



Oregon

Kate Brown, Governor

Department of Consumer and Business Services

Building Codes Division

1535 Edgewater Street NW

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Board of Boiler Rules

Meeting agenda to include:

Deliberation during out of public meeting

Tuesday, June 7, 2016, 9:30 a.m.

Conference Room A

Board meetings are broadcast live via the Internet

Click on "View live meetings"

I. Board business

- A. Call to order
- B. Roll call
- C. Approval of agenda and order of business
- D. Approval of the February 16, 2016, (rescheduled) board meeting minutes
- E. Date of the next regularly scheduled meeting: September 13, 2016
- F. Welcome returning member: Greg Moyer, insurance inspector

II. Public comment

*This time is available for individuals wanting to address the board on **non-agenda items only**. The board will not take action on non-agenda items raised under public comment at this meeting. Testimony on agenda items will be heard when the item is called. (See "Issues to remember when addressing the board" at the end of this agenda).*

(Break to clear audience from room for deliberations outside public meeting. No board action will be taken during this time)

III. Outside of public meeting

Board deliberations on a contested case hearing for Robert Brodmerkle, dba R. H. Brodmerkle Enterprises outside of public meeting under ORS 192.690(1)

(Break to allow audience back in room to be seated)

Board review and provide a recommendation for Robert Brodmerkle, dba R. H. Brodmerkle Enterprises

IV. Reports

- A. Building Codes Division report
- B. Program update

V. Communications - None

VI. Appeals - None

VII. Unfinished business - None

VIII. New business

Board review and approve committee's recommendations on new continuing education courses and instructors

IX. Announcements - None

X. Adjournment

Issues to remember when addressing the board:

- All public participation is subject to the discretion of the board chair for order of testimony, length and relevance.
- Speakers are generally limited to five minutes.
- Please register on the attendance registration form and on the public testimony registration form, listing the appropriate agenda item.
- The board chair will call you to the front testimony table.
- Please state your name and the organization you represent (if any).
- Always address your comments through the chair.
- If written material is included, please provide 20 three-hole-punched copies of all information to the boards coordinator prior to the start of the meeting and, when possible, staff respectfully requests an electronic copy of materials 24 hours prior to the meeting.

Interpreter services or auxiliary aids for persons with disabilities are available upon advance request. Persons making presentations including the use of video, DVD, PowerPoint, or overhead projection equipment are asked to contact boards coordinator 24 hours prior to the meeting. For assistance, please contact Debi Barnes-Woods at 503-378-6787.

Please do not park vehicles with "E" plates in "customer only" spaces.

Note: For information regarding re-appointments or board vacancies, please visit the Governor's website.

Board of Boiler Rules
Meeting minutes
February 16, 2016 (rescheduled)

- Members present:** Blake Alexander, chair, boiler installation and repair
Thomas Engstrom, boiler maker
Roger Hendrix, mfr/owner of boilers or pressure vessels
Kenneth Hill, owner/operator pressure vessel
Greg Itoh, public member
Patrick Lamb, practical steam operating engineer
Mark Stenberg, steamfitter
- Members absent:** Eric Anderson, vice-chair, mechanical engineer
Jon Hooker, owner/operator pressure vessel
Edward Pitzrick, insurance inspector
- Staff present:** Brett Salmon, manager, Policy and Technical Services
Andrea Simmons, manager, Enforcement and Training Services
Jeff Starkey, assistant manager, Statewide Services
Kevin Perdue, boiler program chief, Statewide Services
Adam Blechman, enforcement policy analyst, Enforcement Services
Todd Smith, policy analyst, Policy and Technical Services
Richard Baumann, policy analyst, Policy and Technical Services
Debi Barnes-Woods, boards administrator/coordinator, Policy and Technical Services
- Guests present:** Don VanTungeln, Hartford Steam Boiler (HSB)
Andy Adams, HSB
GF Scheuermann, IAPMO
Bob Graham, ARISE
Mike Graham, retired

I. Board business

A. Call to order

Chairman Blake Alexander called the Board of Boiler Rules rescheduled board meeting of February 16, 2016, to order at 10:00 a.m. The meeting was delayed because there was not a quorum. The meeting was held at the Building Codes Division in Conference Room A, 1535 Edgewater Street NW, Salem, Oregon.

