

Landscape Contractors Board  
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**NEW RULES IN EFFECT**

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This newsletter is mailed to all actively licensed individual landscape contractors, unlicensed owners and anyone who requests to be on the list.

As of January 1, 2006 there is a significant change in the rules that affect some areas of landscape work. Please take time to review these online at [www.lcb.state.or.us](http://www.lcb.state.or.us). Here is a summary:

1. 808-002-0150 – Definition of Backflow Assembly (the term backflow device is no longer used)
2. 808-002-0200 – Definition of casual, minor and inconsequential. The placing of mulching materials is no longer regulated by the LCB.
3. 808-002-0250- Defines construction of ornamental water features, drainage systems and irrigation systems. Clarifies what is and what is not considered construction of these systems.
4. 808-002-0328 - Direct Supervision Definition
5. 808-002-0330 – What is meant by Dishonest or Fraudulent Conduct (all contractors and businesses are subject to conditions of this rule)
6. 808-002-0340 & 0360 – What it means to “employ” a person and what is considered an “employee” vs. a subcontractor.
7. 808-002-0455 – Definition of Install. This rule took out the placement of mulching materials as part of installation and also gave the ability to anyone to place a plant on the ground (not in the ground) and to position it before planting.
8. 808-002-0490 – Definition of Landscape Edging (now under LCB jurisdiction)
9. 808-002-0495 – Definition of Landscape Job for purposes of determining the correct bond amount required by a business.
10. 808-002-0500 – Clarifies what is considered “landscaping work”.
11. 808-002-0650 & 0734 – Definitions of Minority Shareholder and Owner. Makes distinguishing elements for the different types of business owners and who hold responsibility for the business.
12. 808-002-08100 – Definition of repair of water features, drainage systems and irrigation systems.
13. 808-002-0875 – Defines rough grading which is allowed under other licenses. Fine grading is not allowed under other licenses. A person must be licensed with the LCB to do fine grading for the installation of landscape work.
14. 808-003-0010 – Clarifies advertising may only be done by an actively licensed landscaping business.
15. 808-003-0015,0035,0040,0045,0060,0105,0130 – License categories and fees (no change in fees)
16. 808-003-0225- Probation. Clarifies what the board may do if a business is put on probation if the business has 3 or more claims within a 12 month period.
17. 808-003-0110 – Clarifies how bonds, letters of credit and deposits are to be presented to the board.
18. 808-003-0235,0240, 0250, & 0255 - Inactive status rules. New status for a license with the LCB. Gives an alternative to having a license expire or be suspended.
19. 808-004-0320 & 0600- Claim jurisdiction and payments from the bond. Clarifies what happens during the periods bonds have to increase due to landscape job costs requiring a new bond, etc.
20. 808-005-0020 – Civil Penalties. Update and changes to the schedule of civil penalties.

Rules are an important process for the Board and before rules are changed there is an opportunity for public hearing. These rules do affect how you and others do business and it is prudent for you to stay abreast of these changes and to become involved in their making.

# NEWLY LICENSED LANDSCAPE CONTRACTORS SINCE SEPT. 2005

**Congratulations to the following who have accomplished passing the exam and becoming licensed:**

14918	MATTHEW R THOMPSON	White city	Standard—No Irrigation	Backflow Not Allowed
14919	JOSE G PALACIOS	Oregon City	Standard-No Irrigation	Backflow Not Allowed
14920	STEVE E HUNT	Lebanon	Irrigation Only	Plus Backflow
14921	MICHAEL S HUENERS	Powell Butte	Irrigation Only	Plus Backflow
14922	KENNETH D BALL	Creswell	Standard-No Irrigation	Backflow Not Allowed
14923	CHRISTOPHER G KEIL	Bend	Irrigation Only	Plus Backflow
14924	JAMES H SALVADOR	Vancouver	All Phases	Plus Backflow
14925	RUBEN ZUNIGA MONTES	Beaverton	Irrigation Only	Plus Backflow
14926	ANDREW B MCWILLIAMS	Bend	Irrigation Only	Plus Backflow
14927	FEDERICO CORZO-FERNANDEZ	Salem	Irrigation Only	Plus Backflow
14928	JANI R JEWELL	Astoria	Standard-No Irrigation	Backflow Not Allowed
14929	JOHN V OLIVEIRA JR	Shady Cove	All Phases	Plus Backflow
14930	CLIFFORD J COONS	Portland	Standard-No Irrigation	Backflow Not Allowed
14931	ROBERTO LOPEZ	Hillsboro	Irrigation Only	Plus Backflow
14932	JOSH P DEGRAFF	Beaverton	All Phases	Plus Backflow
14933	JUAN M MARAVILLA	Woodburn	Irrigation Only	Plus Backflow
14934	ROBERT E DRENDEL	Portland	Standard-No Irrigation	Backflow Not Allowed
14935	JOSEPH M NICHOLS	Bend	All Phases	Plus Backflow
14936	JASON A OSTLIE	Beaverton	All Phases	Plus Backflow
14937	SABINE E ATKINSON	Bend	Standard-No Irrigation	Backflow Not Allowed
14938	DANIEL D EVERSON	Forest Grove	Irrigation Only	Plus Backflow
14939	ANGEL M MARTINEZ	Cornelius	Irrigation Only	Plus Backflow
14940	BRUCE S ANDREWS	Corvallis	Standard-No Irrigation	Backflow Not Allowed
14941	GAIL A DRESNER	Beavercreek	Standard-No Irrigation	Backflow Not Allowed

