

9 ABOVE BOARD

LANDSCAPE CONTRACTORS BOARD (LCB)

October 2009, Issue 60



UNDERGROUND

INSIDE THIS ISSUE

Winterization	1
Online Profile Management	1
CEH Requirements	1
Points to Ponder	2
Who Are Employees?	3
Enforcement Actions	4-5
Call Before U Dig	5
Meet your Board (Steve Carper)	6

Winterization of Irrigation Systems

Beginning on January 1, 2010, the winterization of irrigation systems using compressed air will require an All Phase plus backflow or Irrigation plus backflow landscape contracting business license with the State Landscape Contractors Board or be performed by a licensed plumber.

Though this type of work is usually only done in regions of the state where freezing occurs at depths that affect the piping of irrigation systems, it is a law that covers the whole state. Using compressed air to expel water from an irrigation system, if done improperly, can create a hazardous condition for potential backflow of contaminants into the potable water system.

Proper licensing promotes public safety and consumer protection through insurance and bonding requirements as well as requiring a specific level of competency for those who perform this work.

Online Profile Management Available NOW!

All licensees have received a letter from the board explaining how to log in and change certain information in the licensee record. The licensee will be able to change the mailing address, phone, and email address online.

Please check online the current licensee information the board has on record to make sure all is correct and current.

Also remember, it is a law that all licensees provide notice of any address change within 10 days of that change. This now can be done online which will hopefully alleviate many of the penalties that are being assessed for failure to provide this notice (ORS 671.603)

BOARD MEMBERS

Martin Gascoyne, Cottage Grove, CHAIR

Lisa Sedlacek, Florence VICE CHAIR

Steve Carper, Beaverton

Joe Lymp, Sunriver

Annie Robertson, Portland

Larry Thomas, Astoria

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DON'T FORGET THE CEH REQUIREMENTS STARTING IN 2010!

In 2010, those landscape construction professionals (LCP) with an even numbered license will be subject to CEH audit at time of renewal of the LCP license. The requirement in 2010 is for 10 CEH of which a minimum of 2 CEH in Business topics, a minimum of 4 CEH in Technical topics and the remaining 4 CEH can be in Business, Technical or Other topics. This is how it works:

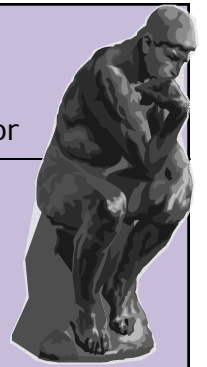
On your next renewal, if you are subject to audit (in 2010 only even numbered licensees), you will be asked to certify that you have completed the CEH requirement. This certification will allow you to renew your individual landscape construction professional license. In the month following the date of your license expiration, a random selection of those that have renewed will be notified that they are to submit documentation of meeting the CEH requirements. If you are one of the selected you will have 21 days to submit the certificates and other allowed documents

(continued page 3)

POINTS TO PONDER

Is Price Really What it is About?

By Michael A. Snyder, CLP; Administrator



In these economic times I hear a lot of complaints about how difficult it is to compete in the landscape construction industry when people are "lowering their price so low that I can't get the job". I have, in my 29 years of owning a landscape contracting business, weathered some significant economic down turns, but I would hesitate to say they were as bad as this one. However, I remember making some conscious decisions in those times that I had to "cut back". I remember one time realizing that I couldn't afford to perform construction work for new projects, but had to focus on those projects that were a consequence of our maintenance customer's desire to upgrade or change their landscape. It was quite a while before I ventured into new construction after those days but I learned some things that I think are important and maybe you will find them helpful as well.

The first thing I learned, and it took a while, was that though the customer "shopped price" it was not the only thing that they considered when they decided who they were going to contract with. In fact when it got down to it, price was at least a couple of "notches" down the list. I am not saying price doesn't enter into the equation, I just believe it is "lower" on the concern list in the end. So what are the primary factors ahead of price: I believe all the primary factors are relationship oriented;

