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State of Connecticut

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October 13, 1995

RECEIVED

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LETTER OF OPINION  
DEPT. OF CONSUMER PROTECTION

John Woodcock, Chair  
Heating, Cooling and Piping  
Work Examining Board  
165 Capitol Avenue  
Hartford, CT 06106

RE: Rattick Combustion, Inc.

Dear Mr. Woodcock:

I am pleased to inform you that Rattick Combustion, Inc. has agreed to settle the pending litigation with the Board. Rattick has agreed to withdraw its pending action challenging the 1988 Declaratory Ruling of the Board concerning whether unlicensed persons may perform unlicensed boiler cleaning work.

At the urging of Superior Court Judge Marshall Berger, we have agreed to request the Licensing Board to reissue, at its convenience, the Declaratory Ruling. I would be pleased to work with Board staff to arrange the reissuance.

I am most appreciative of the assistance provided to my office by Board Member Robert Barrieau and Board Inspector Doug Weidl.

Very truly yours,

Neil G. Fishman  
Assistant Attorney General

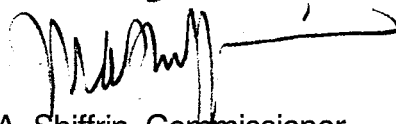
NGF:pas

c: Michael Spagnoli  
Megan O'Neill

**CERTIFICATION**

I hereby certify that the foregoing document, Declaratory Ruling in the Matter of Ratick Combustion, Inc., Docket No. 88-737, dated October 13, 1988, is a true and correct copy of the office copy.

Dated at Hartford, Connecticut this 24<sup>th</sup> day of May, 1995.



Mark A. Shiffrin, Commissioner

STATE OF CONNECTICUT )

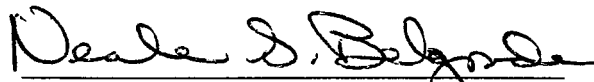
COUNTY OF HARTFORD )

ss:

Hartford, CT

May 24, 1995

Before me personally appeared Mark A. Shiffrin, Commissioner the Department of Consumer Protection of the State of Connecticut, known to me, and made oath to the truth of the matters contained herein.



Commissioner of the Superior Court

STATE OF CONNECTICUT  
HEATING, PIPING & COOLING WORK  
EXAMINING BOARD

IN THE MATTER OF:

RATICK COMBUSTION, INC.

DOCKET NO. 88-737

DECLARATORY RULING

Through its attorney's request of March 31, 1988, Ratick Combustion, Inc. (Ratick) has requested the Board to issue a Declaratory Ruling as to whether boiler cleaning is included within the definition of heating, piping and cooling work as stated in Connecticut General Statutes, §20-330(5) when no mechanical adjustment or repair is involved.

This section states,

"Heating, piping and cooling work" means the installation, repair, replacement, maintenance or alteration of any apparatus for piping, appliances, devices or accessories for heating systems, excluding sheet metal work; air conditioning and refrigeration systems, boilers, including apparatus and piping for the generation of conveyance of steam and associated pumping equipment, but on and after July 1, 1984, shall not include solar work;

For the purpose of this ruling, the key word in this definition is "maintenance." This Board has always considered "maintenance" to include cleaning. Ratick has cited Errichetti v. Bouton, 183 Conn. 481, 490(1981), for the definition of "maintenance" as "keeping in a state of repair, efficiency or validity." We agree, and point out that to remain efficient, a boiler must be cleaned periodically. The legislature apparently recognized this, hence its omission of the word "cleaning" from the statute because it would have been redundant.

Ratick's arguments with reference to Chapter 393a and PA 74-341 are not persuasive for a number of reasons. First, the change in statutory language effected by PA 74-341 occurred in the definition of plumbing and piping work, not heating, piping and cooling work. Second, because the legislature intended "maintenance" to include cleaning, there was no need to amend Section 20-330 to specifically say "cleaning." Third, and more importantly, there is a substantial difference between a heating system which produces ash as a by-product of operation, which is to be removed by regular maintenance to maintain efficiency as well as safety, and a septic system which by its very operation necessarily accumulates material which must be removed. The legislature recognized there were persons who only cleaned septic tanks, and some who only installed them. With the dangers to health from the effluent, it is easy to understand why the legislature required separate licenses for those who clean the septic tanks, as well as those who install them.