B. Roll call

Vice-chair Eric Anderson, Jon Hooker, and Greg Itoh were all absent excused.

This board has two vacant positions: Owner/user or representative and employee of owner/user of low pressure boiler, and insurance inspector.

C. Approval of the agenda and order of business

Chair Alexander **RULED** the rescheduled board meeting agenda of February 16, 2016, approved.

D. Approval of the meeting minutes

Chair Alexander **RULED** the meeting minutes of September 1, 2015, final.

E. Date of the next regularly scheduled meeting: June 7, 2016.

F. Formal farewell to Edward Pitzrick

Although Mr. Pitzrick was unable to attend, his certificate of appreciation will be mailed.

II. Public comment - None

III. Reports

A. Building Codes Division report

Brett Salmon, manager, Policy and Technical Services, discussed the upcoming short legislative session and said that if an item of interest to the Board of Boiler Rules were to occur, an update will be given at the next scheduled meeting.

B. Program update

Kevin Perdue, boiler program chief, State Inspection Services, discussed the overdue inspections noting that the overdue inspection numbers are down because the program is now fully staffed.

IV. Communications - None

V. Appeals – None

VI. Unfinished business - None

VII. New business

A. License Determination Review - out of state exemption from obtaining an Oregon boiler license

Todd Smith, policy analyst, Policy and Technical Services, introduced the item and explained the inquiry was received from an out of state company that requested to perform specialty repair work for a company in Oregon.

Chief Perdue said in October 2015, he was contacted by SERF Inc., a subcontractor for Andritz Inc., located in Cantonment, Florida. The company requested permission to perform specialty repair work on heat exchangers for Cascade Pacific Pulp in Halsey, Oregon. Chief Perdue reviewed all material sent by Jack Sparks, engineer and president of SERF Inc., and determined that the specific work required special tools or a special process for which the individual requesting to do the work was uniquely qualified. Chief Perdue

approved the work requested for an exemption from a Class 4 Boiler License subject to specific conditions.

Chair Alexander was in favor of allowing the exemption with the required conditions. However, if further work was needed, he preferred that the company hire a Class 4 boiler licensed individual.

Motion by Mark Stenberg to concur that staff's determination is compliant with the administrative rules for the Board of Boiler Rules.

Roll call vote taken:

Aye - Stenberg, Lamb, Hill, Hendrix, Engstrom, and chair Alexander

Nay - None

Motion carried unanimously

B. Board review and approve committee's recommendations on new continuing education course and instructors

Richard Baumann, policy analyst, reviewed the new course and instructor applications the committee approved/denied or has pending. Mr. Baumann explained the pending category for the board.

Before the vote, Mr. Baumann reported that one of the courses on the continuing education course outline is taught by board member Hendrix and that because the board has only six members present, there are two options available:

- Proceed with a vote on remaining courses after removing Roger Hendrix's course and instructor applications and delaying vote for his courses until next meeting
- Vote to move Agenda Item VII.B. to the next meeting

Mr. Hendrix and the rest of the members were in favor of moving Mr. Hendrix's course to the next scheduled meeting and proceeding with a vote on the remaining items.

Motion by Mark Stenberg to approve the committee's recommendations for approval or denial of courses or instructors.

Motion carried unanimously

To view continuing education rules, click on the blue underlined link: Oregon Administrative Rules (OAR) 918-035-0000, Division 35.

<http://www.cbs.state.or.us/external/bcd/rules/035.pdf>

VIII. Announcements – None

IX. Adjournment

Chair Alexander adjourned the meeting at 10:25 a.m.

