



# Roaring Brook Consultants Inc.

ENGINEERING A BETTER FUTURE

News and Events

Spring 2009

## State of Maine Wastewater Disposal System Inspection Program

### **Background**

In June 1974, the State of Maine Department of Health and Human Services (DHHS) adopted a comprehensive set of rules covering the design, siting, permitting, and construction of septic systems, or, as they are called today, subsurface wastewater disposal systems.

The rules have evolved over time. The most significant changes include licensing of all individuals preparing subsurface wastewater disposal system designs and implementation of a voluntary certification program for system installers.

### **What is a System Inspection?**

Recently the State of Maine DHHS developed a program for inspection of existing systems. The inspections are voluntary except for those related to property transfers within the coastal shoreland zone.

The DHHS has established minimum criteria for evaluating and reporting on existing subsurface wastewater disposal systems. The report is to provide the following important information:

1. The approximate age of the disposal system;
2. Verification that a design plan and a plumbing permit do or do not exist;
3. A general description of the system components and their present condition;
4. A list of differences (if any) identified between the design plan and actual installation; and
5. Identification of any malfunctions or surface discharges needing correction under the current rules.

Under the current rules, a malfunction is the presence of septic water on the ground surface or in a house due to system backups. By strict application, a system that is not functioning as designed but does not have water on the surface is not malfunctioning.

Advanced techniques and equipment relating to locating components of existing systems exist, but are not required to be utilized. For most systems built since 1974, a plan will most likely exist and details of installation are somewhat standard. Systems built earlier than 1974 will most likely not have a plan, although some do. The use of cameras, radio balls, and other sophisticated devices may be needed to find the components of older systems.

### **Why are they done?**

The voluntary inspection process is designed to provide the buyer and the seller of a property with information regarding the age, status, and general condition of the septic system. The process can help identify those problems representing public health hazards, such as system malfunctions and surface discharges, that are required by law to be corrected at a time when there are funds available to provide for a corrective action.

The report may indicate 1) that corrective action is recommended, 2) that an existing or potential health threat has been identified, or 3) that the property owner could be subject to administrative action if the problem is identified by the local plumbing inspector.

### **What does one do with the results?**

The information contained in the report may be useful in negotiating a purchase price. Depending on the results, either the buyer or seller may gain some bargaining advantage. Preparers and recipients of the report are not obligated to forward copies to any federal, state, or local officials. I repeat: the report does not need to be forwarded to anyone, even if the system is malfunctioning. The odor from malfunctioning systems may over time alert the neighborhood to the problem, but neither the inspector nor the recipient of the report is obligated to report it.

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## Building Codes and the Insurance Adjuster Part I of II

Spring 2009

### Statement of Problem

Insurance adjusters need to know about building codes because the insurance contracts deal with repair and replacement of real property, including buildings, and building codes govern how repair and replacement work can be legally performed. Insurance contracts provide for payment of certain owner-incurred costs under a variety of conditions and in a variety of categories. One such category is increased cost due to building code requirements. Payment for this type of increased cost is commonly called “code coverage”.

Inherent in the concept of code coverage are several fundamental concepts that should be stated explicitly:

1. The building code is a valid regulation in the jurisdiction in which the property is located.
2. The structure that is being repaired must be a building as defined in the applicable building code or a structure that is subject to the applicable building code.
3. The costs of repair or replacement under the applicable building code are actually more than they would have been had the property been repaired or replaced as it was.
4. The changes are mandatory under the building code.

Examination of these fundamental concepts raises several questions and leads us to a basic approach to follow in the adjustment process when considering code coverage issues.

### Basic Concepts and Definitions

**A regulation** is a rule or set of rules that can be legally enforced in some political jurisdiction.

**A code** is a set of rules that concerns a particular subject area. A code is not in and of itself a regulation. A code becomes a regulation when it is validly adopted by a legal entity having the legal power to do so. For example, a city council or other legislative body generally has the legitimate authority to adopt a building code. A sheriff’s department would generally not have such an authority. Each is a valid legal entity, but the authority of the sheriff’s department in a typical jurisdiction would not extend to enforcement of building codes and similar regulations.