## ATTENTION: LANDSCAPING BUSINESSES REMEMBER TO CHECK YOUR BONDING AMOUNTS

### YOUR CURRENT \$3,000 BOND MAY NOT BE ENOUGH!

On January 1, 2006 new legislation went into effect that requires all landscaping businesses to carry surety bonds that are based upon the amount a business charges for a landscape job during the term of the license. Landscape charges are determined by the total of all contracts for a landscape project on a specific site, for a specific owner during a 12 month period. See the chart below for the correct bonding requirement for your business:

LANDSCAPE JOB CHARGES	MINIMUM BOND AMOUNT REQUIRED
UP TO \$10,000	<b>\$3,000</b>
\$10,001 TO \$25,000	<b>\$10,000.</b> (This amount is also required if you are bidding on or installing decks, fences, walkways, driveways, patios, landscape edging and retaining walls without performing other landscape work which includes planting of lawns and plants or irrigation systems.
OVER \$25,000	<b>\$15,000</b>

This change needs to occur NOW if you are bidding on or performing work in these dollar categories. Failure to have the correct bonding amounts may result in a penalty of license suspension and a civil penalty of \$1,500.

**DO NOT wait until renewal. That may be too late!**

## ENFORCEMENT ACTIONS SEPTEMBER 1, 2005 THROUGH DECEMBER 31, 2005

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.