Similarly, there are dangers with heating systems and their cleaning, and this is perhaps the prime reason for requiring persons who clean such systems to be licensed. We are not unmindful of the recent incident in which an unlicensed person was set aflame inside a boiler while another unlicensed co-worker was just outside the boiler. They were there just to clean the boiler and to make no adjustments or repairs, but, for some unknown reason, the burner ignited. Allowing only licensed persons to clean these systems, persons who understand the operation of the various switches, connections, wiring, lines, etc., will help eliminate such tragedies.

For the above-stated reasons, the board rules that boiler cleaning, including such cleaning when no mechanical adjustment or repair is involved, is included in the definition of heating, piping and cooling work as stated in Connecticut General Statutes, §20-330(5).

Dated this

13

day of

OCT

1988.

CONNECTICUT HEATING, PIPING AND  
COOLING WORK EXAMINING BOARD

*David E. Alton*

By: David Alton, Chairman

BERDON, YOUNG & MARGOLIS, P. C.

ATTORNEYS AND COUNSELORS AT LAW

DAVID D. BERDON  
PASQUALE YOUNG  
STUART A. MARGOLIS  
PAUL E. BARRETT, JR.  
DAVID J. SCULLY

132 TEMPLE STREET  
NEW HAVEN, CONNECTICUT 06510  
(203) 772-3740  
FAX (203) 787-9291

March 31, 1988

Heating, Cooling & Piping  
Work Examining Board  
Department of Consumer Protection  
165 Capital Avenue  
Hartford, Ct. 06106

RE: Section 20-330 (5) of the Connecticut General Statutes

Gentlemen:

We hereby request a Declaratory Ruling pursuant to Section 4-176 of the Connecticut General Statutes. The ruling requested pertains to an interpretation of Section 20-330 (5) of the Connecticut General Statutes. This request is made on behalf of Ratick Combustion, Inc., ("Ratick").

Section 20-330 (5) defines heating, piping and cooling work as follows:

- (5) "Heating, piping and cooling work" means the installation, repair, replacement, maintenance or alteration of any apparatus for piping, appliances, devices or accessories for heating systems, excluding sheet metal work; air conditioning and refrigeration systems, boilers, including apparatus and piping for the generation or conveyance of steam and associated pumping equipment, but on and after July, 1, 1984, shall not include solar work;

The issue raised by this request for Declaratory Ruling is whether boiler cleaning is included within the statutory definition when no mechanical adjustment or repair is involved. The practice in issue is limited solely to cleaning with brushes and vacuums. The mechanical apparatus of the boiler is not touched in connection with the cleaning function. The petitioner submits that this limited activity of cleaning is not encompassed by the statutory definition of heating, piping and cooling work. After cleaning is completed, all mechanical adjustment and maintenance is performed by a licensed burner service company. Repairs and maintenance work are beyond the scope of cleaning and not included in the activity covered by this request for declaratory ruling.

BERDON, YOUNG & MARGOLIS, P. C.

The law controlling this action is found in Chapter 393, Connecticut General Statutes Section 20-330, et seq. entitled:

"Electricians, Plumbers, Heating, Piping and Cooling Contractors and Journeyman and Elevator Craftsmen."

The Respondent Ratick limits its activity to cleaning of boilers only.

The subject statute does not contain the word "cleaning". E.g. Section 20-330(5). That term does not appear in the regulations promulgated under the statute.

In stark contrast, the term "cleaning" does appear in Chapter 393a immediately following Chapter 393. That statute, Connecticut General Statutes Section 20-341a(i), et seq. states that it applies pertains to the "construction, installment, repairing, cleaning, or servicing..." of underground sewage disposal systems. It is significant that cleaning and servicing are listed as separate words with distinct meanings, and that neither word appears within the statutory definition of heating and plumbing work.

This sister statute to the subject statute clarifies that had the legislature intended to include simple cleaning within the statute, it could have included it in its language - but the legislature chose not to do so.

This must not be construed as anything other than an intentional omission by the legislature to place cleaning outside the scope of Chapter 393.

This statement is further supported by the fact that in 1974 the Legislature specifically removed underground sewage systems from Chapter 393 and created Chapter 393a with "cleaning" falling within the scope of the new Chapter regarding such systems, but not the original statute regarding heating, piping, etc. See P.A. 74-341.

This is again evidence of the clear intent of the Legislature that simple cleaning is not within the definitions of Chapter 393 as it applies to this case.