Respectfully submitted by Debi Barnes-Woods
Boards Administrator/Coordinator

State of Oregon

Board memo

Building Codes Division

June 7, 2016

To: The Board of Boiler Rules

From: Adam D. Blechman, contested case representative, Enforcement Services

Subject: Final Order for BCD Case No. C2014-0206, In the Matter of Robert Brodmerkle, dba R. H. Brodmerkle Enterprises

Action requested:

To consider the adoption of a Proposed Order and issuance of a Final Order, or amendment of a Proposed Order and potential issuance of a Final Order.

Background:

On May 1, 2015, the division, acting on behalf of the board, issued a Notice of Proposed Assessment of Civil Penalty, Proposed Suspension of Boiler Contractor License No. B99-2052, Proposed Suspension of Class 4 Boilermaker License No. E90-4605, Proposed Suspension of Class 5 Pressure Piping Mechanic License No. E90-4585, Proposed Order to Cease and Desist,¹ and Final Order on Default to Robert Brodmerkle, dba R.H. Brodmerkle Enterprises. An amended Notice was issued on October 2, 2015. Brodmerkle requested a hearing, which was held on February 17, 2016. Administrative Law Judge (ALJ) Marni J. Davis presided.

On March 29, 2016, ALJ Davis issued a Proposed Order finding the following:

- Brodmerkle engaged in the business of installing, repairing or altering boilers or pressure vessels without a valid boiler contractor license, in violation of [ORS 480.630\(1\)](#).
- Brodmerkle installed, repaired or altered boilers or pressure vessels as the employee or agent of a business engaged in the installation, repair or alteration of boilers or pressure vessels without a valid boilmaker license, in violation of ORS 480.630(2) and [OAR 918-225-1691](#).

¹ Orders to Cease and Desist are issued by the Director of the Department of Consumer and Business Services rather than the board. In this case, the Cease and Desist was included in the same Notice as the proposed civil penalties and license suspensions.

- Brodmerkle installed, altered or repaired a boiler or pressure vessel without first obtaining an installation permit, in violation of ORS 480.630(5).
- The division may impose civil penalties totaling \$7,000 against Brodmerkle.
- The division may not suspend Brodmerkle's Boiler Contractor License No. B99-2052.
- The division may not suspend Brodmerkle's Class 4 Boilermaker License No. E90-4605.
- The division may not suspend Brodmerkle's Class 5 Pressure Piping Mechanic License No. E90-4585.
- The division may not order Brodmerkle to cease and desist from engaging in any violation of the state building code.

Accordingly, ALJ Davis proposed that the board issue a final order requiring Brodmerkle to pay \$7,000 for violating ORS 480.630(1), (2), and (5) and OAR 918-225-1691. Mr. Brodmerkle filed exceptions to the Proposed Order, but his exceptions were not filed timely.²

In her opinion, ALJ Davis noted that the division or board may suspend a license if the license holder has failed to comply with the laws administered by the board or with the rules adopted by the board, or if the license holder has performed work without appropriate licensing, certification or registration or has employed individuals to perform work without appropriate licensing, certification or registration.

Although the ALJ found that Brodmerkle had failed to comply with the laws administered by the board and the rules adopted by the board, and that Brodmerkle had performed work without the appropriate licensing or certification, the ALJ declined to recommend the suspension of Brodmerkle's licenses. She indicated that she found that Brodmerkle was not aware that his licenses were expired when he performed work that required those licenses and that he was not aware that he had not obtained the required permits. She stated that because she believed he was not aware that he was violating those statutes and rules, his licenses should not be suspended.³

The Board of Boiler Rules is the final decision maker in this matter. A DOJ representative will inform the board of its options during the board's deliberations. There may be new or additional options that the board may want to consider prior to the issuance of a Final Order in this matter.

² Written exceptions to the ALJ's proposed order were required to be received on or before April 18, 2016. Brodmerkle filed written exceptions via certified mail, which were not received until April 19, 2016. Accordingly, those written exceptions were not timely, so law and rule indicate they shall not be considered.