Name	Violation Type	Final Action
Thomas J Peloquin	Failure to Maintain Insurance	\$200 Civil Penalty
Stephen A Riley	Failure to Pay Required Licensing Fees	Refused to Renew
Stephen Allen Riley	Failure to Employ Licensed Contractor	Suspended Business License
E Gene Kasey	Failure to Employ Licensed Contractor	Suspended Business License
James Dollahite	Operating w/o License	\$1000 Civil Penalty
Chris Trebelhorn	Operating w/o License	Final Order adopting Settlement Agreement
Dennis Meyer	Operating w/o License & Claim Filed	\$2,000 Civil Penalty
Devon Rose	Working outside scope of License	\$400 Civil Penalty
Bradley Keith Schram	Operating w/o License	\$1,000 Civil Penalty
Curtis Otto	Operating w/o License	\$1,000 Civil Penalty
Armando Perez Chavez	Operating w/o License	\$1,000 Civil Penalty
Hector Cisneros	Operating w/o License	\$1,000 Civil Penalty
Henry M Nzioka	Operating w/o License	\$2,000 Civil Penalty; Settlement - suspend \$1,750, settle with claimant, obtain license
Miseal Lagunes	Operating w/o License & Claim Filed	\$2,000 Civil Penalty; Settlement - suspend \$1,750, settle with claimant, obtain license
Mike Shand	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$900, not perform landscape contracting work
Advanced Landscape Group LLC	Failure to Comply with Plumbing Code	Warning
Parkview Design Inc	Failure to Maintain Insurance	\$200 Civil Penalty; Settlement - suspend \$150, quickly settle claims
Forever Green Landscape Maintenance & Irrigation Systems Inc	Working outside scope of License	\$400 Civil Penalty; Settlement, -suspend \$350 upgrade license
Jose Servin	Advertising w/o License	\$600 Civil Penalty; Settlement - suspend \$550, obtain individual and business license
Thomas S Burness LLC	Failure to Maintain Insurance	\$200 Civil Penalty; Settlement - suspend \$150, quickly settle insurance claims
Robert Gipner	Working outside scope of License	\$400 Civil Penalty; Settle - suspend \$300, upgrade business license
David A Straub	Failure to Employ Licensed Contractor	Suspended Business License
Earthly Creations, Inc.	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$750, obtain business license
Fidel Cervantes	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$750, obtain individual and business license
Dan J Mealue	Failure to pay Civil Penalty	Refused to Renew
Cutt & Edge LLC	Operating w/o License	Mediation Agreement
Anthony J Sorrell	Operating w/o License & Claim Filed	\$2,000 Civil Penalty; Settlement - suspend \$1,750, settle with claimant and obtain license
Rigoberto Aguilar Hernandez	Operating w/o License	\$1,000 Civil Penalty
Jani Jewell	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$750, obtain business license
Miquel Ceballos	Operating w/o License	\$1,000 Civil Penalty
Jon Thompson	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$500, obtain individual license; suspend \$250, obtain business license
Leo Sandoval L.S. Constuction, Inc	Operating w/o License	\$1,000 Civil Penalty
Sean Curley	Operating w/o License	\$2,000 Civil Penalty; Settlement - suspend \$1250, obtain individual license (failed to comply with payment arrangement - immediate suspension 1/11/06)
Efren Regalado	Operating w/o License	\$1,000 Civil Penalty, settlement—suspend \$750, become licensed
Rod Surgeon	Operating w/o License	\$4,000; referred to Department of Justice
Rod Surgeon	Operating w/o License	\$2,000; referred to Department of Justice
Rod Surgeon	Operating w/o License	\$2,000; referred to Department of Justice
Award Winning Homes, Inc	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$250, submit contract by licensed business
Jose Luis Zepeda	Operating w/o License	\$1,000 Civil Penalty
Kain Ramierez	Advertising w/o License	\$600 Civil Penalty, settlement— suspend \$550
E. LaRoy Follett	Failure to Maintain Workers Compensation	\$1,000 Civil Penalty; settlement—suspend \$750
Edward A Adolphson	Failure to Maintain Insurance	\$200 Civil Penalty; Settlement - suspend \$150, settle claims

