

8 ABOVE BOARD

LANDSCAPE CONTRACTORS BOARD (LCB)

February 2009, Issue 57



UNDERGROUND

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Lisa Sedlacek, Florence VICE CHAIR

Steve Carper, Beaverton

Richard Hollenbeck, Estacada

Joe Lymp, Sunriver

Matt Triplett, Portland

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CONTINUED EDUCATION "WHAT DO I DO???"

The Continued Education requirement for an active individual landscape construction professional (LCP) license renewal is now in effect with the first audit of this requirement occurring in 2010. This is what you need to do when you renew:

CHECK YOUR INDIVIDUAL LCP LICENSE NUMBER (5 DIGIT #)

- If your LCP license number is an odd number you ARE NOT subject to audit in 2010, you will be subject to audit in 2011 and again in 2013, etc.
- If your LCP license number is an even number you ARE subject to audit in 2010 and again in 2012, etc.
- In 2010, you must have acquired on or before your license renewal date, 10 hours of continued education (CEH). A minimum of 2 CEH are to be business related; a minimum of 4 CEH are to be technical related and the remaining 4 CEH can be business, technical or other type CEH's.
- In 2011 you must have acquired on or before your license renewal date, 20 hours of continued education (CEH). A minimum of 4 CEH are to be business related; a minimum of 8 CEH are to be technical related; and the remaining 8 CEH can be business, technical or other type CEH's.

See the LCB website in the "Continued Education Info" box to find the webpage that lists all the pre-approved CEH programs and forms for applying for CEH for programs not pre-approved: www.lcb.state.or.us

HOW DOES IT WORK?

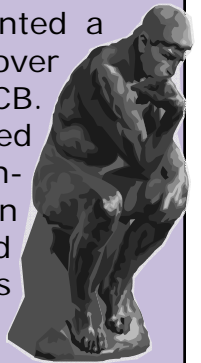
On or before your renewal date for your LCP license the board will send out your renewal form. You will indicate on the form whether you have met the CEH requirements or not, after which your individual license will be renewed (or not depending on your response). If you are selected to be part of the audit for the year then you will receive written notification that you will need to submit verification of meeting the CEH requirement. AT THAT TIME submit certificates and other documentation that verifies your compliance with the CEH requirement. DO NOT send in any documentation until you are asked to do so. The board does not hold or save any documentation on your behalf.

Trivia Question: Who is in direct violation of the law if not directly supervised by a licensed landscape construction professional when performing landscape work? Answer: page 5

POINTS TO PONDER

Enforcement and the LCB

By Michael A. Snyder, CLP; Administrator



As many of you know, during the 2005-2007 biennium the LCB implemented a deficit budget to use \$218,000 of the reserves the board had accumulated over the previous years in order to increase the compliance program of the LCB. During this time the board added the equivalent of 3 FTE in employed investigators and supplied them with vehicles, badges and the necessary training to perform compliance work for the LCB. This was a conscious decision and there was an unwritten expectation that the enforcement program would essentially "pay for itself" over time. The board implemented this program as an experiment with periodic reviews to measure performance vs. cost effectiveness of the program. I am proud to say that the program met its performance measures and over the past 18 months enforcement has grown in actual investigations but more importantly, the depth and thoroughness of the investigation has provided solid evidence for many cases that in the past would have not been pursued. This in return has created additional expenses with the frequent requests for hearings and the need for the board to rely more heavily on our Assistant Attorney General (AAG) in dealing with these cases. I am pleased to say, that in most cases where there has been a hearing the board has prevailed and this is due primarily to the effectiveness and efficiency of the investigative team both in the field and in the office. The unfortunate reality is that though the program has increased the amount of civil penalties levied the issue that remains steadfast is the "collection" of the civil penalties that are levied. An agency can levy any amount of civil penalties, the issue is collecting them. The agency has many avenues for collection and has been working on refining those and using those efforts that are most productive in collections. The board has been most successful in the collecting of penalties that result from settlement agreements that frequently lead to licensing of the individuals or for other actions of compliance that the board has found acceptable. These agreements do result in a reduced penalty if the conditions of the agreement are met which is paid "up front", but if the agreement is not met (50% of the time) then the full penalty is due and it then becomes a collection issue.

The law does make the violation of operating without a license an unclassified misdemeanor which is a Class A misdemeanor. The board has been successful in several cases to have this conviction held up in court especially if there were other consumer damage issues, but the end result has not provided prison sentences for these violators. So, to rely on the collection of civil penalties to fund the enforcement program is not feasible but to continue to operate in the "red" is also not feasible.

The board has discussed this in detail at its last work session in January and is now looking to how this vitally important program is going to continue. Everything is being looked at which include but is not limited to: fee changes or increases, staff reduction, use of AAG services, increasing the number of licensees, overhead reduction and any other cost saving idea that comes to the table.

