



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

811 SW Sixth Avenue

Portland, OR 97204-1390

(503) 229-5696

FAX (503) 229-6124

TTY: 711

December 7, 2015

CERTIFIED MAIL: 7011 2000 0000 5122 9305

Minority Abatement Contractors, Inc.
c/o Corporation Service Company
1127 Broadway Street NE, Ste 310
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-15-178

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$33,470 for 1) conducting an abatement of friable asbestos material without enclosing the work area with a negative pressure enclosure, 2) openly accumulating asbestos and 3) failing to revise an asbestos abatement notification to reflect the correct completion date. The first two of these violations occurred at a commercial building abatement at 4500 SW Watson Avenue in Beaverton. The third violation occurred in connection with a residential abatement project at 10444 SW Terwilliger Place in Portland.

DEQ issued this penalty because 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 exposure to asbestos fibers, DEQ regulations govern the proper removal, packaging and disposal of asbestos. Some of the violations described in the attached Notice could have released asbestos fibers into the air and exposed workers and the public to asbestos.

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. Further detail regarding SEPs may be found on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>.



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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, Manager
Office of Compliance and Enforcement

Enclosures

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

1 not present under all pipes. Approximately one linear foot of uncovered TSI and an open single-sheet
2 poly bag containing approximately 20 linear feet of TSI were present on the floor of the mechanical
3 room. The uncovered TSI and the TSI in the open bag were broken apart and included crumbled
4 fragments and powder. Approximately 50 linear feet of TSI remained on piping. Samples of the
5 uncovered TSI contained 16% chrysotile asbestos. Samples of the TSI in the open bag contained 30%
6 chrysotile asbestos. Samples of the TSI on the piping contained 60% chrysotile asbestos and 3%
7 amosite asbestos.

8 5. Under hand pressure, TSI will crumble, pulverize, or reduce to powder when dry.

9 6. On or about September 24, 2015, Respondent submitted to DEQ a notification form for a
10 friable asbestos abatement to be conducted at a 10444 SW Terwilliger Place in Portland, Oregon (the
11 Portland Facility). The notification identified 1,061 square feet of sheet vinyl containing 20% chrysotile
12 asbestos and specified a project start date of October 5, 2015, a completion date of October 7, 2015,
13 and work hours of Monday–Wednesday, 8:00 am to 4:30 pm.

14 7. On or about October 5, 2015, Respondent submitted the first and second revisions to the
15 notification. The first revision changed only the name of the project supervisor. The second revision
16 changed only the end of daily work hours to 6:00 pm.

17 8. On or about 12 pm on October 6, 2015, DEQ conducted an inspection of the Portland
18 Facility. The abatement described in the notification had been completed and Respondent was not
19 present at the Portland Facility.

20 9. On or about 1:04 pm on October 6, 2014, Respondent submitted the third revision to the
21 notification. The only change was to show that the project was complete. The third notification
22 continued to show a completion date of October 7, 2015.

23 III. CONCLUSIONS

24 1. The TSI at the Beaverton Facility was “asbestos-containing material” as defined by OAR
25 340-248-0010(8), “friable asbestos material” as defined by OAR 340-248-0010(25), and “asbestos-
26 containing waste material” as defined by OAR 340-248-0010(12).

27 2. Respondent was an “owner or operator” of the Beaverton Facility, as defined in OAR 340-

1 248-0010(33) since Respondent was engaged in a “renovation” operation as defined in OAR 340-284-
2 0010(36) which included an “asbestos abatement project,” as defined by OAR 340-248-0010(6).

3 3. Respondent was an “owner or operator” of the Portland Facility, as defined in OAR 340-
4 248-0010(33) since Respondent was engaged in a “renovation” operation as defined in OAR 340-284-
5 0010(36) which included an “asbestos abatement project,” as defined by OAR 340-248-0010(6),

6 4. Respondent has violated OAR 340-248-0270(7)(d) by conducting an abatement of friable
7 asbestos material without enclosing the areas where friable asbestos materials were to be removed with
8 a negative pressure enclosure prior to the abatement, as described in Section II, paragraphs 1–5. This is
9 a Class I violation, according to OAR 340-012-0054(1)(l). DEQ hereby assesses a \$15,200 civil penalty
10 for this violation.

11 5. Respondent has violated OAR 340-248-0205(1) by openly accumulating friable asbestos-
12 containing material and asbestos-containing waste material, as described in Section II, paragraphs 1–5
13 by having uncovered TSI and TSI in an open bag at the Beaverton Facility. This is a Class I violation,
14 according to OAR 340-012-0054(1)(m). DEQ hereby assesses a \$16,800 civil penalty for this violation.

15 6. Respondent violated OAR 340-248-0260(1)(f) by failing to revise the notification for the
16 Portland Facility to reflect the actual completion date at the Portland Facility, as described in Section II,
17 paragraphs 6-9. This is a Class III violation according to OAR 340-012-0054(3)(d). DEQ hereby
18 assesses a \$1,470 civil penalty for this violation.

