. The focus of an “errors and omissions” rule making is by its nature narrowly focused.

Post Rules Revision Reality

www.mainepublichealth.gov/septic-systems

The screenshot displays a Mozilla Firefox browser window with the URL www.maine.gov/dhhs/mecdc/environmental-health/plumb/index.htm. The page is titled "Maine Subsurface Wastewater Unit" and is part of the "Division of Environmental Health" website. The page content includes a navigation menu, a search bar, and a main text area. The main text area contains the following information:

Maine Subsurface Wastewater Unit

Maine is a predominantly rural state, and relies heavily on decentralized sewage disposal facilities for disposal of human waste, i.e., septic systems. The State of Maine has regulated septic systems since 1926, to varying degrees. Over the years, the Maine State Plumbing Code, Subsurface Wastewater Disposal Rules (Rules) in their various versions have been administered by the Maine Center for Disease Control and Prevention (MeCDC) and its predecessors.

The MeCDC has been and continues to be responsible for the Rules because they have historically been viewed as a public health code, rather than an environmental regulation.

The Subsurface Wastewater Unit, within the MeCDC's Division of Environmental Health, promulgates and administers the Rules. Our mission is to minimize health and safety hazards associated with improperly installed subsurface waste water disposal systems.

What's New at the Subsurface Wastewater Unit

On this page:

- [Family Burying Grounds](#)
- [Health Inspection Program Holding Tank Policy](#)
- [Fillable Online HHE-200 Page One Available](#)
- [Recently Approved Products](#)
- [Elimination of Permit Labels](#)

The page also features a sidebar with "Featured Links" including [Online Rules](#), [Variances](#), [Site Evaluator Licensing](#), [Frequently Asked Questions](#), [Ten Tips for Systems](#), [Cemeteries and Crematoria](#), [Certifications](#), [Public Swimming Pools](#), [2001 DHS & DEP Programs Review](#), and [Online Services](#) such as [Publications Order Form](#), [Record Search Form](#), and [Water Records](#).

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www.mainepublichealth.gov/septic-systems

Maine CDC
Division of Environmental Health

Post Rules Revision Reality

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