³ For the same reasons, the ALJ found that the Division should not issue an Order to Cease and Desist. No action of the board is required regarding the Order to Cease and Desist because the Director of the Department of Consumer and Business Services, not the Board, is responsible for issuing such orders.

Options:

After considering the ALJ's Proposed Order, the board may:

- Issue a Final Order adopting the Proposed Order.
- Issue an Amended Proposed Order and, provided that no timely written exceptions are filed, authorize the division to issue a final order after the exceptions period has run.
- Withdraw the Notice, which will dismiss the case against Mr. Brodmerkle.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
BOARD OF BOILER RULES**

IN THE MATTER OF:

**ROBERT BRODMERKLE,
DBA R.H. BRODMERKLE
ENTERPRISES**

) **PROPOSED ORDER**
)
) OAH Case No.: 1504257
) Agency Case No.: C2014-0206

HISTORY OF THE CASE

On May 1, 2015, the Board of Boiler Rules of the Building Codes Division (Division) issued a Notice of Proposed Assessment of Civil Penalty, Proposed Suspension of Boiler Contractor License Number B99-2052, Proposed Suspension of Class 4 Boilermaker License Number E90-4605, Proposed Suspension of Class 5 Pressure Piping Mechanic License Number E90-4585, Proposed Order to Cease and Desist and Final Order on Default to Robert Brodmerkle, DBA R.H. Brodmerkle Enterprises (Respondent). On May 27, 2015, Respondent requested a hearing.

On July 14, 2015, the Division referred the hearing request to the Office of Administrative Hearings. Administrative Law Judge (ALJ) Marni J. Davis was assigned to preside at hearing. On October 2, 2015, the Division issued an amended notice.

ALJ Davis held a contested case telephone hearing on February 17, 2016. Respondent appeared and testified on his behalf. Dwayne Walden and Lois Brodmerkle appeared as witnesses for Respondent, but they did not testify. Adam Blechman represented the Division. Andrea Simmons and Britt Hill testified on behalf of the Division. Respondent is hearing impaired. Tracy Reinke appeared as an interpreter for Respondent and is a certified transcriptionist. The record closed at the conclusion of the hearing.

ISSUES

1. Whether Respondent engaged in the business of installing, repairing or altering boilers or pressure vessels without a valid boiler contractor license. ORS 480.630(1).
2. Whether Respondent installed, repaired or altered boilers or pressure vessels as the employee or agent of a business engaged in the installation, repair or alteration of boilers or pressure vessels without a valid boilermaker license. ORS 480.630(2) and OAR 918-225-0691.
3. Whether Respondent installed, altered or repaired a boiler or pressure valve without first obtaining an installation permit from the Division. ORS 480.630(5).

4. Whether the Division may impose civil penalties totaling \$7,000 against Respondent.
5. Whether the Division may suspend Respondent's boiler contractor license number B99-2052. ORS 455.129(2)(a).
6. Whether the Division may suspend Respondent's class 4 boilermaker license number E90-4605. ORS 455.129(2)(d).
7. Whether the Division may suspend Respondent's class 5 pressure piping mechanic license number E90-4585. ORS 455.129(3)(c).
8. Whether the Division may order Respondent to cease and desist from engaging in any violation of the state building code. ORS 455.775(2).

EVIDENTIARY RULINGS

Exhibits A1 through A11, offered by the Division, were admitted into the record without objection. Exhibits R1, R2, R5, R6, R8 through R12, R16, and R20 through R22, offered by Respondent were admitted into the record without objection. Exhibits R7 and R13, offered by Respondent, were admitted into evidence over the Division's objection because they were relevant. Exhibits R3, R14, R15, R17 through R19, offered by the Respondent, were not admitted into the record because they were not relevant. Respondent did not offer an exhibit marked R4.

RULING ON MOTION TO DISMISS

Respondent filed a Motion to Dismiss on February 12, 2016, asserting that he should be appointed counsel, that he was being deprived of his life, liberty and property without due process, and that he should have a right to a jury trial. He asserted that these rights are provided for by the United States Constitution.