1. **TRUST** is what I believe is first on the list. Trust is usually easy to establish at first because people "want to believe" you are going to do a great job and have their best interest at heart. Many good salespeople can create a sense of trust even when their intentions are not trustworthy. However, trust just as easily evaporates when a person fails to do what they said they were going to do; fails to return a phone call (sometimes it only takes once); doesn't show up when promised; doesn't complete part of the project; doesn't resolve a problem; and many other things. Trust is fragile and repeated experience with a person who continually shows that they are trustworthy will far outweigh a small differential in price. Think about it, why would one pay a much lower price when they know what they are going to get from you is what you say it is and the other person is someone they don't know is trustworthy. Now, it could be that this other person is either more trustworthy or has given the impression that they are, but that is something you can overcome in the "long run".
2. **COMMUNICATION** is very close to the top. So many times in my life I have tried to "avoid" dealing with the "bad things that happen" on a job and found myself procrastinating in returning calls that I surmised were going to make me feel bad. It took me many years and the loss of several customers to realize that facing the fear of hearing a complaint was best if heard sooner rather than later. Festering and frustration on the part of the client only makes the problem (perceived or actual) harder to resolve and sometimes created a situation where no matter what I did it wasn't going to be resolved. Hesitating to return a call, in my case, was because I was afraid that I had "done something wrong". Remember that hesitating means NOT acting, and NOT acting has its own consequences and most of times those consequences far exceed what we feared in the first place. The contract you write is the main communication tool you have in working with your client, make sure it clearly outlines what is expected from both parties of the contract. Remember, "what is said today is easily forgotten tomorrow, if not written."
3. **QUALITY** is about providing a product that exceeds your customers expectations. I used to feel that quality was providing what "I thought was the best product and service", but I learned that it was important to determine what the customer expected and exceed that expectation if I could. What I thought may have been sufficient, but in some cases it wasn't and determining those expectations upfront allowed me to bid properly and know what I needed to do to make the project a success. It is said that perception is 80+% of reality, and if you know what the customer perceives as quality you at least know how to perform the work to leave the customer with a good feeling about the project and a check in your bank account.
4. **SERVICE** is about doing what you say you are going to do. Showing up; being present, prepared and organized; and providing clear expectations to the customer so there is no doubt in the customer's or your mind about what is being provided for the money that is being exchanged.

I believe if you put other "relationship type factors" above price, yet set a price to do the work to meet or exceed customer expectations you will survive and maybe even thrive in these economic times. I just ask you to think about it. I do accept "feedback" if you agree or disagree, email: michael.a.snyder@state.or.us

WHO ARE EMPLOYEES?

This article was prepared by Lyndel L. Erwin, Wage and Hour Consultant for the law firm of Lehr Middlebrooks & Vreeland, P.C. Mr. Erwin can be reached at 205.323.9272.

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For total article go to:http://www.lehrmiddlebrooks.com/documents/ELB_August_2009.pdf#page=9

The Fair Labor Standards Act (FLSA) defines employ as "suffer or permit to work" and the courts have made it clear that the employment relationship under the FLSA is broader than the traditional common law concept. **Mere knowledge by an employer of work done for him by another is sufficient to create the employment relationship under the FLSA.** Many employers attempt to treat persons other than full time employees as independent contractors.

However, to do so, can be very costly in many instances. While the U.S. Supreme Court has said there is no single rule or test for determining whether an individual is an independent contractor or an employee it has listed several factors that must be considered. No one factor is seen as controlling but one must consider all of the circumstances.

1. The extent to which the services rendered are an integral part of the principal's business.
2. The amount of the alleged contractor's investment in facilities and equipment.
3. The alleged contractor's opportunities for profit and loss.
4. The nature and degree of control by the principal.
5. The amount of initiative, judgment or foresight in open-market competition with others.
6. The permanency of the relationship.

There are certain factors which are immaterial in determining whether there is an employment relationship. Such facts as the place where work is performed, the absence of a formal employment agreement, or whether state/local government licenses are required are not considered to have a bearing on determinations as to whether there is an employment relationship. Additionally, the Supreme Court has held that the time or mode of pay does not control the determination of employee status. There are several areas that may cause employers problems:

1. The use of so-called independent contractors in the construction industry.
2. Franchise arrangements, depending on the level of control the franchiser has over the franchisee.
3. Volunteers - for example, a person who is an employee cannot "volunteer" his/her services to the employer to perform the same type service performed as an employee. Of course, individuals may volunteer or donate their services to religious, public service, and non-profit organizations, without contemplation of pay, and not be considered employees of such organizations.
4. Trainees or students.
5. People who perform work at their home.