The law of Connecticut, and throughout this country, supports this fact because licensing requirements were not known at common law but are a creation of statutes. Such statutes therefore must be strictly construed and not extended by implication. (Many cases including Edmundson vs. Rivera, 169 Conn 633 (1975).

Construction of the language of the statute, in particular Connecticut General Statutes Section 20-330(5), necessitates a finding that simple cleaning is not covered by this statute.

These facts prevent the extension of the term "maintenance" in the statute to include simple cleaning.

Additional arguments for this clear distinction are provided in the Statute and by an examination of the definitions of these words.

What actions or expertise constitute maintenance vary greatly with the object to be maintained. Maintaining a heating system, maintaining a dam, a space shuttle or a jet aircraft, all require vastly different and extensive training, education and experience. Maintenance therefore clearly requires expertise.

Cleaning, by contrast, is merely the removal of unwanted substances. Random House Dictionary, (1967). It is a simple act without need for expertise.

The Regulation defines maintenance in a manner which does not include the term cleaning as follows:

- (i) "Heating, piping and cooling maintenance" means the keeping in a state of repair or efficiency all types or classes of heating, piping and cooling equipment and includes the replacement of existing equipment with equivalent materials, or materials substantially equal to existing materials, if identical equipment is not available, but excluding any alteration or additional work adversely affecting safety or change of original design. Change of original function or design is permitted as maintenance only where the existing equipment or system is in a dangerous condition and not in compliance with the present code provisions, provided that the maintenance performed will render the system or equipment safe and in compliance with applicable code provisions. Regs. 20-332-1(i).

Maintenance constitutes activities requiring a high degree of expertise with respect to the functions, testing, repair and replacement of equipment. It requires a skill developed through training, experience and knowledge to ascertain what the normal function of a system should be, diagnosing any troubles that exist, choosing the proper action to solve the problem including the installation of new equipment and knowing and complying with Code provisions. It even includes designing of new systems or functions when the old system is dangerous. These facts are outlined in Regulation 20-332-1(i).

The Regulation's definition is supported by case law defining "maintain" as "keeping in a state of repair, efficiency or validity". Errichetti vs. Bouton, 183 Conn. 481, 490 (1981).



BERDON, YOUNG & MARGOLIS, P. C.

That distinct skills are required to maintain heating and plumbing piping is evidenced in the remaining subsections under Regulation 20-332-1. These subsections clarify that maintenance is item-specific: that it varies with the item being maintained. Maintenance includes repair of wiring relays, controls, replacement of defective wiring, disconnecting of circuits, installation of approved safety devices with regard to electrical systems. Regulation 20-332-1(h).

It involves replacement of plumbing and piping, etc. with regard to "plumbing and piping maintenance" Regulation 20-332-1(j).

The key point is that just as the definitions of maintenance vary under the statute for each different type of item or system to be maintained, so does the skill and expertise to perform the maintenance.

Simple cleaning just does not require such specialized or complicated definitions or skills. It is getting the dirt or ash out by using brooms and vacuum not involving mechanical functions.

Examination of these terms provides the sound basis for the legislature's decision to leave simple cleaning outside the scope of the statute. Cleaning does not require the kind of expertise which the Chapter intends to regulate and define.

It is also the long-standing law of the State of Connecticut that not only can statutes such as this not be extended by implication (Edmundson, supra), but no regulations will be enforceable unless specifically supported by statutory authority. State vs. Stoddard, 126 Conn 623 (1940), e.g. Len-Lew Realty Co. vs. Falsey, 141 Conn 524 (1954).

The Legislature delegated no authority to regulate simple cleaning which is clear from the plain language of the Statute, as well as in a closer examination of its intent.

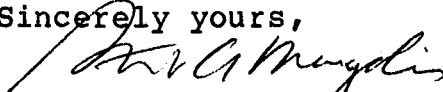
Based upon the foregoing discussion of the issues presented, petitioner submits that "cleaning", without mechanical work, is not included within the definition of "heating, piping and cooling work" under Section 20-330 (5).

BERDON, YOUNG & MARGOLIS, P. C.

We would be pleased to present any additional information requested by the Board.

Thank you for your consideration.