The Office of Administrative Hearings (OAH) conducts contested case hearings for the Division, subject to Oregon's Administrative Procedures Act (APA), ORS Chapter 183, and the Model Rules of Contested Case Procedure (Model Rules), OAR 137-003-0501 through -0700. The APA and the Model Rules set forth various procedural requirements to ensure that a party receives his or her due process before, during, and after the contested case hearing process. *See, e.g.*, ORS 183.413 (requiring written notice to parties prior to hearing that describes the contested case process, a party's rights as to that process, and the party's rights and remedies with respect to actions taken by state agencies); ORS 183.417(8) (requiring an ALJ to ensure that the record developed at hearing shows a full and fair inquiry into the facts necessary for consideration of all relevant issues and the correct application of the law to those facts); OAR 137-003-0650 (allowing a party to file exceptions to a proposed order that is adverse to that party); and ORS 183.482 (conferring jurisdiction to Oregon Court of Appeals for review of contested cases).

Under ORS 183.417(1) and OAR 137-003-0550(1), a party in a contested case may elect to be represented by counsel, but neither the APA nor the Model Rules provides that a party has the right to appointed counsel.

In addition, there is no right to a jury trial in the contested case process. OAR 137-003-0600(1) states that “[t]he contested case hearing shall be conducted by and under the control of the administrative law judge assigned from the [OAH].” *See also* ORS 183.615(1) (providing that an ALJ “shall conduct hearings on behalf of agencies as assigned by the chief [ALJ]. An [ALJ] shall be impartial in the performance of the [ALJ]’s duties and shall remain fair in all hearings”).

For the above reasons, Respondent’s Motion to Dismiss is denied.

FINDINGS OF FACT

1. Robert Brodmerkle dba R.H. Brodmerkle Enterprises (Respondent) has boiler contractor license number B99-2052, class 4 boilermaker license number E90-4605, and class 5 pressure piping mechanic license number E90-4585. He has held these licenses since approximately 1978. (Ex. A1; test. of Respondent.)

2. On August 25, 2003, in Division case number 2003-0169, the Division executed a consent order with Respondent. The Division assessed Respondent a \$1,000 civil penalty for installing a new furnace and related duct work without first obtaining a valid mechanical permit. (Exs. A3, A4; test. of Simmons.)

3. On May 28, 2009, in Division case number 2008-0208, the Electrical and Elevator Board of the State of Oregon issued a final order assessing Respondent a civil penalty of \$5,500 for working on an electrical installation without a valid permit, for making an electrical installation without a supervising or journeyman electrician license, and for making, directing, supervising, or controlling the making of an electrical installation without being licensed as an electrical contractor. These violations occurred in 2008. (Ex. A2; test. of Simmons.)

4. In approximately February 2014, Respondent installed a natural gas boiler, gas line and fittings, and flue pipe and fittings, at the Sacred Heart Klamath Falls (Sacred Heart) high school building. Respondent obtained a permit from Klamath County to install the boiler. He did not obtain any permits from the State of Oregon to perform this work. The boiler has a maximum heat input of 275,000 British thermal units (BTU) per hour. (Exs. A8, R22; test. of Hill, Respondent.)

5. In approximately May 2014, claimant plugged in a new natural gas boiler at the Sacred Heart elementary school building. This boiler has a maximum heat input of 275,000 BTUs per hour. He did not complete installation of this boiler at that time because Sacred Heart needed to complete building the structure where the boiler would be installed. (Ex. R22; test. of Respondent.)

6. Between July 1, 2014 and October 27, 2014, Respondent's boiler contractor license number B99-2052, class 4 boilermaker license number E90-4605, and class 5 pressure piping mechanic license number E90-4585 were expired. Respondent was not aware that these licenses were expired. (Ex. A1; test. of Simmons, Respondent.)

