



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

February 8, 2018

CERTIFIED MAIL: 7016 2140 0000 2409 6554

Tapani Inc.  
c/o John Spencer Stewart, Registered Agent  
2300 SW 1<sup>st</sup> Avenue, Suite 200  
Portland, OR 97201

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2017-218

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Tapani Inc. (Tapani) a civil penalty of \$27,400 for violating the statewide water quality standard for turbidity, performing an unlicensed asbestos abatement project, and for openly accumulating asbestos-containing waste material at a 19-acre property development site located at 9115 SE 152<sup>nd</sup> Avenue, in Happy Valley, Oregon.

DEQ issued this penalty because the alleged violations present a risk to human health and the environment. First, DEQ observed highly turbid stormwater discharging into Mitchell Creek from the site. Excessively turbid stormwater discharge causes pollution and poses a threat to fish and other aquatic life because it can clog fish gills, reduce photosynthesis in aquatic flora, and increase the temperature of the affected waterbody. Second, 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. Performing an asbestos abatement project without a license and openly accumulating asbestos-containing waste material presents a significant risk to public health and the environment.

DEQ appreciates Tapani's efforts to address the violations by preventing additional turbid discharges from occurring and for hiring a licensed asbestos abatement contractor to decontaminate and clean up the openly accumulated asbestos-containing waste material.

If Tapani wishes to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from the receipt of this letter. The hearing request must be in writing. Send the request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us)

Via fax – 503-229-5100

Once DEQ receives the 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, Tapani 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 and refer to it when discussing this case with DEQ.

DEQ may allow Tapani to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that a Respondent may sponsor instead of paying a portion of the penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/regulations/pages/sep.aspx>

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/administrative-rules.aspx> or by calling the number below.

If you have any questions, please contact Kieran O'Donnell at 503-229-5012 or toll free in Oregon at 800-452-4011, extension 5012.

Sincerely,



Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement

Enclosures

cc: Zeb Bates, NWR, DEQ  
Daria Gneckow, NWR, DEQ  
Audrey O'Brien, NWR, DEQ  
Christine Svetkovich, NWR, DEQ  
Shaumae Hall, Accounting, DEQ  
Donald Hendrix, AQ, DEQ  
John Koestler, WQ, DEQ



1 5. On September 15, 2017, DEQ performed an inspection of the Facility. At the time of the  
2 inspection the Facility had been reduced to piles of demolition debris, which were left in the open and  
3 not packaged in leak-tight containers.

4 6. The amount of demolition debris in the piles exceeded 80 cubic yards.

5 7. The piles of demolition debris remained at the Site without being packaged in leak-tight  
6 containers from approximately September 7, 2017, to October 11, 2017.

7 8. On October 11, 2017, a licensed asbestos abatement contractor performed a cleanup  
8 abatement project, removing approximately 1,000 square feet of asbestos-containing material from the  
9 Site.

10 9. Respondent is not licensed by DEQ as an asbestos abatement contractor.

11 10. The Site is approximately 19.54 acres in size.

12 11. Mitchell Creek flows in an approximately north east direction through the Southern half of  
13 the Site.

14 12. On or before October 12, 2017, Respondent cleared the Site.

15 13. On October 12, 2017, DEQ performed an inspection of the Site. At the time of the  
16 inspection the following conditions persisted:

17 a. A construction conveyance channel (the Channel) diverted stormwater from an active  
18 section of the Site directly into Mitchell Creek.

19 b. The water from Mitchell Creek, directly upstream of the point where the Channel  
20 discharged into the creek, measured a turbidity value of 131 Nephelometric Turbidity Units (NTU).

21 c. The water from Mitchell Creek, directly downstream of the point where the Channel  
22 discharged into the creek, measured a turbidity value of greater than 1,000 NTUs.

### 23 III. CONCLUSIONS

24 1. Respondent has violated ORS 468A.710(1) and OAR 340-248-0110(3) by performing an  
25 asbestos abatement project without a license issued by DEQ, as described in Section II above.

