

**Agenda
Item
VII.A.**

State of Oregon

Board memo

Building Codes Division

May 22, 2008

To: Board of Boiler Rules, Oregon State Plumbing Board, Manufactured Structures and Parks Advisory Board, and Electrical and Elevator Board

From: Chris Huntington,
Interim Manager of Policy and Technical Services

Subject: 918-001-0036 Guidelines for Civil Penalties and board penalty matrix

Action requested:

Review 918-001-0036 Guidelines for Civil Penalties and penalty matrix.

History:

The division has amended 918-001-0036 to clarify language and procedure, with the assistance of the Board Chair/Vice-chair group. There were no substantive changes made.

The division and the Board Chair/Vice-chair group have also amended the board's penalty matrix to provide the boards with more flexibility to address common types of violations. The previous penalty matrix was inflexible as to penalties that could be assessed. Under ORS 455.895(7) an imposed Civil Penalty may be reduced upon terms or conditions that the director or appropriate board considers proper. The former matrix had no provisions for negotiating down a Civil Penalty. It also did not address conditioning a license. The division and the Board Chair/Vice-chair group were concerned that this lack of leeway could cause more individuals to seek a hearing in hopes of a reduced penalty. The division and the Board Chair/Vice-chair group have developed the matrix based off the previous matrix's penalty schedule, but provided for a minimum penalty in addition to the maximum penalty for a violation. The Board Chair/Vice-chair group believes that providing a matrix that allows for a more flexible minimum penalty will allow the boards to address particular violations more in line with the individual circumstances of the case.

Alternatives:

1. Approve penalty matrix and rules
2. Disapprove and offer further direction to division

Recommendation:

Approve the penalty matrix and rules for subsequent hearing and adoption, provided no substantial changes occur.

ADVISORY BOARD PENALTY MATRIX

DRAFT

Maximum Penalty/ Minimum Penalty

April 24, 2008

Violation type	1st	2nd	3rd	Look back period
Volunteer (not in business)	\$1000/\$100	\$2000/\$1000	\$5000/\$4000	3 years from latest violation
Unlicensed activities	\$2000/\$750	\$2500/\$1500	\$5000/\$4000 and/or injunction	5 years from latest violation
Scope of license violations	\$2000/\$750	\$3000/\$2000	\$5000/\$4000 and/or condition/denial/suspension/revocation	5 years from latest violation
Scope of license violations (apprentice)	\$2000/0	\$3000/\$2000	\$5000/\$4000 and/or condition/denial/suspension/revocation	5 years from latest violation
Combo – License and permit	\$2500/\$1500	\$3500/\$2500	\$5000/\$4000 and/or condition/denial/suspension/revocation	5 years from latest violation

Supervisor	\$3000/\$1000	\$4000/\$2000	\$5000/\$4000 and/or condition/denial/suspension/revocation	3 years from latest violation
Business	\$3000/\$2000	\$4000/\$3000	\$5000/\$4000 and/or condition/denial/suspension/revocation	3 years from latest violation
Failure to comply with Order of Corrective Action	Not more than \$1000 per day and/or suspension/revocation			3 years from latest violation
Unsafe installations/health and safety hazard/failure to comply with directive	\$3000/\$500	\$5000/\$2000 and/or condition/denial/suspension/revocation		5 years from latest violation
Failure to comply with directive + aggravating factors	\$4500/\$3000	\$5000/\$4000 and/or condition/denial/suspension/revocation		5 years from latest violation

918-001-0036

Guidelines for Civil Penalties

(1) Scope and Authority. This rule sets guidelines for assessing a civil penalty under ORS 446.995 & 455.895.

(2) Definitions. For the purposes of this rule:

(a) “Continuing offense” or “continuing violation” means violation of a code, rule or law on one or more additional days after having been notified ~~that~~ **of the violation or ordered to correct the act, or failure to act**, in question, ~~or failure to act, is a violation. An additional day is any day, other than the first day, an offense takes place.~~

A continuing violation is subject to a civil penalty each day the violation continues after notification.

(b) A “directive” includes, but is not limited to, a notice or warning, citation, order, consent decree or settlement agreement, rule, law, code requirement, or agency interpretation.

~~(b)~~**(c)** “Pattern of violation” means two or more prior violations during a ~~ny three-year~~ **given** period of any provision of ORS Chapter 446, 447, 455, 460, 479, 480 or 693, or the state building code as defined in ORS 455.010, whether or not a penalty was assessed.