For more information concerning independent contractors and employees, please visit:
<http://www.oregonindependentcontractors.com/>

(CEH Requirements Continued from page 1)

to the board. Once this documentation is received you will be sent a letter of congratulations and your license will remain active. Failure to submit the documentation will result in enforcement action where you will be subject to a civil penalty and your Landscape Construction Professional (LCP) license will be suspended until the CEH requirement is met. Please note that if this happens it may affect any landscape contracting business that is associated with this license which can affect your ability to perform landscaping work in Oregon. Those who allow their license to expire during this renewal period will automatically be selected for audit and must meet the CEH requirement before the license is reactivated.

You still have time to gain the required CEH for your license renewal, but time is growing short so please do not procrastinate on this process, especially if your individual LCP is an even number for you will be subject to audit in 2010.



Safe jobs are smart business

One serious injury can stop the growth of your business in its tracks.

We offer **no-cost** safety & health consultations, training, and education workshops

Oregon OSHA

Contact Oregon OSHA:
www.orosha.org

A Division of the Department of Consumer and Business Services

Trivia Question: After which date is a license going to be required for the winterization of irrigation systems using compressed air?

Answer p 6

ENFORCEMENT ACTIONS JUNE 1, 2009 THROUGH AUGUST 31, 2009

THESE ACTIONS ARE FOR FINAL ACTIONS ONLY AND ARE NOT THE TOTAL NUMBER OF ACTIONS TAKEN DURING THE PERIOD, SINCE SOME ARE STILL UNDER INVESTIGATION. THIS IS SUMMARY INFORMATION ONLY. FOR DETAILED INFORMATION SEE: WWW.LCB.STATE.OR.US

City	Violation Type	#	City	Violation Type	#
ALBANY	Failure to Maintain Liability Insurance - Suspend	1	GRANTS PASS	Failure to Maintain Liability Insurance - Suspend	1
ALOHA	Conduct that is Injurious to the Public Welfare	1	GRANTS PASS	Operating w/o License	1
ALOHA	Conduct that was Dishonest or Fraudulent	1	GRANTS PASS	Operating w/o License & Claim Filed	2
ASHLAND	Failure to Maintain Liability Insurance - Gap	1	GRESHAM	Advertising w/o License	3
ASTORIA	Failure to Maintain Bond	1	GRESHAM	Operating w/o License	1
ASTORIA	Operating w/o License - 2nd Offense	1	GRESHAM	Working w/o a Written Contract - 1st Offense	1
AURORA	Operating w/o License - 2nd Offense	1	HAMMOND	Operating w/o License	1
BEAVERTON	Advertising w/o License	2	HAMMOND	Operating w/o License - 2nd Offense	1
BEAVERTON	Failure to Comply with min Standards for Contracts	1	HILLSBORO	Failure to Obtain Required Bond Amount	1
BEAVERTON	Failure to Maintain Bond	1	HILLSBORO 97123	Advertising w/o License	1
BEAVERTON	Failure to Maintain Liability Insurance - Suspend	2	HOOD RIVER	Operating w/o License	1
BEAVERTON	Failure to Notify Board - Address Change	2	HUBBARD	Operating w/o License	1
BEAVERTON	Failure to Obtain Required Bond Amount	1	HUSUM	Operating w/o License	1
BEAVERTON	failure to require direct supervision	1	JACKSONVILLE	Failure to Maintain Liability Insurance - Gap	1
BEAVERTON	Operating w/o License - 2nd Offense	1	KALAMA	Advertising w/o License	1
BEND	Advertising w/o License	3	KALAMA	Operating w/o License	1
BEND	Failure to Employ Landscape Construction Prof.	1	KEIZER	Failure to Maintain Business Registration	1
BEND	Failure to Maintain Business Registration	1	KLAMATH FALLS	Failure to Obtain a Permit	1
BEND	Failure to Notify Board - Address Change	1	LAKE FOREST	Failure to Notify Board - Address Change	1
BEND	Failure to Pay Civil Penalty	1	LAKE OSWEGO	Conduct that is Injurious to the Public Welfare	1
BEND	Operating w/o License	1	LAKE OSWEGO	Failure to Pay Civil Penalty	1
BORING	Failure to Maintain Bond	1	LAKE OSWEGO	Operating w/o License & Claim Filed	1
CENTRAL POINT	Advertising w/o License	1	LINCOLN CITY	Failure to Maintain Liability Insurance - Gap	1
CLACKAMAS	Failure to Employ Landscape Construction Prof.	1	LINCOLN CITY (OCEANLAKE)	Advertising w/o License	1
CLACKAMAS	Failure to Maintain Liability Insurance - Suspend	1	MCMINNVILLE	Failure to Maintain Liability Insurance - Suspend	1
CLACKAMAS	Failure to Use Business License No in Advertising	1	MCMINNVILLE	Operating w/o License	1
COLON	Failure to Notify Board - Address Change	1	MCMINNVILLE	Working w/o a Written Contract - 1st Offense	1
COOS BAY	Operating w/o License	1	MEDFORD	Advertising w/o License	2
CORBETT	Advertising w/o License	1	MEDFORD	Failure to Maintain Business Registration	1
DAYTON	Operating w/o License	1	MEDFORD	Operating w/o License	2
ESTACADA	Advertising w/o License	1	MOUNT ANGEL	Advertising w/o License	1
EUGENE	Failure to Complete Renewal form	1	MULINO	Failure to Notify Board - Address Change	1
EUGENE	Failure to Maintain Business Registration	1	NORTH PLAINS	Failure to Maintain Bond	1
EUGENE	Failure to Notify Board - Address Change	3	OREGON CITY	Advertising w/o License - subsequent offense	1
EUGENE	Operating w/o License & Claim Filed	1	OREGON CITY	Failure to Comply with min Standards for Contracts	1
FRUITLAND	Operating w/o License	1	OREGON CITY	Failure to Maintain Liability Insurance - Suspend	1
GALES CREEK	Failure to Employ Landscape Construction Prof.	1	OREGON CITY	Failure to Pay Civil Penalty	1
GOLD BEACH	Advertising w/o License	1	OREGON CITY	Failure to Submit Fee	1
GRANTS PASS	Advertising w/o License	5	OREGON CITY	Operating w/o License	1
GRANTS PASS	Failure to Maintain Bond	1	PHOENIX	Advertising w/o License	1
PORLAND	Operating w/o License	1	SANDY	Failure to Comply with min Standards for Contracts	1