Name	Violation Type	Final Action
Jim & Diane Chartier	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$750, obtain individual and business licenses
Roadrunner Flooring and Construction, Inc	Operating w/o License	\$1,000 Civil Penalty
David Dominquez	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$750, obtain individual and business licenses
Jose Lara	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$750, obtain business license
Les 'Cory' Covington	Advertising w/o License	\$600 civil penalty, suspend \$550 as per settlement agreement, license business
Lewis Landscape Services Inc	Working outside scope of License	\$400 Civil Penalty; Settlement - suspend \$300, upgrade business license
Tommy Hoover	Operating w/o License	\$1,000 Civil Penalty
Jacobsen Construction Company, Inc	Operating w/o License	\$1,000 Civil Penalty
Louis A Apreza	Failure to Obtain Permit & No Workers Comp	\$1,500 Civil Penalty; Settlement- suspend \$1,250, submit copy of backflow inspection report and obtain employees through leasing company
Leah Richardson	Advertising w/o License	\$600 Civil Penalty; Settlement - suspend \$550, submit new business card
Rogelio Aguilar	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$750, obtain individual and business license
Robert Watson	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$750, obtain individual and business license
Sammy Joe Kloosterman	Operating w/o License	\$1,000 Civil Penalty
Jesus Rodriguez	Failure to Comply w/min. Standards for Contracts	Warning: First Offense
Hi Tech Landscape & Design Inc	Failure to Maintain Insurance	\$200 Civil Penalty
J & JB Construction LLC	Operating w/o License	\$1,000 Civil Penalty; Settlement—suspend \$1,500, obtain licenses
Kim Ngyuen	Advertising w/o License	\$600.00 Civil Penalty
Theodore J Scrivner	Owner of Bus/Owes on Court & Final Order of Claim	Settlement Agreement: LCB will not suspend license, respondent agrees to pay 12.5% of the outstanding debt to claimants because he is 12.5% owner of business with debt.
Paradise Gardening, LLC	Advertising w/o License	\$600 Civil Penalty; Settlement - suspend \$550, remove pamphlet from circulation and submit revised pamphlet.
Dan Bryant	Operating w/o License	\$3,000 Civil Penalty (3 counts)
Jim Chartier	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$250, obtain individual and business license
Rocky Cardin	Operating w/o License	\$1,000 Civil Penalty
Daniel Garcia	Working w/o being employed	\$200 Civil Penalty
Rocky Cardin	Advertising w/o License	\$2,000 Civil Penalty
Sean Philips	Advertising w/o License	\$600 Civil Penalty
Pacifica Landscapes, LLC	Advertising w/o License	\$600 Civil Penalty
Robert Rhoades	Advertising w/o License	\$600 Civil Penalty
David Soto	Operating w/o License	\$1,000 Civil Penalty; Settlement—suspend \$750, obtain licenses
Ridgeway Landscaping	Operating w/o License & Claim Filed	\$2,000 Civil Penalty; Settlement - suspend \$1,500, settle with claimant
Carlos Ceh	Operating w/o License	\$2,000 Civil Penalty; Settlement - suspend \$1,750, settle with claimant & obtain license
Alejandro Zaragoza	Failure to Maintain Insurance	\$200 Civil Penalty; Settlement—suspend \$150, settle all claims quickly
Abraham Baltazar	Advertising w/o License	\$600 Civil Penalty; Settlement - suspend \$550, destroy business cards and reprint
Prestige Landscape Services, Inc	Advertising w/o License	\$600 Civil Penalty; settlement - suspend \$550, become licensed
Junior Landscape Maintenance, Inc	Advertising w/o License	\$600 Civil Penalty; suspend \$350 per settlement agreement
Lewis Kollar	Advertising w/o License	Closed: Warning-remove posting and renew license
Thomas Tjaarda	Operating w/o License	\$1,000 Civil Penalty, suspend \$750, obtain licensed
Daniel Garvin	Operating w/o License	\$1,000 Civil Penalty; suspend \$750 obtain licensed
Daniel Garvin	Operating w/o License	\$2,000 civil penalty; suspend \$1500 obtain licensed
Harlan Brown	Operating w/o License & Claim Filed	\$2,000 Civil Penalty
Israel Rodriguez	Failure to Supervise Landscape Work	\$200 Civil Penalty
Shane Carson	Failure to Employ Licensed Contractor	Suspended Business License
Charles J Brooks	Working w/o a Contract	Warning—First Offense
Buena Vista Arbor Care Co	Advertising w/o License	\$600 Civil Penalty; Settlement - suspend \$50, remove ad
Harold Freeman	Advertising w/o License	\$600 Civil Penalty; Settlement - suspend \$550; obtain individual and business license
James Davies	Failure to Maintain Insurance	\$600 Civil Penalty; Settlement- suspend \$50, quickly settle insurance claims
Jeffery Robanske	Operating w/o License	\$1,000 Civil Penalty
Ruben Cruz	Operating w/o License	\$1,000 Civil Penalty; Settlement - suspend \$750, license business

## Pesticide Licensing for Landscape Contractors

Most licensed landscape contractors will, at some point in time, need to apply herbicides to kill vegetation covering a site prior to starting a redesign or initial landscape job. Other pesticides may also need to be applied to adequately complete your job. If your company applies pesticides (yes, herbicides are pesticides), your company and the person actually making the application of pesticides need to be licensed by the Oregon Department of Agriculture (ODA). A Commercial Pesticide Operator license is required for the business and a Commercial Pesticide Applicator license is required for the applicator. Two types of trainee licenses are also available for crews who make pesticide applications under different levels of supervision by a fully licensed applicator.

Unfortunately, many landscape contractors may think that “landscapers” are exempt from pesticide operator/applicator licensing. Currently there is an exemption in the pesticide law for persons **“whose main or principal work or business is the maintenance of small or home lawns, shrubs, or gardens.”** ODA has clarified this exemption for landscape maintenance companies when:

1. No restricted-use pesticides are used.
2. No machine-powered equipment is used in the application of pesticides.
3. Applications of pesticides are made only to single family residences (no commercial properties), and
4. The use of pesticides is not specified in any advertisements, contracts, or invoices.