**A standard** is a voluntary set of rules or a code that is prepared by a group of parties with similar interests. For example, door and window manufacturers have developed standards for the construction and testing of their products. Individuals and organizations interested in a particular subject matter area develop standards in order to promote common interests and facilitate commerce and the exchange of ideas. Standards can become regulations when they are properly adopted in a political jurisdiction or when they are incorporated into or referenced by codes that are properly adopted.

**A building** is a structure that is generally used for human occupancy or to house activities that humans organize and pursue. Houses, apartment buildings and offices are all examples of buildings. Barns and sheds are buildings. Wharves, piers, towers and similar structures are not buildings under the terms of many building codes. Items attached to buildings may or may not be considered as buildings or structures under an applicable building code. Questions often arise regarding how to treat significant structural components of industrial yard improvements, signs mounted on buildings, and other auxiliary structures.

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## Building Codes and the Insurance Adjuster Continued

Spring 2009

### Background

Building codes have been around for a long time. However, the rise of modern, widely enforced building codes is a 20<sup>th</sup> Century phenomenon. The famous civil engineer Hardy Cross was an early advocate of building codes. He is often quoted as saying that the building codes are necessary “to protect us from fools and knaves.” In short, building codes are required to help those who don’t know what they are doing and to protect society from those who would compromise public safety.

Building codes deal with specialized technical topics and concepts that require specialized knowledge. Therefore, the development of building codes has often been done by trade organizations in conjunction with officials who are in charge of enforcement of the building codes.

The most common building code in the second half of the 20<sup>th</sup> century was probably the code developed by Building Officials and Code Administrators International, Inc. (BOCA). Other similar groups were active in specific geographical areas, such as the southeastern states and the western states. The most major change in building codes, however, occurred in 1999 when the three largest of the US building code generators joined together and then joined with the International Code Council. These bodies all now issue building codes together. Two of these codes are the International Building Code (IBC) and the International Residential Code (IRC). The IRC covers building code requirements for one and two-family dwellings; the IBC is applicable to other buildings. Now and in the near future, the IRC and IBC are probably the building codes that an adjuster will encounter most frequently in practice. The International Code Council also issues other related codes such as the International Maintenance Code.

It is also important to recognize that there are other types of regulations that influence buildings that are not building codes. Zoning and land use regulations exist in most political jurisdictions. However, they are not commonly considered building codes.

When looking at building code coverage issues, the specific insurance contract may or may not contemplate requirements of these types of regulations under building code coverage.

It is also important to remember that a jurisdiction may not have adopted a building code or may use a building code that does not reflect current practice. In the former case, it is wise to question whether building code coverage has any meaning when no code is in effect. In the later case, a code that is far outdated may mandate items that are no longer available or are not current practice, and that are therefore extremely costly.

*Part II of this article will be presented in the Fall 2009 Newsletter*

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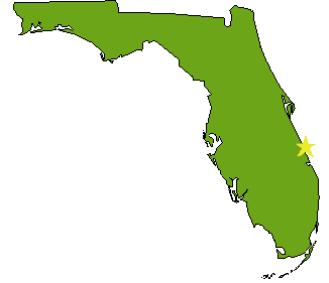
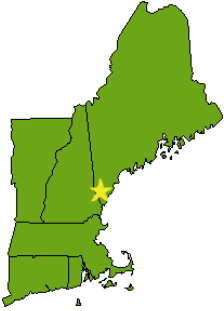
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**Roaring Brook Consultants, Inc.  
15 Sewall Road, South Berwick, ME 03908  
325 Clematis Street, Suite 175, West Palm Beach, FL 33401**

**TEL 207-384-2643      TOLL FREE 877-RBC-2643      FAX 207-384-5383**  
***[www.roaringbrook.com](http://www.roaringbrook.com) - [www.roaringbrookcrane.com](http://www.roaringbrookcrane.com) - [www.italamericon.com](http://www.italamericon.com) - [www.terrasolutions.net](http://www.terrasolutions.net)***

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