

1 **BEFORE THE PLUMBING BOARD OF THE STATE OF OREGON**

2 **IN THE MATTER OF:**

3 **JOHN P. FOULK, AN INDIVIDUAL**

4
5 **RESPONDENT (You)**

)
) **NOTICE OF PROPOSED ASSESSMENT**
) **OF A CIVIL PENALTY AND FINAL**
) **ORDER ON DEFAULT**

6) **CASE NO. 2011-0013**

FINAL ORDER

As of: March 2, 2011

7
8 Under ORS 455.895(1)(a) and OAR 918-001-0036, the Oregon Plumbing Board (Board)
9 proposes to take disciplinary action against you in the form of a civil penalty, totaling \$5,000,
because you violated Building Codes Division statutes and/or rules as follows:

10 **FINDINGS OF FACT and CONCLUSIONS OF LAW**

11 (1) On or about January 5, 2011, at 315 NE 3rd St, McMinnville, Oregon, you installed
12 water pipes, a water heater, and a backflow device, for the account of another, without a
journeyman plumber's license, in violation of ORS 693.030(1).

13 (2) On or about January 5, 2011, at 315 NE 3rd St, McMinnville, Oregon, you installed
14 water pipes, a water heater, and a backflow device, for the account of another, without a plumbing
contractor's license, in violation of ORS 447.040(1).

15 (3) The installation of water pipes, a water heater, and a backflow device, as set forth in
16 the Findings of Fact, is a plumbing installation as defined in ORS 447.010(6).

17 **WHAT THE LAW SAYS**

18 (1) Under ORS 693.030(1), a person may not engage in the trade of journeyman plumber
19 without a journeyman plumber license issued under this chapter.

20 (2) Under ORS 447.040(1), a person may not work as a plumbing contractor, or advertise or
21 purport to be a plumbing contractor, and a member or employee of a firm, partnership or
corporation may not engage in the layout or superintending of plumbing installations, without
22 having obtained the plumbing contractor license required under ORS 447.010 to 447.156 as
provided by State Plumbing Board rules adopted under ORS 455.117.¹

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24 ¹ OAR 918-030-0010(8) states that for purposes of ORS 447.040, 479.620, 480.630 and any other license
25 regulated by ORS chapter 455, "engaging in the business" means to advertise or solicit, contract or agree to
perform, or to perform, work for which a license or permit is required under Oregon law, including but not
limited to a single instance.

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2 **ORDER**

3 Under ORS 455.895(1)(a) and OAR 918-001-0036, the Board assesses the following
4 sanction:

- 5 (1) \$2,000 civil penalty for violating ORS 693.030(1).
6 (2) \$3,000 civil penalty for violating ORS 447.040(1).

7 The civil penalties total \$5,000.

8 **NOTICE OF RIGHT TO HEARING**

9 You are entitled to a hearing as provided by the Administrative Procedures Act, Oregon Revised
10 Statutes, Chapter 183. If you request a hearing, the request must be in writing and filed with the
11 Division no later than 20 days from the service date. If this Notice was served on you in person, the
12 service date is the date you received this Notice. If this Notice was served through the mail, the
13 service date is the day the Notice was mailed, not the day you received it.

14 If a request for hearing is not received within 20 days, your right to a hearing shall be considered
15 waived unless the failure to request a hearing was beyond your reasonable control. Mail hearing
16 requests to Building Codes Division, Enforcement Section, P.O. Box 14470, Salem, Oregon, 97309.

17 You have the right to be represented by legal counsel. ORS 183.457 provides that a corporation
18 may be represented by an authorized representative at the hearing. If you request a hearing, you
19 will be notified of the time and place of the hearing and be given information on the procedures,
20 right of representation, and other rights of parties relating to the hearing before it begins.

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1 **NOTICE OF FINAL ORDER**

2 If you do not request a hearing within 20 days, withdraw a hearing request, notify the Board or the
3 administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Board
4 will issue a Final Order by Default. If the Board issues a Final Order by Default, it designates the
file, including any materials submitted by you that relate to this matter, as the record for purpose of
proving a prima facie case.

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

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12 Dated this 7th day of February, 2010

13 Elizabeth Bronck for
14 Chairman
15 Plumbing Board
16 State of Oregon