

Section 6**You Make the Call****6.1 Resolution of Complaints Beyond Municipality Control**

It became clear that Maine needed a more coordinated local public health infrastructure. All local health officers work within one of eight districts – and in each of these districts there are great opportunities to network and learn from others. **VIDEO** <http://www.maine.gov/mecdc/local-public-health/lho/training/Call/Call-2.html>

In this section, we will cover:

- How to Handle Complaints Where Resolution Is Likely to be Beyond the Municipality’s Control. We will also look at three case studies.
 - Case Study 1: Noisy cow
 - Case Study 2: Manure pile
 - Case Study 3: Outdoor wood boiler
- Sample Knowledge Check #4

Section 6 should take approximately 60 minutes to read, process, and complete the sample knowledge check.

As stated before, some complaints or issues may have no obvious solution. These case studies require the same hands on LHO involvement as in the clear cut cases covered in Section 4. We will discuss three examples of the kinds of “gray area”, *no obvious solution*, complaints you are likely to receive and how to go about resolving them.

Eventual cooperation is still the hoped for outcome. It is equally important to (a) get the correct information, (b) to verify the complaint, and (c) to get good advice for solving the problem. Use the LHO Complaint Flowchart for it is a good tool to rely on. The steps

in resolving the problem are essentially the same except –that the law may not permit the municipality to take corrective action.



Maine statutes contain laws that do not provide a direct remedy to the problem, but instead provide a legal definition or provide guidance for resolving the problem.

6.2 Case Study #1 - Noisy Cow and Other Animal Concerns

You receive a complaint about a noisy cow. The complaint sounds like a legitimate cause for concern. You prepare by reviewing the appropriate statute and other relevant materials. Most complaints can be addressed by using or combining several statutes.



For example, the landlord-tenant issues, dangerous buildings, polluting, malfunctioning sewage systems, automobile junkyards - are very common, and as a result the Maine legislature created laws to address these issues.

If there is little or nothing that appears to directly deal with animal complaints, what is your plan of action to resolve the matter?

Resolving excessive noise problems often requires either a municipal ordinance, unlikely in most Maine communities, or reaching an agreement between the parties to correct the problem.

Some statutes may provide a starting point and guidance for less common complaints. One such law can be found in [Title 17 M.R.S.A §2802, “Miscellaneous Nuisances.”](#) However, this law does not provide a direct solution, but the language contained in the law may be useful in formulating your plan of action.

Even though the town may decide to seek a remedy through the court, remember that the court will defer to the appropriate language in the law to make a decision. In many cases the court will not have to decide if the matter is “legal” or “authorized”, because the law defines what is considered acceptable. Here is a section of the “miscellaneous nuisances” law:

“**The erection, continuance or use of any building or place** for the exercise of a trade, employment or manufacture that, by noxious exhalations, offensive smells **or other annoyances**, becomes injurious and dangerous to the health, comfort **or property of individuals or of the public**; causing or permitting abandoned wells or tin mining shafts to remain unfilled or uncovered to the injury or prejudice of others; causing or suffering any offal, filth or noisome, substance to collect or to remain in any place to the prejudice of others; obstructing or impeding, without legal authority...” Section 2802 (Emphasis added)

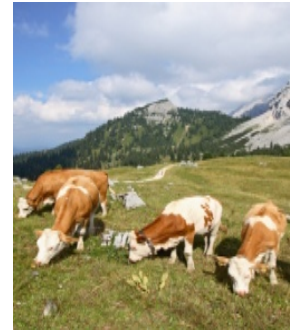
As you can tell from the language, this law has been around a long time. In the meantime, other laws have come into play. One such law, Title 17 M.R.S.A. §2805, can trump the older nuisance law.

Title 17 M.R.S.A. §2805 deals with farm and agricultural composting operations and allows their use – “providing there is no local ordinance stating otherwise”. This “right to farm” language means if the Commissioner of the Department of Agriculture determines that “best management practices” (or **BMP**) are being followed, the activity will not be considered a nuisance.

