FINAL ORDER
As of: June 17, 2014

BEFORE THE BOARD OF BOILER RULES OF THE STATE OF OREGON

IN THE MATTER OF: **TOTAL MECHANICAL, INC.** **A DOMESTIC BUSINESS CORPORATION** **RESPONDENT**	**NOTICE OF PROPOSED ASSESSMENT OF A CIVIL PENALTY AND FINAL ORDER ON DEFAULT** **CASE NO. C2014-0001**

Under Oregon Revised Statutes (ORS) 455.895(1)(c) and Oregon Administrative Rules (OAR) 918-001-0036, the Oregon Board of Boiler Rules (Board) proposes disciplinary action against Respondent in the form of civil penalties totaling $5,000 because Respondent violated Building Codes Division statutes and rules as follows:

FINDINGS OF FACT

1. At all relevant times Respondent held a valid Oregon boiler business license, number B99-2318.
2. During or about the period from May 2013 to December 2013, at 3600 N. Interstate Avenue, Portland, Oregon, Respondent employed an unlicensed individual, Steve R. Ault, to install three boilers and a pressure vessel for the account of another.
3. On or about October 21, 2013, Respondent failed to secure a permit for the installation of a 2000 MBH boiler at 3600 N. Interstate Avenue, Portland, Oregon.
4. On or about October 21, 2013, Respondent failed to secure a permit for the installation of a 1000 MBH boiler at 3600 N. Interstate Avenue, Portland, Oregon.
5. On or about October 21, 2013, Respondent failed to secure a permit for the installation of an air separator at 3600 N. Interstate Avenue, Portland, Oregon.

APPLICABLE LAW

1. ORS 480.515(3) defines "a boiler" to mean a closed vessel intended for the heating or vaporizing of liquids to be used externally to such vessel by the application of heat from

combustible fusels, electricity or nuclear energy.

2. ORS 480.515(12) defines "pressure vessel" to mean a container for the containment of pressure, either internal or external. This pressure may be obtained from an external source or by the application of heating from a director indirect source, or any combination thereof.
3. Under ORS 480.632, a person licensed or required to be licensed under ORS 480.630 may not employ any person to work on a boiler or pressure vessel unless the employed person has a valid license issued under ORS 480.630.
4. Under ORS 480.630(5), a person required to be licensed under ORS 480.630 must secure from the department an installation permit prior to installing, altering or repairing a boiler or pressure vessel.

CONCLUSIONS OF LAW

1. A 1000 MBH boiler and a 2000 MBH boiler are boilers as defined by ORS 480.515(3).
2. An air separator is a pressure vessel as defined by ORS 480.515(12).
3. By employing an unlicensed individual to install three boilers and a pressure vessel, Respondent violated ORS 480.632.
4. By installing two boilers and a pressure vessel without first obtaining valid permits, Respondent violated ORS 480.630(5).

ORDER

Under ORS 455.895(1)(b) and OAR 918-001-0036, the Board assesses the following:

1. a $2,000 civil penalty for violating ORS 480.632
2. a $3,000 civil penalty for violating ORS 480.630(5) on three occasions.

The assessed civil penalties total $5,000.

NOTICE OF RIGHT TO HEARING

Respondent is entitled to a hearing as provided by the Administrative Procedures Act, Oregon Revised Statutes, chapter 183. If Respondent requests a hearing, the request must be in writing and

filed with the Building Codes Division. The postmarked date on the request for hearing must be no later than 20 days from the date the Notice of Proposed Action (Notice) was served on Respondent. If this Notice was served to Respondent in person, the service date is the date Respondent received this Notice. If this Notice was served through the mail, the service date is the day the Notice was mailed, not the day Respondent received it. Mail hearing requests to Building Codes Division, Enforcement Section, P.O. Box 14470, Salem, Oregon, 97309.

Respondent has the right to be represented by legal counsel. ORS 183.457 provides that a corporation may be represented by an authorized representative at the hearing. If Respondent requests a hearing, Respondent will be notified of the time and place of the hearing and be given information on procedures, right of representation, and other rights of parties relating to the hearing before it begins.

NOTICE TO ACTIVE DUTY SERVICE MEMBERS

Active duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. Contact the Oregon State Bar at 800-452-8260 or the Oregon Military Department at 800-452-7500 for more information. If Respondent needs help finding legal assistance, visit the United States Armed Forces Legal Assistance Legal Services Locator website at http://legalassistance.law.af.mil/content/locator.php.

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NOTICE OF FINAL ORDER

If Respondent does not request a hearing within 20 days, withdraws a hearing request, notifies the Building Codes Division (Division) or the administrative law judge that they will not appear, or fails to appear at a scheduled hearing, the Division will issue a Final Order by Default. If the Division issues a Final Order by Default, it designates the file, including any materials submitted by Respondent that relate to this matter, as the record for purpose of proving a prima facie case.

Respondent is entitled to judicial review of any final order issued in the matter of this Notice of Proposed Assessment of a Civil Penalty. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days after the Final Order is served. See ORS 183.482. If the Order was served in person, the service date is the date Respondent received the Order. If the Order was served through the mail, the service date is the day the Order was mailed, not the day it was received by Respondent. If Respondent does not file a petition for judicial review within 60 days, Respondent will lose the right to appeal. The phone number for the Oregon Court of Appeals is 503-986-5555.

Dated this 20th day of May, 2014

Roseanne Nelson for

Chair
Board of Boiler Rules
State of Oregon