What is certain is that there has been a definite increase of compliance efforts on the part of the LCB and a increased awareness of the licensing requirements for performing landscape construction in Oregon. Is it worth it? The board feels it is, but the cost barriers need to be overcome. Your suggestions and ideas are welcome. Please contact me at lcb.info@state.or.us. Thank you.

CHANGES TO THE WEB SEARCH

If you have done a search on the LCB website lately you will notice a change in the way the results are being returned to you. In the past, every licensee (landscape construction professional and landscape contracting business) would come up during a search. This has changed.



The board made a decision to only return actively licensed businesses when a search is conducted on the web. The reasoning behind this is two-fold: first for consumer protection in that it is the active landscape contracting business that the consumer can contract with and if the search does not return a result then the business is not currently licensed. Secondly for businesses that are expired, suspended or terminated the consumer is not having to search through a list of businesses that are not active that have similar names which may confuse the consumer during the search. Many businesses that have either changed entities or have chosen to let their license expire are not wanting that information on the website since it brings a lot of unnecessary concern to the consumer.

This change was done as an "experiment" for a period of time and to date we have not heard any significant input that would lead the board to believe this wasn't a good idea.

DIRECT SUPERVISION

Over the past several months the board has had several hearings challenging the "direct supervision" requirements. In every case the board has prevailed in the hearing. One case is now being appealed to the Appellate Court and that case has yet to be heard.

This issue has created significant discussion within the industry. For many companies compliance is not an issue. The real discussion centers around the "availability" of the licensed landscape construction professional and what that really means.

The question for the industry is: Is the examination that the LCP passes relevant and if so, to what extent? Direct supervision is a requirement of statute and relates to the ability of an unlicensed employee of a landscape contracting business to perform landscape construction work without a license. Why would legislators put direct supervision as a requirement in statute? Is it because of the exam or is it for assurance of competent work, or just another barrier to doing business in Oregon?

Whatever the reason, the board has interpreted this law to require the LCP to provide instruction and be available to the unlicensed individual. The board is enforcing this law and will continue to do so until the law is changed.

Statute and
employee to
licensed employee to
perform landscape work.
Direct Supervision is a requirement of
relates to the ability of an unlicensed employee to
perform landscape work.

LCB LEGISLATION FOR 2009

SB 147

The LCB introduced legislation for the 2009 Legislative session to amend the statutes in an attempt to correct some deficiencies that have been revealed in the last couple of years. The bill will address specifically:

- The licensing requirement for the winterization of irrigation systems using compressed air;
- Changes the definition of landscape contracting business to relate directly to the work the business performs as opposed to just offering the services of a landscape construction professional. This eliminates any confusion as to whether a business is offering services of an individual or performing the work that is privileged to a landscape construction professional.
- Restricts any person exempt from LCB licensure to represent that they are landscape construction professionals or landscape contracting businesses.
- Creates an exemption for employees (not contracted persons) of a property owner to not be required to be licensed when they arrange for landscape contracting work on the owner's property.

ENFORCEMENT ACTIONS NOVEMBER 1, 2008 THROUGH JANUARY 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	Advertising w/o License	Conduct that was Dishonest or Fraudulent	Failure to Appear at On-Site Meeting	Failure to Comply with min Standards for Contracts	Failure to Employ Landscape Construction Prof.	Failure to Obtain Required Bond Amount	Failure to Maintain Business Registration	Failure to Maintain Liability Insurance - Gap	Failure to Maintain Workers Compensation - Suspend	Failure to Notify Board - Address Change	Failure to Obtain a Permit	Failure to Pay Civil Penalty	Failure to Pay Taxes	Failure to Register with the Corporation Division	Failure to Use Business License No in Advertising	Operating w/o License	Operating w/o License & Claim Filed	Working Outside Scope of License	Working w/o a Written Contract - 1st Offense	TOTAL
ALOHA			1				1			1			1			1				5
ASHLAND	1							2								1				4
ASTORIA																1				1
AUMSVILLE										1										1
BEAVERTON						2								1						3
BEND	1			1			1			1		1			1					6
BORING							1									1				2
BROOKINGS																1				1
CANBY																1				1
CANNON BEACH								1												1
CARLETON	1																			1
CENTRAL POINT	1															1				2
CLACKAMAS	1		1																	2
COOS BAY																1				1
CORVALLIS						1														1
COTTAGE GROVE	1																			1
EUGENE	1					1	1			1	1									5
GLIDE																1				1
GRANTS PASS	1		1	1	2											2				7
GRESHAM	1																			1
HERMISTON				1																1
HILLSBORO				1						1					1					3
IRRIGON										1		1								2
JACKSONVILLE			1	1																2
JEFFERSON						1														1
KEIZER															1					1
KLAMATH FALLS	1																			1
LAKE OSWEGO							1													1
MABTON					2											1				3
MCMINNVILLE				1																1
MEDFORD	1			1											1	1				4
MERIDIAN																1				1
MOLALLA																1				1
NEWBERG			1																	1
NEWPORT										1										1
OREGON CITY				1	1		2													4