In this specific case, the LHO should contact the animal control officer (ACO) and visit the property to discuss the complaint with the owner. If local zoning permits either farming or the owning of a cow or cows (Note: These are two separate activities), a decision has to be made as to the tending to the cow in terms of BMP. If it is determined

that farming is allowed by ordinance, and if the cow is part of the farm then the “right to farm” law would permit the cow to be there as long as BMP are maintained.

Sometimes, the best course of action/approach would be to discuss the issue with the owner and to work with the owner on a plan of action. It may be a matter of relocating the cow on the property. If the health of the cow is questioned, a veterinarian may be called in to make a determination of disease.



Keep in mind that “due process” is at the forefront of all corrective actions taken by the municipality. The right to due process, found in our Constitution, is the right to be treated fairly by your government. The Constitution protects the individual right to be treated fairly by the state, local or federal government.

6.3 Animal Complaints Other than Farming Situations

All municipalities are required to employ an animal control officer (ACO). In addition, the statute authorizes the ACO to enforce the laws in Title 7, Chapter 725. Below is a list of the areas/issues in which the ACO has authority to enforce the Law.

- | | |
|-------------------------------------|--|
| §3911. Dogs at large | §3947. Animal control officers |
| §3912. Disposition of dogs at large | §3948. Animal control |
| §3916. Rabies vaccinations | §3950-A. Official refusal or neglect of duty |
| §3919. Seizure of stray cats | §3952. Keeping a dangerous dog |
| §3921. License necessary | §4041. Animal trespass |

6.4 Case Study # 2 – Improper Manure Handling

You receive a complaint about a manure pile. How do you plan to approach the problem? Do you have enough information about the complaint? Here is an opportunity to review and follow the steps in the LHO Complaint Flow Chart again and read the appropriate statutes that address this issue. This complaint is no different from other complaints. A plan:

1. Log or record the complainant's name, telephone number, location of the nuisance.
2. Your information reveals that it is a new manure pile in a barnyard close to the complainant property line.
3. The complainant's well is 50 feet away from the pile.
4. The owner of the manure pile is unwilling to work with the neighbor to remedy the situation.



You look through the statute and determine the law addresses manure as well as general nuisance – **Title 17, §2701-B “Action against improper manure handling,** provides relief through court action, and, with the assistance of the Department of Agriculture, Conservation and Forestry, a fine can be levied against the offending landowner up to \$1,000 and a \$250/day assessment. Court actions should be your last recourse in resolving complaints. Court actions are an expense the town may not want to accrue. **<http://www.mainelegislature.org/legis/statutes/17/title17sec2701-B.html>**

You decide to work with the landowner –farmer - to amicably resolve the matter. Schedule a visit with the owner, logs the meeting/discussion; schedule a follow-up; after the follow-up, prepare a summary letter of your discussions and any promises made by the owner.

What is the solution? – Simply remove the pile to the side of the barn may solve the problem.

6.4.1 “Right to Farm”

Clearly, Maine’s “Right to Farm” law, states that a farm, farm operation or agricultural composting operation may not be considered a public or private nuisance under Title 17, chapter 91, if the farm, farm operation or agricultural composting operation alleged to be a nuisance is in compliance with applicable state and federal laws, rules and regulations. (Title 7, Part 1, Chapter 6, Section 153) This right seeks to protect qualifying farmers from nuisance lawsuits filed by individuals who move into a rural area where normal farming operations exist, and who later use nuisance actions to attempt to stop those ongoing operations. As with any law or rule there are always exceptions in the law or rule.



<http://www.mainelegislature.org/legis/statutes/search.asp>

The law also refers to “best management practice” or BMP. Best practices would require that a manure pile be located at least 100 feet from a domestic water supply. Your information also reveals that the well location pre-dated the establishment of the manure pile, it would appear reasonable to re-locate the manure pile. Relocating the manure pile would be a prudent and less costly solution. If the owner is unwilling to move the pile, the LHO and the ACO should request a determination from the Department of Agriculture, Food, Conservation and Forestry.