(A) For violations by volunteers performing unlicensed work, supervisor and business violations, and failures to comply with corrective orders, a pattern of violation is calculated within a three-year period from the date of the latest violation.

(B) For scope of license violations, violations concerning other unlicensed activities, failure to obtain license and permit, failure to comply with a previous directive, or violations resulting in unsafe installations or health and safety hazards, a pattern of violation is calculated within a five-year period from the date of the latest violation.

(e) “Egregious Act,” for purposes other than plumbing violations found by the State Plumbing Board, means:

(A) An act resulting in an unsafe installation and/or imminent health and safety hazard, structural or financial damage;

(B) A violation of a previous order;

(C) Directly employing, allowing or permitting an unlicensed individual to perform work; or

(D) Performing or engaging in work that requires a license.

(d) "Egregious Act," for the purposes of plumbing violations found by the State Plumbing Board, means:

(A) An act resulting in an unsafe installation and/or imminent health and safety hazard, structural or financial damage;

(B) A violation of a previous order;

(C) Allowing or permitting an unlicensed individual to perform work; or

(D) Performing or engaging in work that requires a license.

~~(e)~~ **(3)** A licensed person or contractor who **performs an act resulting in an unsafe installation or a health and safety hazard, structural or financial damage, performs or allows another to perform work requiring a license without an appropriate license, violates a previous directive, or exhibits a pattern of violation** has committed an egregious act may have their license, registration or certificate **conditioned**, suspended or revoked. For the purposes of civil penalty assessments, there is no time limit on egregious acts.

~~(e)~~ **(4)** **Civil penalties may be assessed by a board, the administrator, or a board's designee acting as agent for a board.** A board or the administrator may take into account any appropriate factors, **including previous directives**, in determining the penalty amount or conditions within an order. **The statutorily defined maximum penalty may only be assessed upon a finding of a pattern of violation.**

~~(4)~~ **(5)** Civil penalties may be assessed in addition to, or in lieu of, the **conditioning**, suspension or revocation of a license, certificate of competency or similar authority issued by the division.

~~(5)~~ Procedures:

~~(a)~~ Civil penalties shall be assessed by a board, the administrator or a board's designee acting as agent for a board.

~~(b)~~ **(6)** The division shall ~~may~~, subject to approval of a board, ~~adopt~~ **develop** a penalty matrix **for the board's use** to promote equity and uniformity in proposing the amount and terms of civil penalties and conditions under which the penalties may be modified based on the circumstances in individual cases.

~~(e)~~ **(7)** If a dispute concerning the application of the state building code as defined in ORS 455.010 is appealed to a local appeals board, to a board under ORS 455.690 or to the program chief under ORS 455.475:

~~(A)~~ **(a)** No ~~A~~ civil penalty shall be sought or assessed for violation of the code provision that **is being** was appealed, **may be stayed** until after **resolution of** the appeal or interpretation is resolved, and ~~if~~ corrections are

necessary, **a civil penalty may be stayed for** ~~they are made within~~ 30 calendar days or the time frame established in the appeal or in the interpretation process.

~~(B)~~ **(b)** ~~Notwithstanding a~~ **An** administrative appeal; **will not stay** civil penalties ~~can be brought or~~ **when they were** assessed for failure to obtain a permit ~~if the issues on~~ **unless the** appeal ~~do not involve~~ **the question of** whether a permit was necessary.

~~(C)~~ **(c)** ~~The obligation is on the person charged~~ **seeking the appeal or interpretation has the obligation to notify the division of the appeal for the purpose of granting a stay of the civil penalty.** ~~or about to be charged, with a violation to advise of an appeal under this subsection.~~

~~(D)~~ ~~The division shall adopt and review the division's operating procedures with a board to promote equity and uniformity in proposing the amount and terms of civil penalties and conditions under which the penalties may be modified based on the circumstances in individual cases.~~

~~(6)~~ **(8)** Violations of ORS Chapters 446, 447 and 479 and ORS 455.020(2) and 455.610, wherein defects are noted by an inspector in an element of assembly or construction, shall not be considered a violation ~~of~~ **for the purposes of** this section if the violation is corrected and an inspection request made in 20 calendar days unless extended in writing by the building official.

~~(7)~~ **(9)** The Building Codes Division shall forward a copy of final orders to the Construction Contractors Board.

Stat. Auth.: ORS 446.995 & 455.895
Stats. Implemented: ORS 446.995 & 455.895
Hist.: BCD 35-2002, f. 12-31-02, cert. ef. 1-1-03; BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05