

BEFORE THE STATE PLUMBING BOARD OF THE STATE OF OREGON

IN THE MATTER OF:

CONSENT ORDER

**MALMEDAL ENTERPRISES, INC.,
ABN MALMEDAL PLUMBING, INC.
A DOMESTIC BUSINESS CORPORATION,**

RESPONDENT.

BCD CASE C2016-0026

INTRODUCTION

The Building Codes Division (Division) conducted an investigation on behalf of the State Plumbing Board of the State of Oregon (Board) and determined that Malmedal Enterprises, Inc., abn Malmedal Plumbing, Inc. (Respondent) violated certain provisions of the Division's statutes and administrative rules as identified below.

The parties agree to resolve this matter without a hearing. Respondent understands that Respondent has the right to a contested case hearing under the Administrative Procedures Act, Oregon Revised Statutes (ORS) chapter 183, and Respondent fully and finally waives the right to a hearing and any judicial review therefrom by the signing of this Consent Order.

BACKGROUND

1. On or about December 18, 1998, the Division, on the Board's behalf, assessed a \$1,000 civil penalty against Respondent in Division case number 1998-0303. In that case, the Division found that Respondent violated ORS 693.030(2)(a) because Respondent permitted or suffered a person to work as a journeyman plumber who did not hold a valid journeyman plumber license. That installation involved Respondent's unlicensed employee installing a tub diverter valve onto a water supply system. Also in that case, the Division found that Respondent violated ORS 693.030(2)(a) a second time because Respondent employed an

1 apprentice plumber to make a plumbing installation without having a journeyman plumber
2 on site or immediately available for advice and direction by voice communication.¹ That
3 installation involved a third-term plumbing apprentice installing vent piping without the
4 required supervision. Accordingly, the Board assessed a \$500 civil penalty for each
5 violation, for a total of \$1,000.

- 6 2. On or about March 29, 2006, Respondent entered into a consent order with the Board in
7 Division case number 2005-0228. In that case, the Division found that Respondent permitted
8 or suffered a person to work as a journeyman plumber who did not hold a valid journeyman
9 plumber license, in violation of ORS 693.030(2)(a). The installation in that case involved an
10 unlicensed laborer installing a pipe and faucet at a residential property. As a result of that
11 case, Respondent agreed to pay a civil penalty in the amount of \$1,000.

12 FINDINGS OF FACT

- 13 1. At all relevant times, Respondent has held plumbing contractor license 34-276PB.
14 2. Respondent has employed Matthew Blasier as a laborer since on or about November 27,
15 2015.²
16 3. On or about January 28, 2016, Blasier installed PEX pipe through holes that had been drilled
17 through floor joists at 28690 NW Mays Street (lot #43) in North Plains, Oregon.
18 4. At no relevant time has Blasier held an Oregon journeyman plumber license.

19 APPLICABLE LAW

- 20 1. The terms used in this Notice may be defined in ORS 183.310(1)-(10), ORS 447.010(1)-(6),
21 ORS 455.010(1)-(10), ORS 693.010(1)-(5), OAR 918-001-0005(1)-(4), OAR 918-030-
22 0010(1)-(11), and OAR 918-690-0420(1)-(14).

23
24 ¹ Under OAR 918-695-0140, an apprentice must work in the physical presence of a journeyman plumber, which
25 requires the journeyman plumber to be located at the immediate worksite or to be immediately available for advice and
direction. If a journeyman plumber is not on the worksite or immediately available to an apprentice plumber, then the
apprentice plumber is working outside of the scope of his apprenticeship and thus is treated the same as an unlicensed
individual.

² See related Division case C2016-0031.

