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Pension Plan for the Employees of Nauss Plumbing & Heating Inc., Registration No.1084284

**IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "PBA")**

**AND IN THE MATTER OF an Intended Decision of the Superintendent of Financial Services to Make an Order under section 69(1)(b) and to make an Order under sections 55(2) and 87(2)(c) of the PBA relating to the Pension Plan for the Employees of Nauss Plumbing & Heating Inc., Registration No. 1084284**

TO: Nauss Plumbing & Heating Inc.  
2590 Lasalle Blvd.  
Sudbury ON P3A 4R7

Attention: Denis Groves  
Owner

Employer and Administrator of the Plan

## **NOTICE OF INTENDED DECISION**

**I INTEND TO MAKE AN ORDER**, under section 69(1)(b) of the PBA, that the Pension Plan for the Employees of Nauss Plumbing & Heating Inc., Registration No. 1084284 (the "Plan"), be wound up effective as at the date the Order is issued pursuant to this Notice of Intended Decision or any hearing request.

**I ALSO PROPOSE TO MAKE AN ORDER** under sections 55(2) and 87(2)(c) of the PBA that Nauss Plumbing & Heating Inc. ("Nauss") forthwith remit all outstanding contributions with interest to the Plan.

### **REASONS:**

1. Nauss is the employer and administrator of the Plan.
2. The Plan was established effective June 1, 2002 as a defined contribution pension plan.
3. Sections 4(d) and (e) of the Plan text effective June 1, 2002 set out the contributions which Nauss is required to make to the Plan: (d) Employer's contributions

### **Other Employees**

The employer is required to contribute to the Plan an amount equal to two per cent of each Member's Earnings for each Member for each full year or partial year of membership in the

Plan.

### **Managers**

The Employer is required to contribute to the Plan an amount equal to two per cent of each Member's Earnings for each Member for each full or partial year of membership in the Plan.

#### (e) Payment of contributions

The Employer is required to remit contributions to the Plan within 30 days after the end of the month for which contributions are payable.

#### 4. Sections 4(a) and (b) contain the terms governing employee required and voluntary contributions:

##### (a) Member's required contributions

### **Other employees**

Each Member is required to contribute to the Plan by payroll deduction an amount equal to two per cent of the Member's Earnings during each full or partial year of membership in the Plan.

### **Managers**

Each Member is required to contribute to the Plan by payroll deduction an amount equal to two per cent of the Member's Earnings during each full or partial year of membership in the Plan.

##### (b) Member's voluntary contributions

Subject to the maximum contributions provisions below, a Member may make voluntary contributions to the Plan and withdraw those contributions at any time.

5. In 2008, Nauss ceased remitting contributions (both employer and employee) to the Plan including employee contributions which were deducted from employee pay cheques.
6. On July 14, 2009, charges under the Provincial Offences Act were laid in respect of Nauss' failure to remit required contribution to the Plan. On August 11, 2009, Nauss plead guilty to one count of failing to remit required contributions. A fine was levied and Nauss was required to pay all arrears owing to the Plan as of that date.
7. On or about December 1, 2010, staff at the Financial Services Commission of Ontario ("FSCO Staff") were advised by Great-West Life Assurance Company ("GWL"), the custodian for the pension fund for the Plan, that Nauss was more than 60 days late in remitting its required contributions in respect of September 2010. Nauss was late with both required employer and employee contributions.
8. Since the notification from GWL in 2010, Nauss has repeatedly failed to make the required employer and employee contributions to the Plan within the required time frames despite repeated follow up by FSCO staff. As of January 24, 2012, Nauss' contributions were only paid up in respect of the period ending November 18, 2011.
9. Section 55(2) of the PBA states that an employer who is required to make contributions to a pension plan shall make the contributions in accordance with the prescribed requirements for funding and shall make the contributions in the prescribed manner and at the prescribed times to the pension fund.

10. Section 4(4)1 of Regulation 909, R.R.O. 1990 (the "Regulation") states that "all sums received by the employer from an employee, including money withheld by payroll deduction or otherwise from the employee, as the employee's contribution to the pension plan," shall be remitted to the pension plan "within thirty days following the month in which the sum was received or deducted".
11. Section 4(4)3.1 of the Regulation states that employer contributions to a defined contribution pension plan shall be made in monthly installments within 30 days after the month for which the contributions are payable.
12. Section 87(2)(c) of the PBA states that the Superintendent may make an order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the employer is contravening a requirement of the PBA or the Regulation.
13. Section 69(1)(b) of the PBA states that the Superintendent of Financial Services may require the wind up of a pension plan if the employer fails to make contributions to the pension fund as required by the PBA or the Regulation.
14. As set out above, Nauss has failed to remit employee and employer contributions to the Plan within the time limits set out in section 4(4) of the Regulation and has, therefore, contravened section 55(2) of the PBA. In addition, the failure to remit contributions as required gives rise to grounds to order a wind up of the Plan under section 69(1)(b) of the PBA.
15. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Intended Decision is served on you. **[1]**

**YOUR WRITTEN NOTICE** must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

Attention: The Registrar

**FOR FURTHER INFORMATION** on a Form for the written notice, please see the Tribunal website at [www.fstontario.ca](http://www.fstontario.ca) or contact the Registrar of the Tribunal by phone at 416- 590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

If you fail to request a hearing within thirty (30) days, I may carry out the intended decision as described in this notice.

**THE ADMINISTRATOR IS REQUIRED** pursuant to section 89(5) to transmit a copy of this Notice of Intended Decision to the following persons: all members of the Plan.

**DATED** at Toronto, Ontario, this 29th day of February, 2012.

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K. David Gordon  
Deputy Superintendent, Pensions

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**[1]** NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.