

Alabama Onsite Wastewater Board

Disciplinary Guidelines/Complaint Procedures

Revised/Effective July 2018

1. **REFERENCES:** The following references serve as the basis for the complaint procedures outlined herein and are available from the Alabama Onsite Wastewater Board (AOWB).
 - a. Section 34-21A-1 et. Seq., Code of Alabama 1975
 - b. Chapter 628-X-5 et seq., AOWB Administrative Code
 - c. Section 41-22-1 et. Seq. Alabama Administrative Procedure Act
2. **PURPOSE:** The purpose of these procedures is to provide guidelines for the processing and resolution of complaints received by the AOWB.
3. **DEFINITIONS:** Refer to Code of Alabama 34-21A

The Alabama Onsite Wastewater Board accepts written complaints via letter, email, telephone, fax or consumer complaint forms. When AOWB staff receives a complaint, The Executive Director shall determine if the alleged violator is licensed by the Alabama Onsite Wastewater Board or is operating illegally.

STAGE 1: INITIAL CONTACT AND DOCUMENTATION

Complaints are received via fax, email, US mail, website consumer complaint form or telephone. The complainant is contacted and given details concerning time requirements of the complaint and asked to provide a written report of the complaint to the Alabama Onsite Wastewater Board (AOWB) if the written report has not been submitted.

STAGE 2: INVESTIGATION

- (1) Once the written account is received, it is date stamped and logged into the AOWB Complaint Database by the Executive Director. Complaint will be assigned a complaint number and a Licensing Compliance Field Officer will be assigned. A copy of the complaint is forwarded to the respondent (licensee) and the respondent is allowed 14 days to provide a written response.
- (2) As a response is awaited, the Compliance Officer assigned will begin the investigation by contacting the complainant, the local county health department and the licensee to schedule a meeting time for all to participate at the site if possible. Once onsite, the investigator will gather all facts, such as:

(3)

- Who was involved?
- Where is the location?
- What was done?
- When was this done?
- Why is this a problem/complaint?

(4) The Executive Director will assign a Board member to serve on the Investigative Committee of the Board. The Investigative Committee of the Board will consist of a Board member, the Executive Director, Compliance Officer and Legal Counsel. The Executive Director and legal Counsel are non-voting members of the Committee. No member of the Investigative Committee will discuss the complaint with other Board member(s).

(5) The Investigative Committee shall meet and review/investigate the allegations of the complaint from the information received from Complainant, Respondent and the Compliance Officer

(6) If the Investigative Committee finds that the complaint is without merit (no probable cause for a disciplinary hearing) the licensee and the complainant shall be notified that there has been a finding of no probable cause and the case will be closed.

(7) If the Investigative Committee finds “probable cause for a disciplinary” hearing, then the Board counsel will proceed with the filing of administrative charges against the licensee.

(8) INFORMAL SETTLEMENT (CONSENT AGREEMENT)

(a) After the filing of administrative charges, the licensee and the licensee’s attorney (if the licensee has hired one) may meet with the Board’s Executive Director in person or via telephone to determine whether a settlement of the complaint may be reached. The Board’s Executive Director is responsible for conducting settlement negotiations. If a settlement is reached between the parties, the Board’s Executive Director will draft a Consent Agreement that the licensee shall sign. The Board’s Executive Director will present the Consent Agreement to the Board. The Board will review and discuss the Consent Agreement (except for the Board member who participated on the investigation of the complaint) during executive session at a public meeting of AOWB. A vote to accept, reject or modify the Consent Agreement shall occur in the public session of the Board’s meeting. If the Board accepts the Consent Agreement, it will be signed by the Executive Director and kept in the public discipline file at the Board’s office.

(b) This Informal Settlement is for first time offenders only.

(c) There is no requirement for a licensee to participate in settlement negotiations regarding a complaint. This is a voluntary option for the licensee.

(9) FORMAL HEARING

- (a) A notice of the Administrative Complaint including the Statement of Charges, Notice of Hearing and Explanation of Rights shall be forwarded by certified mail, return receipt requested, to the last known address of the licensee. The notice will also be mailed regular mail.
- (b) The licensee will be given a minimum of twenty (20) day notice in writing of the Administrative Complaint against him/her and the date, time, location of a public hearing of the Board to consider the evidence in the case.
- (c) The Board will have on staff a hearing officer to conduct the disciplinary hearing. The hearing officer shall have the authority from the Board to determine pre-hearing matters such as motions, subpoenas, etc., preside over the hearing and issue recommendations to the Board about whether disciplinary action should be imposed against the licensee based on the evidence presented at the hearing.
- (d) The Board will hire a court reporter to officially record the proceedings.
- (e) At every stage of the formal hearing, the licensee may be represented by counsel of his/her choice, or may waive this right.
- (f) After notice to the licensee of the Administrative Charges against him/her, if the licensee fails to appear, then, the Board may proceed with the disciplinary hearing and decide in the absence of the party.
- (g) At a formal hearing, the Board may administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant records.
- (h) The hearing shall proceed in accordance with the rules of evidence for a nonjury civil case. The burden of proof required to substantiate the Administrative Charges against the licensee is a preponderance of the evidence.
- (i) At the hearing, the licensee and his/her attorney may present evidence, call witnesses on his/her behalf. The Board's counsel shall present the case against the licensee.

(10) FINAL ORDER OF THE BOARD

- (a) After the Administrative Hearing, the Administrative Hearing Officer will make his recommendation in writing to the Board at least 10 days before the next public meeting. After a review of the evidence, as well as the Administrative Hearing Officers recommendation, the Board shall determine whether any violations of the law and/or rules and regulations have occurred. The Board shall deliberate and vote on the disciplinary charges at its next public meeting. If the Board finds that the Administrative Charges were proven against the licensee, then, the Board shall determine the discipline to be imposed by

accepting the Administrative Hearing Officers recommendation or choosing a different course of disciplinary action.

- (b) The Executive Director shall draft and issue a final order that contains the findings of fact and conclusions of law pertinent to the case. Findings of fact shall be based solely on the evidence in the record and on matters officially noted in the record.
- (c) The Board may in its discretion suspend or revoke a license. The Board may also explore other avenues of discipline. The Executive Director will notify the licensee via certified mail of any disciplinary action that it imposes no later than thirty (30) days in the final order issued by the Board.
- (d) All appeals of the Board's decision shall be made in accordance with the Alabama Administrative Procedure Act governing appeals in contested cases.

PROTOCOL AND PROCEDURES FOR COMPLAINTS WILL BE FOLLOWED FOR UNLICENSED INDIVIDUALS WITH THE FOLLOWING DIRECTIVE:

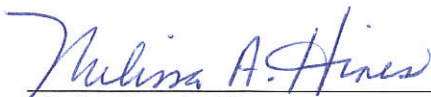
- (a) If the individual does not have a license, the Board authorizes the Executive Director to issue a letter to the alleged violator of its licensure laws and/or rules and regulations to cease and desist the unauthorized activities. The cease and desist letter will be enclosed with the letter asking respondent to respond to the allegations against him/her. All letters are to be registered with return confirmation of receipt.
- (b) If the unlicensed individual does not respond within 20 days, then the Board may seek penalties and injunctive relief against the unlicensed individual and/or refer the matter to the local District Attorney's Office for criminal prosecution.

Adopted by the Alabama Onsite Wastewater Board

7-26-2018



The Honorable Randall Anderson
Chairman of the Board



Ms. Melissa A. Hines
Executive Director