7. In approximately September 2014, Respondent installed the gas line and fittings and the flue pipe and fittings for the boiler located at the Sacred Heart elementary school. He did not obtain any permits from the State of Oregon to perform this work. (Exs. A8, A9; test. of Respondent.)

8. Installing a natural gas boiler, gas line and fittings, and flue pipe and fittings are installations under OAR 918-225-0240(11). (Test. of Hill; Simmons.)

9. On October 31, 2014, Respondent obtained a boiler/pressure installation, alteration, or repair permit from the State of Oregon for each of the natural gas boilers installed at Sacred Heart. (Ex. A5.)

CONCLUSIONS OF LAW

1. Respondent engaged in the business of installing, repairing or altering boilers or pressure vessels without a valid boiler contractor license, in violation of ORS 480.630(1).

2. Respondent installed, repaired or altered boilers or pressure vessels as the employee or agent of a business engaged in the installation, repair or alteration of boilers or pressure vessels without a valid boilermaker license, in violation of ORS 480.630(2) and OAR 918-225-1691.

3. Respondent installed, altered or repaired a boiler or pressure vessel without first obtaining an installation permit, in violation of ORS 480.630(5).

4. The Division may impose civil penalties totaling \$7,000 against Respondent.

5. The Division may not suspend Respondent's boiler contractor license number B99-2052.

6. The Division may not suspend Respondent's class 4 boilermaker license number E90-4605.

7. The Division may not suspend Respondent's class 5 pressure piping mechanic license number E90-4585.

8. The Division may not order Respondent to cease and desist from engaging in any violation of the state building code.

OPINION

The Division contends that Respondent engaged in the business of installing, repairing or altering boilers or pressure vessels without a valid boiler contractor license; that he installed,

repaired or altered boilers or pressure vessels without a valid boilermaker license; that he installed, altered or repaired a boiler or pressure vessel without first obtaining an installation permit; and that his boiler contractor license, his class 4 boilermaker license, his class 5 pressure piping mechanic license shall be suspended. The Division also contends that Respondent should be assessed civil penalties in the amount of \$7,000 for the alleged violations and that he should be ordered to cease and desist from engaging in further violation of the state building code. The Division has the burden to show, by a preponderance of the evidence, that Respondent committed the alleged violations, and that the proposed penalties, the license suspensions and the order to cease and desist are appropriate. ORS 183.450(2), *Harris v. SAIF*, 292 Or 683, 690 (1982). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractor, Inc. v. Tandy Corp.*, 303 Or. 390 (1987).

Engaging in the Business of Installing, Repairing or Altering Boilers or Pressure Valves without a Valid Boiler Contractor License

ORS 480.630(1) provides:

A person engaging in the business of installing, repairing or altering boilers or pressure vessels must possess a boiler contractor license issued by the Department of Consumer and Business Services.

At hearing, Respondent confirmed that he installed a natural gas boiler at Sacred Heart's elementary school in approximately September 2014. In so doing, he engaged in the business of installing boilers. It is undisputed that, at the time of the installation, Respondent's boiler contractor license was expired. While Respondent testified at hearing that he was not aware that his boiler contractor license expired, his lack of knowledge regarding the expiration does not change the fact that he violated ORS 480.630(1).

Installing, Repairing and Altering Boilers or Pressure Vessels without a Valid Boilermaker License

ORS 480.630(2) provides:

A person who installs, repairs or alters boilers or pressure vessels as the employee or agent of a business engaged in the installation, repair or alteration of boilers or pressure vessels must possess an employee or agent license issued by the department.

OAR 918-225-1691 provides, in relevant part:

Persons installing, altering or repairing boilers and pressure vessels shall be licensed under these rules and may only work within the scope of their license.

(6) Class 4 Boilermaker License. A person holding this license may install, alter or repair boilers and pressure vessels *** by welding or other methods of attachment.

In approximately September 2014, Respondent installed a natural gas boiler at Sacred Heart's elementary school. At the time, his class 4 boilermaker license was expired. While Respondent testified at hearing that he was not aware that his boilermaker license had expired, he nonetheless violated ORS 480.630(2).