26 Specifically, Respondent demolished the Facility without an asbestos abatement license issued by  
27 DEQ. Respondent's complete wrecking of the Facility was a "Demolition" as defined by OAR 340-

1 248-0010(19) because Respondent removed all load supporting structural members of the Facility and  
2 reduced it to piles of debris. The Materials were “asbestos-containing materials,” as defined by OAR  
3 340-248-0010(8) because they contained more than one-percent asbestos by weight. The demolition of  
4 the Facility was an “asbestos abatement project,” as defined by OAR 340-248-0010(6), because it was  
5 a demolition of a private facility that involved the removal and handling of asbestos-containing material  
6 with the potential of releasing asbestos fibers into the air. This is a Class I violation, according to OAR  
7 340-012-0054(1)(n). DEQ hereby assesses an \$8,800 civil penalty for this violation.

8 2. Respondent has violated OAR 340-248-0205(1) by openly accumulating asbestos-containing  
9 waste material, as described in Section II above. Specifically, Respondent openly accumulated asbestos-  
10 containing waste material when it demolished the residential building containing asbestos and generating  
11 piles of demolition debris and accumulated the piles outside without leak-tight packaging. The demolition  
12 debris was “asbestos-containing waste material,” as defined by OAR 340-248-0010(12), because it is  
13 waste generated from an asbestos abatement project. As described above, the demolition of the Facility  
14 was an asbestos abatement project. This is a Class I violation according to OAR 340-012-0054(1)(m).  
15 DEQ hereby assesses a \$12,000 civil penalty for this violation.

16 3. Respondent has violated ORS 468B.025(1)(b) by discharging waste into waters of state that  
17 reduces the quality of such waters below a water quality standard, as described in Section II above.  
18 Specifically, on October 12, 2017, Respondent discharged turbid stormwater runoff into Mitchell Creek  
19 that was more than a ten percent cumulative increase in natural stream turbidities in violation of the water  
20 quality standard set pursuant to OAR 340-041-0036. Respondent’s discharge elevated Mitchell Creek’s  
21 NTU value from 131 NTUs to greater than 1,000 NTUs, which is more than a ten percent cumulative  
22 increase. Mitchell Creek is a “water of the state,” as defined by ORS 468B.005(10), because it is a creek.  
23 Construction stormwater is a “waste,” as defined by ORS 468B.005(9), because it is a liquid substance that  
24 may cause or tend to cause an alteration of the physical, chemical, or biological properties of a water of the  
25 state, including turbidity. This is a Class I violation according to OAR 340-012-0055(1)(b). DEQ hereby  
26 assesses a \$6,600 civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a total civil penalty of \$27,400. The determinations of the civil penalties are attached as  
5 Exhibit Nos. 1, 2, and 3 and are incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money order  
7 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**  
8 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you pay the penalty, the  
9 Findings of Fact, Conclusions and Order become final.

10 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

11 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
12 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
13 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
14 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
15 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
16 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
17 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax  
18 it to **503-229-5100,** or email it to **DEQappeals@deq.state.or.us.** An administrative law judge  
19 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
20 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
21 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
22 you may represent yourself. If you are a corporation, partnership, limited liability company,  
23 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
24 authorized representative, as set forth in OAR 137-003-0555.

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1 Active duty service-members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
5 <http://legalassistance.law.af.mil/content/locator.php>.

6 If you fail to file a timely request for hearing, the Notice will become a final order by default  
7 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
8 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
9 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
10 the relevant portions of its files, including information submitted by you, as the record for purposes of  
11 proving a prima facie case.

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February 8, 2018  
Date

Sarah G. Wheeler  
Sarah G. Wheeler, Acting 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 No.1: Performing an asbestos abatement project without a license issued by DEQ, in violation of ORS 468A.710(1) and OAR 340-248-0110(3).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(A) because the violation involved more than 160 square feet of asbestos-containing material. The Facility was a 2,034 square foot site built home. The survey identified eight different homogeneous materials, including flooring and wall surfaces, with an asbestos content of greater than 1% asbestos by weight. Therefore, there were more likely than not, more than 160 square feet of asbestos-containing material.

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)(a)(B) and applicable pursuant to OAR 340-012-0140(3)(b)(A)(i).

