Oregon
Kate Brown, Governor

Department of Environmental Quality
Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
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TTY: 711

December 30, 2015

CERTIFIED MAIL: 7011 2000 0000 5122 9534

Darren Allen Schulz doing business as
Don Schulz Roofing and Remodeling
2300 NE 8th Street
Gresham, OR 97030

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-15-197

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $20,400 for allowing the open accumulation of asbestos-containing waste materials at a commercial building located at 1804 NE Martin Luther King Boulevard in Portland. You were hired to remove and replace the roofing materials on the building. During the removal of the roofing materials, some of the materials entered the building or fell to the ground surrounding the building. A portion of those materials contained 60 and 45 percent chrysotile asbestos. You are not licensed to conduct the removal of asbestos containing materials. In addition, DEQ has cited you, without civil penalty, for failing to thoroughly survey the roofing materials prior to removing it.

DEQ issued this penalty because the violations described in the attached Notice could have released asbestos fibers into the air and exposed tenants of the building and the public to asbestos. Asbestos fibers are a respiratory hazard proven to cause lung cancer, mesothelioma, and asbestosis. Asbestos is a danger to public health and a hazardous air contaminant for which there is no known safe level of exposure. To protect the public from asbestos exposure, DEQ requires that asbestos-containing material be handled in a manner that prevents it from releasing fibers into the air. The failure to properly remove and store asbestos presents a significant risk to public health and the environment.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204
Via fax - 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at http://www.deq.state.or.us/programs/enforcement/SEP.htm, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at http://www.deq.state.or.us/regulations/rules.htm, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Susan Elworth, at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,

Leah K. Feldon

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Zeb Bates, NWR, DEQ
Cindy Troupe, AQ, HQ, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: DARREN ALLEN SCHULZ doing business as DON SCHULZ ROOFING & REMODELING, a registered assumed name, Respondent.	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. AQ/AB-NWR-15-197

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, , ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 248.

II. FINDINGS OF FACT

1. From September 8 through September 12, 2015 and again on September 21, 2015, Respondent removed roofing materials from a commercial building located at 1804 N.E. Martin Luther King Jr. Boulevard in Portland Oregon.

2. During the removal of the roofing, a portion of the removed roofing materials fell into the building and around the perimeter of the building.

3. The analysis of roofing materials collected from inside the building showed that those materials contained 60 percent chrysotile asbestos and 45 percent chrysotile asbestos.

4. During inspections by DEQ on September 25 and 29, 2015, roofing material was present inside of the building. The roofing material was crumbled into small pieces.

5. On October 7, 2015, a licensed asbestos abatement contractor began the abatement of the roofing material located inside the building. The abatement was completed on October 23, 2015.

6. On September 8, 11, 18 and 21, 2015, Respondent disposed of roofing material that had been removed from the building.

7. As of the date of this Notice, Respondent has not applied to DEQ for a license to perform asbestos abatement projects under OAR 340-248-0120.

8. As of the date of this Notice, Respondent has not provided DEQ with a copy of a survey (as defined by OAR 340-248-0010(39)) of the roofing materials.

III. CONCLUSIONS

The removal of the roofing materials was a renovation as defined by OAR 340-248-0010(36).

Respondent was an operator (as defined by OAR 340-248-0010(33)) as it controlled or supervised the renovation.

The removed roofing material was asbestos-containing material (as defined by OAR 340-248-0010(8)) and asbestos-containing waste material (as defined by OAR 340-248-0010(12)).

The roofing material inside of the building was friable asbestos material (as defined by OAR 340-248-0010(25)) since hand pressure could crumble or pulverize the material.

The renovation was an asbestos abatement project (as defined by OAR 340-248-0010(6)) because it involved the repair, removal, handling and disposal of asbestos-containing material with the potential of releasing asbestos fibers into the air.

1. Respondent violated OAR 340-248-0205(1) by open accumulating asbestos-containing waste material. The roofing material was open accumulated (as defined by OAR 340-248-0010(32)) inside of the building as the material was not securely enclosed. This is a Class I violation, according to OAR 340-012-0054(1)(m). DEQ hereby assesses a $14,400 civil penalty for this violation.

2. Respondent violated OAR 340-248-0120(1) by performing an asbestos abatement project without a license from DEQ. This is a Class I violation, according to OAR 340-012-0054(1)(n). DEQ hereby assesses a $6,000 civil penalty for this violation.

3. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector thoroughly survey the part of the facility where the renovation occurred for the presence of asbestos-containing material, prior to performing the renovation. This is a Class I violation, according to OAR 340-150-0054(1)(l). DEQ did not assess a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO:

1. Pay a total civil penalty of $20,400. The determinations of the civil penalty are attached as Exhibits 1 and 2, and are incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or association.

Active duty service-members have a right to stay proceedings under the federal Service members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website http://legalassistance.law.af.mil/content/locator.php.

If you fail to file a request for hearing in writing within 20 calendar days of receipt of the Notice, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing

or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

12/30/15
Date

Leah K. Feldon
Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 1: Open accumulating asbestos-containing waste material, in violation of OAR 340-248-0205(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(m).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(A) and (D) as the violation involved more than 160 square feet of asbestos-containing waste material. The building is approximately 4,500 square feet and at least one layer of roofing material contained asbestos. Additionally, the asbestos-containing waste material was comprised of more than five percent asbestos.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is $8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(A).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. The asbestos-containing waste material was present in the building starting on September 8, 2015 until a proper abatement was completed on October 23, 2015 so the violation was on-going for more than 28 days.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent was negligent. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct resulting in a violation. Prior to removing the roofing material, the owner of the building asked Respondent if there was a chance that asbestos or other hazardous materials could be present in the roofing material. Respondent replied that there is not hazardous material in roofing. Respondent, as a licensed contractor, should have known that roofing could contain asbestos. By removing

the roofing material without ensuring that materials did not enter the building or otherwise be stored in an open area, Respondent failed to take reasonable care to avoid the violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f), because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of $0 as DEQ is unable to make an estimate of any costs delayed or avoided.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $8,000 + [(0.1 x $8,000) x (0 + 0 + 4 + 4 + 0)] + $0
= $8,000 + [$800 x 8] + $0
= $8,000 + $6,400 + $0
= $14,400

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 2: Performing an asbestos abatement project without a license, in violation of OAR 340-248-0120(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(n).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is $4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(A).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. Respondent conducted an asbestos abatement project on 7 separate days. Specifically, Respondent removed roofing from the building on September 8 through 12, 2015 and September 21, 2015. Respondent also disposed of roofing on those days and September 18, 2015 for a total of seven separate days. The roofing is asbestos-containing material.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent had constructive knowledge (reasonably should have known) of the requirement. Respondent is a licensed contractor with the state of Oregon and so reasonably should have known that a license is required to conduct an asbestos abatement project.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f), because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of $0 as any costs avoided would be de minimis.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $4,000 + [(0.1 x $4,000) x (0 + 0 + 3 + 2 + 0)] + $0
= $4,000 + [$400 x 5] + $0
= $4,000 + $2,000 + $0
= $6,000