Installing, Altering or Repairing a Boiler or Pressure Maker without an Installation Permit

ORS 480.630(5) provides in relevant part:

A person required to be licensed under this section may not install, alter or repair a boiler or pressure vessel unless an installation permit is first secured from the department.

ORS 480.525(1) provides in relevant part:

ORS 480.510 and 480.670 do not apply to:

* * * * *

(b) Domestic water heaters designed for heating potable water, equipped with an approved pressure-relieving device, containing only water and that do not exceed a:

* * * * *

(D) Heat input of 200,000 BTU per hour.

* * * * * [.]

In approximately February 2014 and September 2014, Respondent installed two natural gas boilers at Sacred Heart. While Respondent obtained installation permits from Klamath County to install the boilers, he did not obtain an installation permit from the State of Oregon for either installation. At hearing, Respondent argued that he was not required to obtain installation permits from the State of Oregon because he did not set the boilers to run over 200,000 BTU per hour. That testimony was not persuasive. Even if the boilers can be used at a lower BTU heat input, because the boilers installed have the ability to have a heat input of over 200,000 BTU per hour, they are not exempt from the permitting requirements of ORS 480.630(5).

Respondent also argued at hearing that he contacted the State of Oregon about obtaining a permit and that the State of Oregon informed him that a permit was not necessary prior to the installation of the boilers. That testimony is not persuasive. Respondent obtained permits for the installations from Klamath County and should have known that he needed to obtain permits from the State or Oregon prior to installing the boilers.

The preponderance of the evidence establishes that Respondent installed two boilers without first obtaining valid permits. As such, he violated ORS 480.630(5).

Civil Penalties

The Board of Boiler Rules has adopted administrative rules to administer and enforce ORS chapter 693. OAR 918-001-0036 provides that the Boards may develop a penalty matrix to use as a guideline for assessing civil penalties.

The Board of Boiler Rules penalty matrix provides for a civil penalty of \$3,000 for violating ORS 480.630(1), a civil penalty of \$2,000 for violating ORS 480.630(2) and OAR 918-225-0691 and a civil penalty of \$2,000 for violating ORS 480.630(5) on two occasions (\$1,000 per violation).

Therefore, the \$7,000 civil penalty proposed by the Division is appropriate.

Suspension of Respondent's Boiler Contractor License, Class 4 Boilermaker License and Class 5 Pressure Piping Mechanic License

ORS 455.129(2) provides in relevant part:

Subject to ORS chapter 183, a regulatory body listed in subsection 3 of this section may deny a license, certificate, registration or application or may suspend * * * a license, certificate or registration if the regulatory body finds that the licensee, certificate holder, registrant or applicant:

(a) Has failed to comply with the laws administered by the regulatory body or with the rules adopted by the regulatory body.

* * * * *

(d) Has performed work without appropriate licensing, certification or registration or has employed individuals to perform work without appropriate licensing, certification or registration.

The Division contends that Respondent's licenses should be suspended because he installed two boilers without first obtaining the required permits and he installed one of the boilers while his licenses were expired. Additionally, Respondent had two prior instances in 2003 and 2008, where he performed work without the proper licensing or permits.

Respondent testified at hearing that he was unaware that his licenses were expired when he installed the boiler in September 2014 and that he believed he had obtained the required permits required to make the installation. While Respondent should have been aware that his licenses were expired and that the work he performed required installation permits, his testimony is persuasive that he was not aware that he was violating state building code. Because Respondent was not aware that he was violating state building code and his most recent violation prior to 2014 was in 2008, the evidence is not persuasive that his licenses should be suspended.

Order to Cease and Desist

ORS 455.755(2) provides:

If the director has reason to believe that any person has been engaged, or is engaging, or is about to engage in any violation of the state building code, * * *, the director may issue an order, subject to ORS 183.413 to 183.497, directed to the person to cease and desist from the violation or threatened violation.

