

Appendix A

RULEMAKING HEARING Public Hearing Appearances and Written Testimony

Rule Subject: Home Improvement Practices and Basement Waterproofing
Adm. Code Reference: ATCP 110, Wis. Adm. Code
Rules Clearinghouse #: 13-066
DATCP Docket #: 12-R-08

Public Comments Received

DATCP received comments on this rule from 118 individuals. The content of the comments was essentially unanimous. Two trade organizations, The Wisconsin Builders Association (WBA) and the Milwaukee Chapter of the National Association of the Remodeling Industry (NARI) coordinated the submission of comments from their members.

Public Hearing Attendance Cards-Position on Rule and Verbal Testimony

DATCP held four public hearings on the rule:

- Madison on September 24, 2013
- Eau Claire on September 26, 2013
- Milwaukee on October 1, 2013
- Green Bay on October 2, 2013

There were no attendees at three of the hearings. There were six attendees at the Milwaukee hearing. One individual, David Pekel representing NARI, provided verbal & written testimony at the Milwaukee hearing.

Written Testimony Received During Comment Period

Last Name	First Name	Title	Business	City
Wendorf	Shawn	Office Administrator	Quality Remodeling Specialist Inc	
Barenz	Ronny	Director of Business Development	Barenz Builders	
Smukowski	Jim	Vice President / Owner	J&J Construction Lake Country, Inc	Dausman
Ripple	Terry	President	The Cabinetree of WI Inc	
Loppnow	Jack	Vice President	Robertson Ryan and Associates	
Wolff	Todd	Owner	Highland Builders LLC	
Grau	Michelle		Professional Construction Inc.	Waukesha
Hoffmann	Mark	Owner	Bedrock Granite	
Kohls	Steven R	Manager	Kohls Floor Covering, Inc	
Bates	Robert	President	Badger Carpentry	Pewaukee

Last Name	First Name	Title	Business	City
Stano	Mathew M	President	Stano Landscaping, Inc.	Milwaukee
Zastrow, CR	Tom		Phantom Creek Builders, LLC	Mukwonago
Sannes, C.R., C.G.R	Gary	President	SJ Janis Company, Inc.	Wauwatosa
King	Kory		Schoenwalder Plumbing Inc	Waukesha
Cape	Robert	Vice President	J.D. Griffiths Co., Inc.	Milwaukee
Krueger	Leah		L. H. Krueger and Son, Inc.	Waukesha
Riedel	Dan	President	NARI -- Milwaukee Chapter	Wauwatosa
Bartelt	Richard		Bartelt	Delafield
Bayer	Barbara	President	Bayer and Bayer, Inc.	Muskego
Kawczynski	Gary		Jen Chris Company, LLC	Grafton
Callen	Thomas C.	President	Callen Construction, Inc	Muskego
McLean	Andrew	Operations Manager	Burant Heating and Air Conditioning	Franklin
Baird-Luedke	Anna		Coello & Associates, Inc.	Waukesha
Cyborowski	Jerry	President	J&J Contractors I LLC	Oak Creek
Hucke	Daniel J	President	Hucke Drywall Inc.	Hartland
Meehan	Jeff J	Vice President	Quality Window Specialists, Inc.	Butler
Rink, CR	Tony		Renovators, LTD	Elm Grove
Cluigley	Robert B	President	Brillo Home Improvement, Inc	Milwaukee
		Secretary/ Treasurer	Brillo Home Improvement, Inc.	Milwaukee
Rose, P.E.	Gervase R.	C.E.O.	Roman Electric Co., Inc.	Milwaukee
Buss, Sr.	Terry	Secretary and Treasurer	Suburban Asphalt Co., Inc.	Franklin
Sobieski	Steve		Weisfloss Design Center, LLC	Nashotah
	Mike	Managing Member	Winters Re modeling Group LLC	Wauwatosa
Ciesielyk	Aaron B.	Owner	Aaron's Building Services	New Berlin
Eckland	Peter	President	Lakeland Building Supply	Gurnee
Nelson	Larry	Sales Director	Knuts on Bros.	Milwaukee
Wandsnider, RLA, CLP	William	President	Wandsnider Landscape Architects	Menomonee Falls
L	B	President	Creative Construction of WI, Inc.	Franklin
Gugger	Jack	President	Gugger Construction, Inc.	Madison
Kilian	Rod	President	Productive Builders Inc.	Menomonee Falls
Klappa	Daniel	CEO	JDJ Builders, Inc	Greenfield
Gabor	Nathan	Owner / Manager	Gabor Design Build, LLC	Mequon
Kruger, CR	Diane		Carl Krueger Construction	Milwaukee
Wood, CR	Michael		Callen Construction, Inc.	
Whittmann	Christopher		Callen Construction, Inc.	
Conner, CR	Ken		Conner Re modeling & Design, Inc.	
Anundson, PE, MCR, CKBR, CAPS	Kevin	Owner	Assisted Remodeling	
Kraemer, CRM, CIC	Paul		The Starr Group	
Brick	Mark		B&E General Contractors	
Rathmanner	Dave		First Supply, LLC	