The Maine Agriculture Protection Act -Title 7, Chapter 6, ¶156 – defines complaint resolution and the way that farm complaints are processed.

6.4.2 Farm Issues - Department of Agriculture Complaint Process:

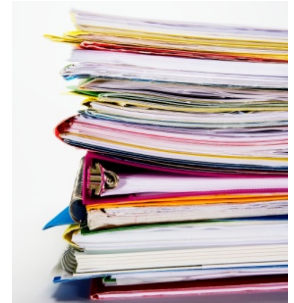
At the end of the complaint process the Department of Agriculture, Food, Conservation and Forestry (Department of Agriculture) will make a **(1) decision or determination** as to its findings, or **(2) a written report** on the use of best practices. The first type of decision is a determination. Department of Agriculture, Food, Conservation and Forestry will provide a written determination as to whether the farmer (the person responsible for dumping the manure) used best management practices when locating the manure pile.

(1) If the Department of Agriculture, Food, Conservation and Forestry find that the person responsible for the manure pile is following best management practices for manure handling, it is unlikely that a court would request removal of the pile. The complainant and the property owner will receive a copy of the Department of Agriculture, Food, Conservation and Forestry determination.

(2) The second type of decision is a written report which states that the person responsible for the manure did not follow best management practices. The Department of Agriculture sends the report to the Department of Environmental Protection and the Maine Attorney General.

The Attorney General can then seek an order which may result in a court order to abate the nuisance. Court costs can be assessed. If the Department of Agriculture, the Department of Environmental Protection, and the Attorney General's office decide to take the matter to court, the municipality has the authority to do so as well.

It is entirely possible that due to excessive legal actions costs, and the time involved in this type of matter, the municipality will not be willing to go to court. Ultimately, the law



favors the complainant and the complainant has the option of pursuing the matter in court.

6.5 Case Study # 3 - Outdoor Wood Boiler

You receive a complaint about a newly installed Outdoor Wood Boiler. This “outside the home heating unit” emits a large amount of smoke. The complainant states he has to close his windows; he cannot use his backyard or sit on his patio when the boiler is

“burning”. **Consult the LHO complaint flow chart, Statutes, and other reference materials.**



The Maine Department of Environmental Protection established regulations for Outdoor Wood Boiler (OWB) under “Control of Emissions from Outdoor Wood Boilers Rule” 6-96 CMR 150.

[Http://www.maine.gov/sos/coc/rules/06/096/096c150.doc](http://www.maine.gov/sos/coc/rules/06/096/096c150.doc) (Word*)

Highlights of the Control of Emissions from Outdoor Wood Boilers Rule

- a. Only the burning of clean wood is permitted.
- b. Horizontal setback distances, particulate emissions requirements, and smoke stack heights are specified.
- c. If an abutting residence is located less than 500 feet from the outdoor wood boiler, the OWB must have an attached stack height 2 feet higher than the peak of the roof of the structure being served by the outdoor wood boiler.
- d. If visible emissions totaling twelve minutes in any hour, cross onto any land or buildings immediately adjacent to a dwelling or commercial building not owned by the owner of the OWB the operation of the OWB is prohibited. (See [Emissions from Outdoor Wood Boilers, 6-96 CMR 150 \(.pdf*\)](#) (new window))

Once you have an understanding of the allowances and rules, visit the owner of the OWB, preferably with the fire chief. You may want to observe the location, and other compliances of the rule. It is important to have the fire chief present, because the fire

chief has the experience and expertise in fire safety and fires. Present the complaint to the owner. Armed with what the rules allow, you and the fire chief should be able to make a decision regarding the validity of the complaint.



