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CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

Chief Financial Officer
Docketed by: BSB

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DIVISION OF
ADMINISTRATIVE
HEARINGS

IN THE MATTER OF:

Case No.: 11-118-D3-WC

SHANNON BRADHAM AND KIMBERLY
NICHOLSON, D/B/A, BACK TO EARTH INC.,
A DISSOLVED FLORIDA CORPORATION
AND BACK TO EARTH INC.

FINAL ORDER

THIS PROCEEDING came on for final agency action and Jeff Atwater, Chief Financial Officer of the State of Florida, or his designee, having considered the record in this case, including the request for administrative hearing received from SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC., the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, the 2nd Amended Order of Penalty Assessment, and being otherwise fully advised in the premises, hereby finds that:

1. On April 29, 2011, the Department of Financial Services, Division of Workers' Compensation (hereinafter "Department") issued a Stop-Work Order and Order of Penalty Assessment in Division of Workers' Compensation Case No. 11-118-D3 to SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. The Stop-Work Order and Order of Penalty Assessment included a Notice of Rights wherein SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A

DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. was advised that any request for an administrative proceeding to challenge or contest the Stop-Work Order and Order of Penalty Assessment must be filed within twenty-one (21) days of receipt of the Stop-Work Order and Order of Penalty Assessment in accordance with Sections 120.569 and 120.57, Florida Statutes, and must conform to Rule 28-106.2015, Florida Administrative Code.

2. On April 29, 2011, the Stop-Work Order and Order of Penalty Assessment was served by personal service on SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. A copy of the Stop-Work Order and Order of Penalty Assessment is attached hereto as "Exhibit A" and incorporated herein by reference.

3. On May 17, 2011, the Department issued an Amended Order of Penalty Assessment to SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. The Amended Order of Penalty Assessment assessed a total penalty of \$116,999.25 against SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. The Amended Order of Penalty Assessment included a Notice of Rights wherein SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. was advised that any request for an administrative proceeding to challenge or contest the Amended Order of Penalty Assessment must be filed within twenty-one (21) days of receipt of the Amended Order of Penalty Assessment in accordance with Sections 120.569 and 120.57, Florida Statutes, and must conform to Rule 28-106.2015, Florida Administrative Code.

4. On May 20, 2011, the Amended Order of Penalty Assessment was served by certified mail on SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. A copy of the Amended Order of Penalty Assessment is attached hereto as "Exhibit B" and incorporated herein by reference.

5. On June 7, 2011, SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. timely filed a request for administrative hearing ("Petition") with the Department. A copy of the Petition is attached hereto as "Exhibit C" and incorporated herein by reference.

6. On July 7, 2011, the Department issued a 2nd Amended Order of Penalty Assessment to SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. The 2nd Amended Order of Penalty Assessment assessed a total penalty of \$86,409.43 against SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC.

7. On July 12, 2011, the 2nd Amended Order of Penalty Assessment was served by certified mail on SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. A copy of the 2nd Amended Order of Penalty Assessment is attached hereto as "Exhibit D" and incorporated herein by reference.

8. On March 8, 2012, the Petition from SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION

AND BACK TO EARTH INC. was referred to the Division of Administrative Hearings, and the matter was assigned DOAH Case No. 12-0857.

9. On March 19, 2012, the Department filed its First Interlocking Discovery Request (“discovery requests”) with the Division of Administrative Hearings, to which Respondent was required to serve its answers upon the Department within 30 days of service, pursuant to Rules 1.340(a), 1.350(b), and 1.370(a), Florida Rules of Civil Procedure. The Discovery request included requests for admissions, interrogatories, and requests for production.

10. On April 25, 2012, the Department filed a Motion to Deem Matters Admitted and Relinquish Jurisdiction Pursuant to Section 120.57(1)(i), Florida Statutes after having not received any answer from Respondent to the Department’s discovery requests.

11. On May 7, 2012, the Administrative Law Judge issued an Order Deeming Matters Admitted, Closing File and Relinquishing Jurisdiction. A copy of the Order Deeming Matters Admitted, Closing File and Relinquishing Jurisdiction is attached hereto as “Exhibit E” and incorporated herein by reference.

FINDINGS OF FACT

12. The factual allegations contained in the Stop-Work Order and Order of Penalty Assessment issued on April 29, 2011, the Amended Order of Penalty Assessment issued on May 17, 2011, and the 2nd Amended Order of Penalty Assessment issued on July 7, 2011, attached as “Exhibit A,” “Exhibit B,” and “Exhibit D” respectively, and fully incorporated herein by reference, are hereby adopted as the Department’s Findings of Fact in this case.

CONCLUSIONS OF LAW

13. The Department has jurisdiction over the subject matter of and the parties to this matter pursuant to Chapter 440, Florida Statutes.

14. Based upon the Findings of Fact adopted herein, the Department concludes that SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. violated the specific statutes and rules alleged in the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment, and hereby adopts the violation(s) charged in the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment as the Conclusions of Law in this case.

PENALTY IMPOSED

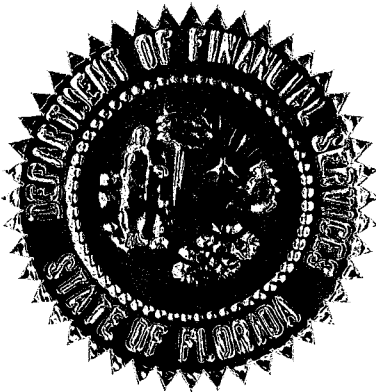
15. The Order Deeming Matters Admitted, Closing File and Relinquishing Jurisdiction from the Division of Administrative Hearings, the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment taken together with the Findings of Fact and Conclusions of Law adopted herein, constitute grounds for the Chief Financial Officer to impose the penalty as set forth herein.


IT IS THEREFORE ORDERED that:

a. SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. shall immediately pay the total penalty of \$86,409.43 in full to the Department of Financial Services for deposit into the Workers' Compensation Administration Trust Fund;

b. SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. shall immediately cease all business operations in the State of Florida until such time as the Department issues an order releasing the Stop-Work Order and Order of Penalty Assessment. The Department shall not issue an Order releasing the Stop-Work Order and Order of Penalty Assessment until SHANNON BRADHAM AND KIMBERLY NICHOLSON, D/B/A, BACK TO EARTH INC., A DISSOLVED FLORIDA CORPORATION AND BACK TO EARTH INC. have come into compliance with the coverage requirements of Chapter 440, Florida Statutes and have paid a total penalty of \$86,409.43 to the Department.

DONE AND ORDERED on this 1st day of June, 2012.




E. Tanner Holloman
Director, Workers' Compensation

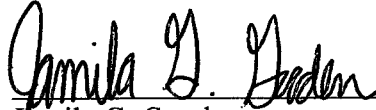
NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.110. Review proceedings must be instituted by filing a Notice of Appeal with Julie Jones, DFS Agency Clerk, Department of Financial Services, Room 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida, 32399-0390 and a copy of the Notice of Appeal, a copy of this Order and filing fee with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by

U.S. Mail to the person(s) listed below, on this 1st day of June, 2012.



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Copies to:

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