Landscape contractors are not usually considered to be in the business of maintenance of small or home lawns, shrubs, or gardens. If you make pesticide applications you need to make sure that you are appropriately licensed to do so. Check with ODA for guidance and licensing procedures at (503) 986-4635 or you may find pesticide license information at: <http://oregon.gov/ODA/PEST/>

**NOTE: All businesses who apply pesticides on the property of another, whether they are required to be licensed with ODA or not, are still required to report all pesticide applications made under the Pesticide Use Reporting System (PURS). Check <http://oregon.gov/ODA/PEST/> for further information on PURS.**

## IS YOUR EMPLOYEE EXEMPT FROM MINIMUM WAGE AND OVERTIME LAWS

The board has run across several instances (and we know many more exist) where a licensed individual landscape contractor is the employee of record for a landscaping business. This person is put on the payroll and in many cases is paid a salary (specific monthly amount) for the work that he/she is performing and the employer is stating that this person, being a supervisor is then not subject to minimum wage and overtime laws.

**This is NOT TRUE.** According to the Bureau of Labor and Industries (BOLI) there are several conditions that must be met for a person to be exempt from minimum wage and overtime pay.

1. Must manage a distinct unit or subdivision within the employer’s organization
2. In most cases, more than 50% of the work time must be in managerial activities
3. Must supervise two or more full-time employees (or the equivalent)
4. Have hiring or firing authority, or if not full authority their recommendation is given particular weight
5. Must customarily and regularly exercise authority to make decisions of significance, and
6. **MEET THE SALARY TEST:**
  - a. The employee must receive a minimum salary of \$455 a week or \$23,660 a year.
  - b. Salary must not vary based upon quantity or quality of work.

Exempt employees do not need to be paid for work in weeks which no work is performed, but if any work is performed during the week the employee must receive the full salary amount for that week. There are some exceptions:  
Salary may be prorated if employee takes a day or more off for personal reason, other than sickness or accident.  
Salary may be reduced for absences of a day or more for sickness or disability if the employer has a policy or plan for all employees that is consistent. Employee must have exhausted all paid leave under the plan.  
Salary cannot be reduced when the employee serves on jury duty or is called as a witness.  
Salary cannot be reduced if the employee is absent only part of a day unless the absence qualifies as a leave under the federal Family and Medical Leave Act.

Paying a person “a fixed amount” amount each month does not qualify as being employed and is not subject to the minimum wage and overtime laws. Please consider this when you are either the employee of record for a business or you are an employer employing another person into your business as the employee of record.

For more information see: [www.oregon.gov/BOLI/TA/T\\_FAQ\\_Taclass.shtml](http://www.oregon.gov/BOLI/TA/T_FAQ_Taclass.shtml)

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***Mission Statement***

***TO PROMOTE CONSUMER PROTECTION, CONTRACTOR  
COMPETENCY AND FAIR COMPETITION IN OREGON'S LANDSCAPE  
CONTRACTING INDUSTRY***

**FUTURE BOARD MEETINGS:  
MARCH 17—SALEM  
MAY 19—SALEM  
JULY 21—SALEM**

## What is meant by Direct Supervision?

As of January 1, 2006 a new rule is in place that governs the relationship of the individual licensed landscape contractor and the employees of the licensed landscaping business. The Statute, ORS 671.540 (15) & (16) state that employees of licensed landscaping businesses and employees of a worker leasing company or temporary service provider may work without being licensed individual landscape contractors as long as they are employed by the business or performing work for that business through a leasing company or temporary service provider and are under the "direct supervision" of the licensed landscape contractor. OAR 808-002-0328 states that direct supervision means:

1. The person being supervised is working under the direction of the licensed landscape contractor;
2. The licensed landscape contractor needs to be readily available to the person being supervised such that, even if not at the job site, the licensed landscape contractor can be contacted and is available for consultation and able to provide direction.
3. The licensed landscape contractor is responsible for the work done by the person he or she is supervising. To the LCB this means, that if an enforcement investigator comes onto a job site and there is not a licensed individual landscape contractor on the job site, the people on the job site need to:
  - a. Know who the licensed landscape contractor is for the business
  - b. Be able to contact this person by phone or other means during the time the investigator is on site or within a reasonable amount of time; and
  - c. The landscape contractor needs to have the ability to shut the job down, if so instructed, until he/she can show up to the job site to deal with the difficulty that is apparent to the investigator.

Failure of employees to be able to do this may be the catalyst for further investigation into the business and the functioning of the licensed landscape contractor. Failure to have direct supervision is double sided: \$500 for the business and the penalty starts at \$200 for the individual landscape contractor and up to \$1000 and six month suspension of license. This is a serious issue.