ENFORCEMENT CONTINUED

PORTLAND	Advertising w/o License	4	SEASIDE	Operating w/o License	1
PORTLAND	Failure to Complete Renewal form	1	SEASIDE	Operating w/o License & Claim Filed	1
PORTLAND	Failure to Employ Landscape Construction Prof.	1	SHERWOOD	Operating w/o License	1
PORTLAND	Failure to Maintain Bond	1	SISTERS	Operating w/o License	1
PORTLAND	Failure to Maintain Business Registration	1	SPRINGFIELD	Failure to Employ Landscape Construction Prof.	1
PORTLAND	Failure to Maintain Liability Insurance - Suspend	2	ST. HELENS	Advertising w/o License	1
PORTLAND	Failure to Notify Board - Address Change	1	SUTHERLIN	Owes a Landscaping Debt	1
PORTLAND	Failure to Pay Required Licensing Fees (Bus)	1	TALENT	Advertising w/o License	1
PORTLAND	Failure to Pay Required Licensing Fees (Ind)	1	TALENT	Failure to Employ Landscape Construction Prof.	1
PORTLAND	Failure to Register with the Corporation Division	1	TERREBONNE	Failure to Pay Required Licensing Fees (Ind)	1
PORTLAND	Failure to Supervise Landscape Work	1	THE DALLES	Failure to Maintain Liability Insurance - Suspend	1
PORTLAND	Operating w/o License	6	TIGARD	Failure to Employ Landscape Construction Prof.	1
PORTLAND	Operating w/o License & Claim Filed	1	TIGARD	Failure to Notify Board - Address Change	1
PRESCOTT VALLEY	Failure to Maintain Liability Insurance - Suspend	1	TILLAMOOK	Failure to Maintain Business Registration	1
PRINEVILLE	Operating w/o License	1	TILLER	Failure to Obtain a Permit	1
REDMOND	Advertising Outside Scope of License	1	TILLER	Working w/o a Written Contract - 1st Offense	1
REDMOND	Failure to Maintain Business Registration	1	TROUTDALE	Advertising Outside Scope of License	1
REDMOND	Failure to Maintain Liability Insurance - Suspend	1	UMATILLA	Advertising w/o License	1
REDMOND	Failure to Register with the Corporation Division	1	VANCOUVER	Advertising w/o License	1
ROGUE RIVER	Failure to Maintain Liability Insurance - Suspend	1	VANCOUVER	Failure to Employ Landscape Construction Prof.	1
ROSEBURG	Failure to Maintain Bond	1	VANCOUVER	Failure to Notify Board - Address Change	1
SAINT HELENS	Advertising w/o License - subsequent offense	1	VENETA	Advertising w/o License	1
SALEM	Failure to Employ Landscape Construction Prof.	1	VENTURA	Failure to Maintain Liability Insurance - Suspend	1
SALEM	Failure to Maintain Bond	2	WEST LINN	Advertising w/o License	1
SALEM	Failure to Maintain Liability Insurance - Suspend	2	WHITE CITY	Advertising w/o License	1
SALEM	Failure to Notify Board - Address Change	1	WHITE CITY	Operating w/o License	1
SALEM	Failure to Register with the Corporation Division	1	WISHRAM	Failure to Maintain Business Registration	1
SALEM	Owes a Landscaping Debt	1	WOLF CREEK	Failure to Maintain Business Registration	1
			WOODBURN	Advertising w/o License	1