CITY	Advertising w/o License	Conduct that was Dishonest or Fraudulent	Failure to Appear at On-Site Meeting	Failure to Comply with min Standards for Contracts	Failure to Employ Landscape Construction Prof.	Failure to Obtain Required Bond Amount	Failure to Maintain Business Registration	Failure to Maintain Liability Insurance - Gap	Failure to Maintain Workers Compensation - Suspend	Failure to Notify Board - Address Change	Failure to Obtain a Permit	Failure to Pay Civil Penalty	Failure to Pay Taxes	Failure to Register with the Corporation Division	Failure to Use Business License No in Advertising	Operating w/o License	Operating w/o License & Claim Filed	Working Outside Scope of License	Working w/o a Written Contract - 1st Offense	TOTAL
PAYSON																	1			1
PHOENIX																1				1
PORTLAND	3			2	4	1			2	2				1		2			1	18
POWELL BUTTE						1				1										2
PRINEVILLE	1					1									1	1				4
RALEIGH HILLS	1																			1
REDMOND	1			1	1	1			1			1								6
ROSEBURG																1				1
SALEM				1	1	1				1						1			1	6
SHADY COVE										1										1
SHERWOOD					1			1								1				3
SILVERTON							1													1
SISTERS		1																		1
SOUTHBEACH																1				1
SPRINGFIELD																1				1
ST PAUL						1		1												2
SUNRIVER	1																			1
TALENT						1		1												2
TERREBONNE	1									1									1	3
TIGARD				1				1				1						1		4
TROUTDALE										1		1								2
TURNER						1														1
VANCOUVER						1														1
VENETA																			1	1
WHITE CITY	1											1				1				3
WOLF CREEK					1															1
WOODBURN							1	1								1				3
Total	20	1	1	10	19	15	2	15	3	13	2	6	1	2	5	26	1	1	4	147

CRIME DOESN'T PAY!

Oregon Attorney General John Kroger announced today the conviction of a crooked businessman who bilked the state out of approximately \$8 million in unpaid taxes. Maurilio Castillo Vega pleaded guilty to one count of racketeering and received a 61-month prison sentence. He was involved in a fraud scheme to avoid paying income taxes and worker's compensation insurance dating back to at least 2001.

"As Attorney General, my highest priority is fighting crime. When companies break the law, we are going to come after them. I will fight for a level playing field for honest companies to compete," Kroger said.

The Vega scam involved paying workers in cash under the table. It allowed Vega to bid lower for projects than legitimate companies that paid taxes. The state Department of Revenue has yet to complete its final assessment, but the sham companies Vega set up avoided taxes on about \$25 million in income. The net loss to Oregon is expected to be around \$8 million.

Vega and two drywall companies were indicted in Marion County last year on 16 counts of racketeering, tax evasion, theft and other charges. The investigation is ongoing.

Senior Assistant Attorney General Andrew D. Campbell and Special Agent Steve Armbruster in the Criminal Justice Division investigated and prosecuted the case. Other agencies involved include the Marion County District Attorney's office, the Oregon State Police, Immigration and Customs Enforcement (ICE) and the Beaverton Police Department. Critical to bringing the case was a greater level of inter-agency cooperation through the Independent Contractor's Steering Committee, which includes the Oregon Department of Revenue, the Bureau of Labor and Industries, the Oregon Employment Department, the Department of Consumer and Business Affairs Workers Compensation Division, the Construction Contractor's Board and State Landscape Contractors Board.



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

MEET YOUR BOARD

Larry Thomas, Landscape Construction Professional, Astoria (2008-2011)



Larry Thomas lives in Astoria and is the owner of Edgewater Landscape Service, Inc. Larry and his wife Carol have been gardening since they first met in the late 70's in San Diego. Larry's interest in horticulture started in the early 80's when he and his wife developed a Central Washington property into a self sufficient farmstead. During that time Larry worked at a local golf course and in a short period of time was promoted to managing the course maintenance. Later, Larry took a management position at the Double Eagle Golf Center, now known as the Red Tail Golf Club. He then found himself working for Charbonneau Country Club where he began his studies in landscape technology at Portland Community College at the Rock

Creek Campus. The next step in his career was to take a position with Generations, LLC as the manager of the landscape operations which included designing and project management of projects as far south as Ashland, Oregon. In 1999, Larry became a Certified Landscape Technician (CLT) and continues to volunteer as a judge in support of this program.

In 2000 Larry started his own landscape maintenance business and in 2004 Larry obtained his landscape construction professional license and landscape contracting business license. Edgewater Landscape Services, Inc focuses on designing and constructing landscapes and outdoor living spaces. In February 2008, Larry was appointed to the State Landscape Contractors Board and is excited about his involvement with the upcoming challenges this board faces.

The board Welcomes Larry and appreciates his willingness to support and volunteer. Thanks Larry!