The Division contends that Respondent has been or is violating state building code law. While Respondent has previously violated state building code, those violations arose from the same conduct when Respondent was not aware that he was violating any statutes or rules. Respondent's most recent violation was in September 2014 and the record contains no evidence that he is currently engaging in or is about to engage in any further violations of the state building code. The Division has not established grounds to issue an Order to Cease and Desist.

ORDER

I propose the Board of Boiler Rules of the Building Codes Division issue the following order:

Robert Brodmerkle dba R.H. Brodmerkle Enterprises shall pay a \$7,000 civil penalty for violations of ORS 480.630(1), (2) and (5) and OAR 918-225-1691.

Marni J. Davis
Administrative Law Judge
Office of Administrative Hearings

APPEAL PROCEDURE

This is the Administrative Law Judge's Proposed Order. You have the right to file written exceptions and argument to be considered per OAR 137-003-0650. Your exceptions and argument must be received within 20 calendar days after the service date of this Proposed Order. Send them to:

Building Codes Division
Manager, Enforcement and Licensing
PO Box 14470
Salem, OR 97309-0404

CERTIFICATE OF MAILING

On March 29, 2016, I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 1504257.

By: First Class Mail

Robert Brodmerkle
2222 Garden Ave
Klamath Falls OR 97601

Adam Blechman
Building Codes Division (DCBS)
PO Box 14470
Salem OR 97309-0404

Alesia Vella for Lucy Garcia
Administrative Specialist
Hearing Coordinator

State of Oregon

Board memo

Building Codes Division

June 7, 2016

To: Board of Boiler Rules

From: Richard Baumann, policy analyst, Policy and Technical Services

Subject: Continuing Education Course Approval Process

Action requested:

Board of Boiler Rules consideration of the Continuing Education Committee's recommendations regarding continuing education courses and instructors.

Background:

The Board of Boiler Rules establishes continuing education (CE) requirements for boiler and pressure vessel licensees in order to ensure licensees possess up-to-date knowledge of the code. They set standards for approval of courses and providers in order to have a sufficient number and variety of CE courses available to licensees. The board's continuing education committee evaluates courses and instructors on the board's behalf. The committee met on April 26, 2016, to review CE course and instructor applications. The committee reviewed 3 applications from 2 organizations:

- 1 course was recommended for approval.
- No courses were recommended for denial.
- No courses are pending.
- 2 instructors were recommended for approval.
- No instructors were recommended for denial.

See attached summary for more information. Summary includes items carried over from February 16, 2016, board meeting.

The committee is also using the following criteria when reviewing applications:

- For correspondence courses – provider must submit complete course.
- For online courses – provider must submit a log-on or screen shots of course content.

- OSHA courses are eligible for a maximum of eight hours code-related credit.
- First Aid/CPR courses are eligible for a maximum of eight hours code-related credit.

Options:

- Approve the committee's recommendations for approval or denial of courses or instructors.
- Amend and approve the committee's recommendations for approval or denial of courses or instructors.
- Disapprove the committee's recommendations for approval or denial of courses or instructors.

Board of Boiler Rules
Committee on Continuing Education Course and Instructor Review
6/7/16

Courses

	Applicant	Course Name	Committee Recommendation	Board Action
1	Gordian Solutions, LLC.	ASME Boiler and Pressure Vessel Code: Section IX Welding and Brazing Qualifications – Part 1 (8 hours CR)	Approve – carried over from February 16, 2016 board meeting.	
2	Harvey & Price Co.	OSHA 30 Construction (8 hours CR)	Approve – course hours reduced to 8 from 30 per board policy.	

Instructors

	Applicant	Committee Recommendation	Board Action
1	Roger Hendrix Gordian Solutions, LLC.	Approve – carried over from February 16, 2016 board meeting.	
2	Jeffrey Martin Harvey & Price Co.	Approve	
3	Roxanne Belland United Rentals Trench Safety	Approve – courses for this provider approved by the board March 2015.	