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Each day of violation constitutes a separate occurrence. The violation occurred on at least one day, September 7, 2017. Therefore, there was one occurrence of the violation.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent is licensed by the Oregon Construction Contractors Board (CCB) as a commercial general contractor. The CCB tests its licensees annually on the contents of its manual. The CCB manual contains information regarding asbestos surveys and licensing requirements. Therefore, by performing a demolition without first obtaining an asbestos survey, risking performing an unlicensed

asbestos abatement project, Respondent failed to take reasonable care to avoid a foreseeable risk that Respondent's actions would result in the violation.

"C" is Respondent's efforts to correct or mitigate 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. After DEQ's inspection, Respondent wetted and covered the piles of asbestos-containing waste material. In addition, Respondent hired a licensed asbestos abatement contractor to properly package, transport, and dispose of the asbestos-containing waste material.

"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 pursuant to OAR 340-012-0150(3) because there is insufficient information to determine whether Respondent received an economic benefit from this matter.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 4 + -3)] + \$0 \\ &= \$8,000 + (\$800 \times 1) + \$0 \\ &= \$8,000 + \$800 + \$0 \\ &= \$8,800 \end{aligned}$$

EXHIBIT No.2

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

- VIOLATION No.2: Openly 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) because the violation involved more than 160 square feet of asbestos-containing waste material. Respondent openly accumulated at least 1,000 square feet of asbestos-containing waste material.
- 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)(a)(B) and applicable pursuant to OAR 340-012-0140(3)(b)(A)(i).
- "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. Each day of violation constitutes a separate occurrence. The violation began on or before September 7, 2017, the day that Respondent generated the asbestos-containing waste material when it demolished the Facility. The violation continued until October 11, 2017, the day that a licensed asbestos abatement contractor performed a cleanup of the piles of asbestos-containing waste material. Therefore, there were 34 occurrences of the violation.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent is licensed by the Oregon Construction Contractors Board (CCB) as a commercial general contractor. The CCB tests its licensees annually on the contents of its manual. The CCB manual contains information regarding asbestos surveys and proper packaging of asbestos-containing waste material. Therefore, by performing a demolition without first obtaining an asbestos survey, and risking the generation and mismanagement of asbestos-containing waste material,

Respondent failed to take reasonable care to avoid a foreseeable risk that the violation would occur.

"C" is Respondent's efforts to correct or mitigate 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. After DEQ's inspection, Respondent wetted and covered the piles of asbestos-containing waste material. In addition, Respondent hired a licensed asbestos abatement contractor to properly package, transport, and dispose of the asbestos-containing waste material.

"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 pursuant to OAR 340-012-0150(3) because there is insufficient information to determine whether Respondent received an economic benefit from this matter.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 4 + 4 + -3)] + \$0 \\ &= \$8,000 + (\$800 \times 5) + \$0 \\ &= \$8,000 + \$4,000 + \$0 \\ &= \$12,000 \end{aligned}$$

EXHIBIT No.3

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

VIOLATION No.3: Discharging waste into waters of the state that reduces the quality of such waters below a water quality standard, in violation of ORS 468B.025(1)(b).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(b).

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D).

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Each day of violation constitutes a separate occurrence. The violation occurred on at least one day, October 12, 2017, the day DEQ performed an inspection and documented the highly turbid discharge to Mitchell Creek.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent is licensed by the Oregon Construction Contractors Board (CCB) as a commercial general contractor. The CCB tests its licensee annually on the contents of its manual. The CCB's manual contains information regarding stormwater management and the prohibition against excessively turbid discharges in violation of the statewide water quality standard. Therefore, by performing grading activities without the proper erosion and sediment controls, such that

Respondent discharged excessively turbid stormwater, Respondent failed to take reasonable care to avoid a foreseeable risk that the violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. After DEQ's October 12, 2017, inspection, Respondent stopped the discharge of highly turbid stormwater into Mitchell Creek.

"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 pursuant to OAR 340-012-0150(3) because there is insufficient information to determine whether Respondent received an economic benefit from this matter.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 4 + -3)] + \$0 \\ &= \$6,000 + (\$600 \times 1) + \$0 \\ &= \$6,000 + \$600 + \$0 \\ &= \$6,600 \end{aligned}$$