- 1 2. Under ORS 447.010(6), plumbing is defined as the art of installing, altering, or repairing
2 pipes, fixtures, and other apparatus for bringing in the water supply and removing liquid and
3 water-carried waste.
- 4 3. Under ORS 693.030(1), a person may not engage in the trade of journeyman plumber
5 without a journeyman plumber license.
- 6 4. Under ORS 693.030(2)(a), a licensed plumbing contractor may not permit or suffer any
7 person to work as a journeyman plumber who does not hold a valid journeyman plumber
8 license.

9 CONCLUSIONS OF LAW

- 10 1. Installing PEX pipe through holes that had been drilled through floor joists constitutes
11 plumbing under ORS 447.010(6).
- 12 2. A journeyman plumber license is required to make the foregoing plumbing installation
13 under ORS 693.030(1).
- 14 3. By permitting or suffering Blasier to make the foregoing plumbing installations without
15 holding a journeyman plumber license, Respondent violated ORS 693.030(2)(a).

16 ORDER

17 Pursuant to ORS 455.895(1)(a) and OAR 918-001-0036, the Board assesses a total of
18 \$2,000 in civil penalties for violating ORS 693.030(2)(a).

19 ORDER

- 20 1. The Board hereby assesses a total civil penalty of \$2,000.00 against Respondent for
21 violating ORS 693.030(2)(a) as follows:
 - 22 a. \$750.00 of the total civil penalty will be suspended for a period of five years if there
23 is compliance with all other terms of this Consent Order.
 - 24 b. Respondent agrees to pay the remaining \$1,250.00 of the civil penalty. Respondent's
25 payment shall be postmarked no later than the 25th day of the month following the

1 month in which this Consent Order becomes a final order. *(An invoice will be*
2 *included with Respondent's copy of the final order after the Director signs it.*
3 *Respondent understands timely payment must be made even if no invoice is ever*
4 *received.)* Payment shall be mailed to Department of Consumer and Business
5 Services, Fiscal Services Section, P.O. Box 14610, Salem, OR 97309-0445.

6 c. Respondent understands the suspended civil penalty (\$750.00) will be considered
7 satisfied five years after this Consent Order becomes a final order, provided
8 Respondent complies with its terms and has not committed any further violations of
9 the Division's statutes and rules within that five-year period. Respondent
10 understands and agrees that if Respondent does not comply with the terms of this
11 Consent Order or if Respondent commits any further violations of the Division's
12 statutes or rules within the five-year period, then the entire civil penalty, including
13 any suspended amount, will become immediately due and payable. Failure to comply
14 with this Consent Order includes, but is not limited to, failure to pay the civil penalty
15 amount due by the due date.

16 2. Respondent agrees to fully cooperate with the Division's enforcement efforts in other cases
17 that rely on the facts underlying this case. Cooperation may include, but may not be limited
18 to, making sworn statements or testifying in administrative hearings.

19 3. Respondent understands that further enforcement action may be taken for any violation of
20 the Division's statutes or rules not alleged in this Consent Order, whether committed before
21 or after the execution of this Consent Order, and/or for any violation of the terms of this
22 Consent Order.

23 4. Respondent understands that failure to comply with this Consent Order may be used as a
24 basis for the denial of future license, certificate, registration, or other applications, or for the
25 refusal to renew the same; for the suspension, revocation, or conditioning of a license,

1 certificate, or registration issued by the Division or other state agencies; and/or for any other
2 reason provided for in law.

3 5. Respondent understands that this Consent Order is a public record.

4 6. Respondent has read and fully understands the terms of this Consent Order, freely and
5 voluntarily consents to the entry of this Consent Order without any force or duress, and
6 expressly waives all rights to hearing or judicial review in this matter.

7 7. Respondent understands that, upon signature of all parties, this Consent Order will be a
8 Final Order.

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10 It is so agreed this 6th day of May, 2016.

11 Kris Malmedal
12 Owner and authorized representative
13 Malmedal Enterprises, Inc., abn Malmedal Plumbing

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15 for It is so agreed this 10th day of May, 2016.

16 Chair
17 State Plumbing Board
18 State of Oregon
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