**CALL BEFORE YOU DIG
OREGON UTILITY NOTIFICATION CENTER**



Do you know the law around "Call Before You Dig"?

The Utility Notification Center is the one-call agency dedicated to safeguarding citizens and construction personnel who work around utilities, as well as safeguarding the underground infrastructure of pipes, mains and lines which bring utilities to your community.

Calling before beginning any excavation prevents damage to underground facilities, service interruptions, and bodily injury.

The Utility Notification Center is open 24 hours a day, every day, and accepts calls from contractors, homeowners, or anyone planning to dig in Oregon, Washington, Montana and Hawaii. Calling before you dig ensures that any publicly owned underground facilities will be marked according to the APWA color code so that you can dig safely.

If, during the performance of landscaping work the soil is disturbed in any manner it is safe to assume that you will need to have a locate of utilities performed on the property before work commences. There are some exceptions to this requirement but they are minimal at best. For safety of the consumer and workers not withstanding the liability the landscape contracting business is assuming when performing this work, it is prudent for the business to obtain the locate before performing work on a consumer's property.

Failure to conform to the Call before You Dig laws can result in fines of up to \$5000 if determined to be unintentional, but up to \$10,000 if determined to be intentional.

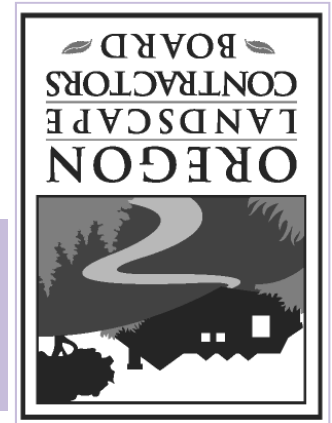
Go to: www.callbeforeyoudig.org and www.digsafelyoregon.com for more information about this important service.



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MISSION STATEMENT
 Promoting Consumer Protection, Contractor Competency and Fair
 Competition in Oregon's Landscape Construction Industry

MEET YOUR BOARD—Public Member: Steve Carper



Steve Carper is the Conservation Technician for Tualatin Valley Water District. His focus is developing TVWD's B.I.G. conservation program for Business, Industry, Government and Multi-Family Housing facilities within the district. An Oregon native, Steve graduated from the University of Oregon with majors in Geography and Environmental Studies and a minor in Landscape Architecture. His professional background includes 15 years in the Willamette Valley landscape industry with experience in construction, irrigation and maintenance. In his free time Steve enjoys of whitewater rafting, skiing/snowboarding and running.

In addition to supporting the mission of the Landscape Contractors Board he sees his role on the board as being a strong advocate for promoting public awareness and professional development for landscape construction professionals by partnering with industry organizations, associations and other state agencies. More specifically, in Oregon landscape irrigation professionals in effect manage 25-50% of the states potable water resources through irrigation practices. Therefore he is committed to creating opportunities to increase awareness and accountability for the public and landscape construction professionals to efficiently manage one of our states most precious resources; our water

Steve is serving his first term on the board which began on 10/8/2007 and ends 10/7/2010. The Board greatly appreciates Steve's dedication and significant contributions as a volunteer on the board. Thank you Steve.