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 28, 2015

CERTIFIED MAIL: 70142870000133736446

McKee Harrington, Inc.
c/o Robert B. Harrington, Registered Agent
7950 SW Northvale Way
Portland, OR 97225

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-15-206

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $3,000 for openly accumulating asbestos-containing waste material (ACWM) at a commercial property that you operate in Oregon City.

DEQ issued this penalty because you openly accumulated approximately five square feet of friable asbestos-containing boiler insulation in the boiler room of your building. The ACWM had the potential to expose workers, tenants, and members of the public who entered your building to asbestos fibers, which are a respiratory hazard proven to cause lung cancer, mesothelioma and asbestosis. Asbestos is a hazardous air contaminant for which there is no safe level of exposure. DEQ requires ACWM to be securely packaged and appropriately disposed in order to protect the public from asbestos exposure.

DEQ appreciates your efforts to minimize the effects of the violation by hiring a licensed asbestos abatement contractor to conduct a cleanup and abatement. DEQ considered these efforts when determining the amount of civil penalty.

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 Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,

Leah K. Feldon

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Killian Condon, DEQ Northwest Region
Audrey O'Brien, DEQ Northwest Region

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: MCKEE-HARRINGTON, INC., an Oregon corporation, Respondent.	)))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. AQ/AB-NWR-15-206

I. AUTHORITY

This Notice of Civil Penalty Assessment and Order is issued 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. At all material times, Respondent was the operator, as defined in OAR 340-248-0010(33), of the commercial building located at 1301 Main Street in Oregon City, Clackamas County, Oregon (the Facility)

2. Since on or before April 14, 2015, the boiler at the Facility was wrapped in asbestos-containing insulation.

3. Since on or before April 14, 2015, there was a pile of approximately five square feet of asbestos-containing boiler insulation on the floor in the boiler room at the Facility.

4. The boiler insulation contained 50% chrysotile asbestos.

5. The boiler insulation was in poor condition that hand pressure could crumble, pulverize or reduce to powder when dry, and was therefore friable as defined in OAR 340-248-0010(25).

6. The asbestos-containing insulation on the floor was discarded material generated by a source subject to OAR 340-248-0205 through 340-246-0290, and was therefore asbestos-containing waste material (ACWM) as defined in OAR 340-248-0010(12).

7. From on or before April 14, 2015 through on or about May 30, 2015, the ACWM was in an uncovered pile on the floor at the Facility, not securely enclosed and stored, and was therefore openly accumulated as defined in OAR 340-248-0010(32).

8. On or about May 30-June 1, 2015, Lake Oswego Insulation, a licensed abatement contractor, conducted an asbestos abatement and cleanup at the Facility.

III. CONCLUSION

On or before April 14, 2015 through on or about May 30, 2015, Respondent violated OAR 340-248-0205(1) by openly accumulating ACWM, as described in Section II, paragraphs 1 through 8 above. This is a Class I violation according to OAR 340-012-0054(1)(m). DEQ hereby assesses a $3,000 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:

Pay a total civil penalty of $3,000. The determination of the civil penalty is attached as Exhibit No. 1 and is 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 Servicemembers 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.

12/28/2015
Date

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

EXHIBIT NO. 1

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

VIOLATION: Openly accumulating asbestos-containing waste material (ACWM), in violation of 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 minor pursuant to OAR 340-012-0135(1)(h)(C), because the amount of ACM that was openly accumulated was less than 80 square feet.

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

"BP" is the base penalty, which is $2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(B).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), 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 the Respondent has no prior significant actions.

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

"O" is whether or not the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(a)(C), because the violation occurred on more than 28 days. Respondent began openly accumulating ACWM on or before April 14, 2015 through May 30, 2015, when a licensed asbestos abatement contractor began abatement and cleanup at the Facility.

"M" is the mental state of the Respondent and receives a value of 4 pursuant to OAR 340-012-0145(5)(a)(C), because Respondent's conduct was negligent. Respondent was aware of the asbestos-containing boiler insulation at the Facility and committed to removing it prior to the lessee taking possession of the Facility in a lease dated April 14, 2015. When Respondent left the ACWM in uncovered pile in the boiler room, Respondent failed to take reasonable care to avoid a foreseeable risk that it would openly accumulate ACWM and thereby expose workers and tenants to asbestos fibers.

"C" is Respondent's efforts to correct the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent took reasonable affirmative efforts to minimize the effects of the violation by promptly arranging for a licensed asbestos abatement contractor to perform an abatement and cleanup.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 because Department has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:

Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $2,000 + [(0.1 x $2,000) x (0 + 0 + 4 + 4 + (-3))] + $0
= $2,000 + [($200) x (5)] + $0
= $2,000 + $1,000 + $0
= $3,000