Last Name	First Name	Title	Business	City
Burback, CR, UDCP	Rick		Burback Builders	
Scifo, CR	Susan		Service Master Recovery Services	
Frueden	Gary		Standard Roofing Co., Inc.	
Bergmann	Rebecca		Cardinal Homes, LLC	
Kruger	Natalie		Klam Construction	
Sherman	Andrea		Accurate Basement Repair, LLC	
Mancuso, CWS, CSRS	Chris		Accurate Basement Repair, LLC	
Preiss	Brian		Mor Strategy Group, LLC	
Pitzen, CR, ALA	Jim		Pitzen Design, LTD	
Latsch, CR	Kevin		Design Tech Remodeling	
Herriges, CKBR	Julie		Urban Herriges & Sons, Inc.	
Lorentzen	Robyn		Service Master Recovery Services	
Klug	Chris		ABC Audio Video, LLC	
Johannsen	Brendt		The Starr Group	
Neulreich	Walter		McCoy Contractors, Inc.	
Madsen	Robert		Halquist Stone	
Herriges, CLC	Joe		Urban Herriges & Sons, Inc.	
Herriges	Lisa		Urban Herriges & Sons, Inc.	
Meiners	John		DG Remodeling	
Brinkmann	Barb		Barb's Interior Design, Inc.	
McDaniel, CPO-CD, cSMM	Brenden		Action Organizing Services, LLC	
M	Z			
Volz	Sharon		DG Remodeling	
Kords	Ron		Kordus-Schuster Plumbing, Inc.	
Keel, CSP, CAPS, CCP	Susan		Advanced Communication Specialists	
Hapka	Deanne		Hapka Contracting, Inc.	
Lococo	Nancy		JM Remodeling & Construction LLC	
Trego JR	Michael P.		Trego Architects, LLC	
Hannan	Mary Lee			
Hackbarth	John		Hackbarth Builders, Inc.	
Glisch	Mark		Premiere Kitchen Designs, LLC	
Sweenel	K P			
Koehler	James		Star Satellite	
Charno	Milt		Milt Charno & Assoc. Inc.	
Fraul	Stan G		Renewal by Anderson of Milwaukee	
Miller	Randy		Allrite Home and Remodeling Inc.	
Moeschbryn	Thomas G.		Milwaukee Journal Sentinel	
Brehmer	Mark			Sun Prairie
Hendricks	Jill			De Pere
Liebl	William			Middleton
Maurer	KC			Winneconne

Last Name	First Name	Title	Business	City
Degnan CGR, CGB, CAPS	Abe			De Forest
Sabel	Jeff			Valders
Breiwalt	George R			Highland
Tews	Randy			Eau Claire
Rakowski	Craig			New Berlin
Miller	Ed			Cedarburg
Downs	David			Neenah
Schaffer	Greg			Fitchburg
Sickler	Chad			Wausau
Hartwig	Tena			New Holstein
Atlija	Dara			Muskego
Pekarske	Mark			Reedsville
Puyleart	Scott			Green Bay
Church	Leon			Appleton
Diermeier	Jack			Rhineland
Boycks	Brad			Middleton
Johnsen	Kathy			Madison
Mathie	J. Scott			Waukesha
Werner	Bob			Sheboygan
Gigstead	Jack			Sturgeon Bay
Bartow CAPS	Brandon			Manitowoc
Johansen	Chuck			Hayward
Birmingham	Thad			Sturgeon Bay
TenPas, CAPS	Brad			Waldo
Kuchera	Todd			River Falls
Etrheim	Mark			Onalaska

Summary of Public Comments

The text below is from the written testimony submitted by Dan Riedel, President of NARI – Milwaukee on September 11, 2013. All other testimony referenced this letter and supported the positions stated in it.