Sincerely yours,



STUART A. MARGOLIS

SAM/tjb

cc: Michael D. Spagnoli, Esquire  
Senior Administrative Hearing Attorney  
and Complaint Counsel  
165 Capital Avenue, Room 173  
Hartford, Connecticut 06106



# STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

RECEIVED

JUN 17 1988

DEPT. OF CONSUMER PROTECTION

June 15, 1988

Berdon, Young & Margolis, P.C.  
Attorneys & Counselors at Law  
132 Temple Street  
New Haven, Connecticut 06510

Attn: Stuart A. Margolis, Esq.

Dear Sir:

This is to acknowledge receipt of your request for a declaratory ruling pertaining to an interpretation of §20-330(5) of the Connecticut General Statutes on behalf of Ratick Combustion, Inc.

Please be informed that the State Heating, Piping & Cooling Work Examining Board has approved your request and shall issue its ruling at an early date.

FOR THE STATE HEATING, PIPING AND  
COOLING WORK EXAMINING BOARD

David Alton, Chairman

Roland Bonosconi  
Director  
Occupational Licensing Division

RB/kh

cc: Don Wasik, Assistant Attorney General ✓  
Joseph Lembo, Chief Legal Officer ✓  
File

(203) 566-3290

165 Capitol Avenue • Hartford, Connecticut 06106  
An Affirmative Action/Equal Opportunity Employer

STATE HEATING, PIPING & COOLING  
WORK EXAMINING BOARD  
165 Capitol Avenue, Room 177  
Hartford, Connecticut 06106

Meeting of October 13, 1988

Chairman Alton convened the meeting at 9:35 a.m. Present were members Alton, Horan, Wood and Higgins. Also present were R. Bonosconi, Director of the Occupational Licensing Division and Assistant General, D. Wasik.

The minutes of the previous meeting were read and approved on a motion by members Wood/Higgins.

Having requested reinstatement of his S-1 license, Jacob Goldman was present to offer evidence of his experience and conduct since the revocation of his license. The Board tabled the matter pending review of his file.

Ronald Kauffman appeared to request approval of his application for the D-2 class license exam. After discussion, the Board was unanimous to approve for the D-4 exam.

James M. Brady appeared to request approval of his application for the S-7 class license exam. After discussion the Board approved for the S-7 class.

Matthew Bourke appeared to request waiver of the one year waiting period after three successive failures. After discussion, the Board was unanimous to approve.

Daniel M. Wicker was present to request approval of the S-2 class license exam. After discussion and review of his application, the Board was unanimous to approve.

Mark Guarino was present to request approval of his application for the S-7 class exam. After discussion of his prior experience, the Board advised him to complete his apprenticeship. Pending his pursuit of this matter, the issue is tabled.

Scott Bilodeau appeared to request waiver of the two year period in journeyman status. The Board was unanimous to waive the remaining ten months and approve for the S-1 exam.

Ralph H. Renzulli was present to request approval of the S-7 class exam. After review of his file and experience the Board approved for the S-8 class.

Ronald Parkes was present, accompanied by Atty. David Weis, to request approval of the S-3 class license exam. After discussion and review of his file and experience, the Board was unanimous to approve.

Patrick J. Mottola, applicant for the S-2 class license exam was present. After review of his experience, the Board approved for the S-8 exam.

Atty. George Levine was present with the following individuals, all on

HEATING, PIPING & COOLING

October 13, 1988

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behalf of the I.C. P.A., Charles Eisenberg, Alice Cornish, Gene Mangini, and Mikr Morin. Discussion centered on the proposal of establishing an additional license category to permit a limited area of servicing oil burner heating systems. Lengthy discussion was terminated and continued until November 10th meeting.

The Board read and approved for signature a declaratory ruling in the matter of Ratick Combustion.

In the matter of Docket No. 88-459, Respondent Jeffrey Hayes, the Board issued an Order of Immediate Discontinuance and a civil penalty of \$35.

In the matter of Docket No. 88-474, Respondent Al Trumbull, the Board issued an Order of Immediate Discontinuance and a civil penalty of \$35.

An application submitted by Graydon Levesque, Jr. was reviewed and approved for the B-3 class exam.

An application submitted by Douglas R. Ewen was reviewed and approved for the D-1 class exam.

A request to waive the two year journeyman status as submitted by James M. Orize was denied.

In the matter of File No. 87-33-301739 the Board approved the Hearing Officer's recommendation to dismiss.

The departure of a Board member caused a non-quorum and the meeting adjourned at 12:50 p.m.

David Alton  
Chairman

*David E. Alton*