19 IV. ORDER TO PAY CIVIL PENALTY

20 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
21 hereby ORDERED TO pay a total civil penalty of \$33,470. The determinations of the civil penalties are
22 attached as Exhibits 1–3 and are incorporated as part of this Notice.

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

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

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

14 Active duty service-members have a right to stay proceedings under the federal
15 Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at 1(800)
16 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information can be found
17 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website,
18 <http://legalassistance.law.af.mil/content/locator.php>.

19 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
20 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
21 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing,
22 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
23 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
24 information submitted by you, as the record for purposes of proving a prima facie case.

25
26 _____
27 Date

12/7/15

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Leah K. Feldon

EXHIBIT 1

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

VIOLATION 1: Conducting an abatement of friable asbestos material without enclosing the work areas with a negative pressure enclosure prior to the abatement, in violation of OAR 340-248-0270(7)(d).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(h)(B) and (D), as there was more than 40 but less than 260 linear feet of asbestos-containing material and those materials were 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)(B).

"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 3 according to OAR 340-012-0145(2)(a), because Respondent has one Class II violation in case no. AQ/AB-NWR-11-010, one Class II violation in case no. AQ/AB-WR-15-090, and two Class II violations and two Class III violations in case no. AQ/AB-WR-15-102.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 is only evidence that the violation occurred on one day.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. As a licensed asbestos abatement contractor, Respondent was aware of the general obligation to abide by work practice requirements for friable asbestos-abatement projects, the specific requirement to install a negative pressure enclosure prior to abatement, and the specific requirement to obtain a prior waiver from work practice requirements to deviate from work practice requirements and the procedures for doing so. Respondent's deviation from the standard of care a reasonable

person under the same circumstances would observe was gross because Respondent made no effort to comply with the requirements, including requesting a waiver.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to minimize the effects of the violation. Following the inspection, Respondent installed a negative pressure enclosure in the mechanical room and conducted air sampling in the mechanical room and another room connected to the work area by the HVAC system.

"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 because there is insufficient information on which to make an estimate.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (3 + 0 + 0 + 8 - 2)] + \$0 \\ &= \$8,000 + [\$800 \times 9] + \$0 \\ &= \$8,000 + \$7,200 + \$0 \\ &= \$15,200 \end{aligned}$$

EXHIBIT 2

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

VIOLATION 2: Openly accumulating friable asbestos-containing material and 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(h)(B) and (D), as there was more than 40 but less than 260 linear feet of asbestos-containing material and those materials were 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)(B).

"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 3 according to OAR 340-012-0145(2)(a), because Respondent has one Class II violation in case no. AQ/AB-NWR-11-010, one Class II violation in case no. AQ/AB-WR-15-090, and two Class II violations and two Class III violations in case no. AQ/AB-WR-15-102.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 is only evidence that the violation occurred on one day.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. As a licensed asbestos abatement contractor, Respondent was aware of the rules governing the storage and disposal of asbestos. Respondent's deviation from the standard of care a reasonable person under the same circumstances would observe was gross because Respondent made no effort to comply with the requirements, including requesting a waiver.

"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 because there is insufficient information on which to make an estimate.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (3 + 0 + 0 + 8 + 0)] + \$0 \\ &= \$8,000 + [\$800 \times 11] + \$0 \\ &= \$8,000 + \$8,800 + \$0 \\ &= \$16,800 \end{aligned}$$

EXHIBIT 3

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

VIOLATION 3: Failing to revise an asbestos abatement notification, in violation of OAR 348-248-0260(1)(f).

CLASSIFICATION: This is a Class III violation pursuant to OAR 340-012-0054(3)(d).

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 \$700 for a Class III violation in the matrix listed in OAR 340-012-0140(3)(b)(C) 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(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 3 according to OAR 340-012-0145(2)(a), because Respondent has one Class II violation in case no. AQ/AB-NWR-11-010, one Class II violation in case no. AQ/AB-WR-15-090, and two Class II violations and two Class III violations in case no. AQ/AB-WR-15-102.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. As a licensed asbestos abatement contractor, Respondent was aware of the specific requirement to revise an asbestos abatement notification in response to changes in completion date, yet in spite of this knowledge, Respondent failed to do so. Respondent's deviation from the standard of care a reasonable person under the same circumstances would observe was gross because Respondent made no effort to comply with the requirement.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), because the violation or the effects of the violation could not be corrected or minimized.

"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 because there is insufficient information on which to make an estimate.

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

$$\begin{aligned} &= \$700 + [(0.1 \times \$700) \times (3 + 0 + 0 + 8 + 0)] + \$0 \\ &= \$700 + [\$70 \times 11] + \$0 \\ &= \$700 + \$770 + \$0 \\ &= \$1,470 \end{aligned}$$