6.5.1 Special Outdoor Wood Boiler Considerations

The Maine Department of Environmental Protection (MDEP) understands that some outdoor boilers are causing air quality problems. Some existing boilers are not as efficient as the newer OWB, which are designed to reduce the particulate matter and hydrocarbons in their exhaust.

Emissions from outdoor wood boilers can sometimes cause **air pollution problems** when not sited, installed, or operated properly. New state regulations have addressed these concerns by implementing strategies to reduce emissions along with siting requirements for new OWBs and operational practices for both existing and new outdoor wood boilers. The rule addresses the need for cleaner burning units, establishing emission limits that new outdoor wood boilers must meet beginning in April 2008.

Complainants can also call the Department of Environmental Protection toll free –

Augusta	Phone: 1-800 452-1942
Presque Isle	Phone: 1-800 769-1053
Bangor	Phone: 1-888-769-1137
Portland	Phone: 1-888-769-1036.

Persons who have complaints can report them directly to the Department of Environmental Protection on the Internet.

<http://www.maine.gov/dep/air/woodsmoke/woodcombustion.html>

6.6 Last Words

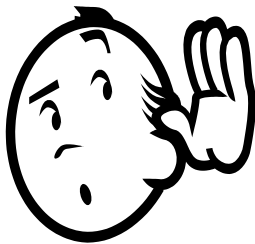
As the LHO, you will receive a variety of complaints. You may have to determine whether a complaint is legitimate before



proceeding. Every complaint is important; treat every case seriously. Consult the professionals in your town (CEO, Selectpersons) and the flowchart so you are consistent in your actions. As can be seen by these three differing situations, there will generally be a statute appropriate for most situations. Some statutes will help more than others.

As stated previously, the LHO has to present himself/herself in a professional, polite, and respectful manner. Most importantly, use the due process law when dealing with the public.

It is unlikely that all situations will be the same. People often see the same situation differently. It is important to make sure you have someone visit the property with you, as in the case of the OWB. Although you cannot be all things to all people, you can be an important contributor to the overall health of your community.



Whether the problem is simple or complex, analyze the facts, and determine whether the situation is LHO appropriate. If you have done your best to resolve the complaint but the situation cannot be easily resolved, the municipality has the options to: (a) put a lien on the property, if allowed, or (b) have the CEO go to court under the authority of **Rule 80K**, or an attorney can be hired to represent the town in court. In such cases the municipality may not want to make the investment (time and money). However, the complainant can take the matter to court. The municipality is only required to solve some problems - but not most.

Section 6: You Make the Call

In this section, we looked at three case studies:

- How to Handle Complaints Where Resolution is Likely to be Beyond the Municipality's Control, using three case studies.
- 3 Case studies:
 - Case Study #1 Noisy cow
 - Case Study #2 Manure pile
 - Case Study # 3 Outdoor wood boiler

You can review the frequently asked question for this section at any time.

If you have reached a level of comfort with the material presented so far then you are ready to move on to the next section.



6.7 Sample Knowledge Check #4:

You Make the Call

True/False

The role of the LHO is made easier because for every complaint the LHO receives, there is a statute that directly provides a remedy.

A) True

B) False

Question 1 of 4

True or False

The "right to farm" law in Maine permits farm related activities to exist in a municipality - including related effects - such as odors and flies. As stated in Maine law, in order for the farm activities to continue, should there be a complaint, it must be shown that:

A) the farm must be registered by the Department of Agriculture, Food and Rural Resources

B) the farm must use "Best Management Practices" with regard to the particular farming activity.

C) the farm must be inspected by the Animal Control Officer yearly

Question 2 of 4

Order of Preference

In order of preference, what is the most favorable way to resolve nuisances brought before the LHO? (place in order)

1)

2)

3)

4)

Question 3 of 4

True/False

No Outdoor Wood Boiler (OWB) may be used unless it meets the regulations established by the Maine Department of Environmental Protection.

A) True

B) False

Question 4 of 4