On behalf of the Milwaukee/NARI Home Improvement Council and our more than 900 members, we wish to thank the Department of Agriculture, Trade and Consumer Protection for its efforts to update and improve ATCP 110. The current draft of the rule is a good start. However, further revisions are needed to modernize the rule, protect consumers, and level the playing field for numerous Wisconsin remodelers. We request that you make the following additional changes to the proposed rule:

Product and Material Substitution

Include language in the rule that would permit the buyer to agree verbally, via text message, email, or in writing to substitutions in products or materials.

Indicate that the buyer may not unreasonably withhold approval where the substitution is necessary due to circumstances outside the control of the seller.

State that if the buyer elects to upgrade the product or material, then the additional costs may be passed onto the buyer.

Lien Waivers

The proposed rule changes do not streamline the process for dealing with lien waivers. The proposed changes actually make it more cumbersome. We ask that you amend the proposed rule so that the seller is only required to present lien waivers upon the demand of the buyer.

Contractors understand that they have to follow the Wisconsin lien laws. The proposed changes add burdens to contractors who are good actors and will not prevent the problems that arise with bad actors.

If you would like to include model contract language providing that lien waivers will be held till the end unless requested by the buyer, the following is an example:

I understand that contractors, subcontractors, and materials suppliers may have a right to file a lien against my property if they are not paid for their products or services. I further understand that obtaining lien waivers prevents these liens. Wisconsin law (ATCP 110, Wis. Adm. Code) requires sellers of home improvement services to provide the buyer with lien waivers from all contractors, subcontractors and material suppliers, upon request of the buyer, at the time the buyer makes payments. If the home improvement contract requires partial payments at various stages in the performance of the contract, the buyer may demand that the seller provide lien waivers for the proportionate value of labor, service and products or materials furnished or delivered as of the time the partial payment is made. I agree to waive and requirement that the seller provide lien waivers to me at the time partial payments are made.

Delays

Include language that does not penalize sellers for a delay if the delay was due to circumstances beyond the control of the seller. Include language indicating that buyer will not unreasonably withhold agreement to extend the completion date.

Large Projects

Instead of using the assessed value of the entire property as the measure of whether a project constitutes a “major renovation,” the rule should use only the value of the existing dwelling. This would be consistent with other laws that consider the value of the dwelling and recognizes that the land value often exceeds dwelling value (e.g., lakefront property, farm land).

Text and Email Documentation

It would be helpful to expressly state in ATCP 110 that email messages and text messages are permissible means to document authorization or agreement by the buyer. This is more convenient for our customers and helps avoid unnecessary delays in a project.

Eliminate Inclusion of “Other Charges” under ATCP 110.02 (6) (h)

This section places a large burden on the contractor to identify all potential “other charges” that might be assessed prior to contract execution.

Although a seller should identify all reasonably anticipated charges for the buyer in the contract in order to reduce the possibility of surprises, sometimes there are unanticipated costs and the occurrence of those charges when the seller has performed its due diligence up front should not be a violation. The impact of this provision is to penalize a seller who makes a good faith mistake, which should not be the intent of ATCP 110.

Examples of this include: concealed conditions that are not conspicuous, (hidden conditions), orders for compliance remediation of existing conditions by building officials for work not included in the scope or performed by the seller, any modifications identified after concealing conditions are revealed.

Clarify that Contractors May File Complaints under ATCP 110.02 (8)

Building contractors have tried making complaints to DATCP when they believe that another contractor is making false disparaging remarks about them, but they have been told by DATCP that contractors cannot make complaints under ATCP 110. We request that ATCP 110 be revised to make clear that contractors do have the right to assert violations of ATCP 110.02 (8) against other contractors.

Because remodelers are often in the best position to know what is happening in our industry, giving us the ability to file a complaint is in the interest of consumer protection.

Insurance

Revise Section ATCP 110.05 (4) to say: “Where a representation is made that insurance or some other form of protection will be provided, the contract shall either clearly state the terms, conditions and limitations thereof, as well as the name and address of the insurer or the person who is to furnish such protection, if different from the seller. The

Seller may comply with this section by providing a copy of the Declarations Page or Evidence of Property Insurance Form that provides said information prior to commencing work.”

Change orders

Make clear it is not a violation of ATCP 110 if a Buyer orally requests a change and the Seller honors that request.

We will appreciate your efforts to further improve ATCP 110 in a manner that protects consumers and eliminates unnecessary burdens on remodelers. We would welcome the opportunity to meet with you to discuss our proposals in greater detail.