



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

February 24, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5609

Schwabe, Williamson & Wyatt
c/o David Bartz, Attorney for Respondent
1211 SW 5th Avenue, Suite 1900
Portland, OR 97204

CERTIFIED MAIL: 7014 2870 0001 3373 5616

Rose City Contracting, Inc.
c/o David Chaff, Registered Agent
29791 SW Kinsman Rd.
Wilsonville, OR 97070

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-16-001

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Rose City Contracting, Inc., (Rose City) a civil penalty of \$16,800 for failing to install negative pressure enclosure and failing to install a viewing window for an asbestos abatement project at a residential building in Portland, Oregon. In addition, DEQ cited Rose City, without civil penalty, for failing to carefully lower asbestos containing thermal system insulation (TSI) to the floor.

DEQ issued this penalty because the asbestos abatement work practice violations described in the attached Notice could have released asbestos fibers into the air and exposed workers 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 training and licensing for those who handle asbestos-containing material. The failure to employ the required protective asbestos abatement work practices presents a significant risk to public health and the environment.

DEQ appreciates Rose City's efforts to minimize the impacts of the violation by correcting the work practice violations during DEQ's inspection of the project. 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 Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Zeb Bates, NWR, DEQ
Cindy Troupe, HQ, DEQ
Audrey O'Brien, HQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 ROSE CITY CONTRACTING INC.,) ASSESSMENT AND ORDER
an Oregon corporation)
5 Respondent.) CASE NO. AQ/AB-NWR-16-001

6
7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,
10 ORS Chapters 183 and 468A, Oregon Administrative Rules (OAR) Chapters 340, Divisions 011, 012, and
11 248.

12 II. FINDINGS OF FACT

13 1. Respondent is licensed by DEQ as an asbestos abatement contractor.

14 2. On November 20, 2015, Respondent submitted to DEQ an ASN 1 DEQ Project Notification
15 Form for the abatement of friable asbestos-containing material at a residential building located at 2033
16 NE Rodney Avenue in Portland, Oregon (the Facility).

17 3. On November 30, 2015, Respondent performed a renovation activity at the Facility,
18 removing and handling thermal system insulation (TSI).

19 4. The removed pieces of TSI could crumble under hand pressure when dry.

20 5. The TSI contained approximately 20% asbestos by weight.

21 6. On November 30, 2015, DEQ performed an inspection of the Facility. At the time of the
22 inspection, the Respondent:

23 a. Failed to seal plastic barrier walls together and to the ceiling, failed to cover a boiler
24 vent and an ambient air vent, and failed to operate a HEPA filtration unit during the
25 removal of the TSI;

26 b. Failed to install at least one viewing window along the perimeter of the asbestos
27 abatement work area; and

1 c. Dropped TSI pieces to from the ceiling to the floor.

2 III. CONCLUSIONS

3 1. Respondent has violated OAR 340-248-0270(7)(d) by failing to enclose the area where
4 friable asbestos materials were removed with a negative pressure enclosure during an asbestos
5 abatement project, as described in Section II above. Specifically, Respondent removed and handled TSI
6 in an enclosure, without sealing plastic barriers together and to the ceiling, without sealing a boiler vent
7 and an ambient air vent, and without operating a HEPA filtration unit. The TSI was “asbestos-
8 containing material,” as defined by OAR 340-248-0010(8) because it contained more than one-percent
9 asbestos by weight. In addition, once removed, the TSI was “friable asbestos material,” as defined by
10 OAR 340-248-0010(25), because it was capable of crumbling under hand pressure. Finally, the removal
11 and handling of the TSI was an “asbestos abatement project,” as defined by OAR 340-248-0010(6)
12 because it was a renovation activity of a facility that involved the removal and handling of asbestos
13 containing material with the potential of releasing asbestos fibers into the air. This is a Class I violation
14 according to OAR 340-012-0054(1)(I). DEQ hereby assesses an \$8,400 civil penalty for this violation.

15 2. Respondent has violated OAR 340-248-0270(7)(e) by failing to install a minimum of one
16 viewing window in the enclosure, as described in Section II above. Specifically, Respondent failed to
17 install a viewing window in the plastic barriers erected around the perimeter of the work area at the
18 Facility. This is a Class I violation according to OAR 340-012-0054(1)(I). DEQ hereby assesses an
19 \$8,400 civil penalty for this violation.

20 3. Respondent has violated OAR 340-248-0270(7)(b) by failing to carefully lower materials to
21 the floor without dropping them, as described in Section II above. Specifically, Respondent dropped
22 pieces of removed TSI from the ceiling of the Facility’s work area to the floor from a ladder. This is a
23 Class I violation according to OAR 340-248-0054(1)(I). DEQ has not assessed a civil penalty for this
24 violation.

25 ///

26 ///

27 ///

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 \$16,800. The determinations of the civil penalties are attached as
5 Exhibit Nos. 1 and 2 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 **811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of Fact,
9 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. You
12 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
13 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
14 this Notice or attached exhibits, you must include them in your request for hearing, as factual matters
15 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
16 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
17 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
18 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the
19 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
20 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
21 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
22 association.

23 Active duty service-members have a right to stay proceedings under the federal Service
24 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
25 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
26 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
27 <http://legalassistance.law.af.mil/content/locator.php>.

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

7
8
9
10 2/24/16

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 No. 1: Failing to enclose the area where friable asbestos materials were removed with a negative pressure enclosure during an asbestos abatement project, in violation of OAR 340-248-0270(7)(d).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(1)(h)(B) because the violation consisted of between 40 and 260 linear feet of asbestos containing material. The violation consisted of approximately 80 linear feet of asbestos containing TSI.

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)(ii) 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 6 according to OAR 340-012-0145(2)(a), because Respondent has three Class I violations and two Class III violations in case no. AQ/AB-WR-07-121, one Class I violation in case no. AQ/AB-WR-12-067, and one Class I violation in case no. AQ/AB-WR-15-072.

"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. Each day of violation constitutes a separate occurrence. The violation occurred on a single day, November 30, 2015.

"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. Respondent has been licensed by DEQ as an asbestos abatement contractor for at least 10 years. However, Respondent has a history of noncompliance with DEQ's asbestos rules. Specifically, Respondent was penalized for similar work practice violations in Case Nos. AQ/AB-WR-07-121 and AQ/AB-WR-15-072. Therefore, Respondent's failure to enclose an asbestos abatement project work area constitutes a conscious disregard of a substantial and unjustifiable risk that

its conduct would result in a violation. In addition, this disregard for risk of a violation is gross deviation of the standard of care a licensed asbestos abatement contractor would observe in a similar situation.

"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. Respondent corrected the work practice violations before the conclusion of DEQ's inspection of the project.

"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 Respondent did not realize an economic benefit by submitting an incomplete notification.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (6 + 0 + 0 + 8 + -3)] + \$0 \\ &= \$4,000 + [\$400 \times 11] + \$0 \\ &= \$4,000 + \$4,400 + \$0 \\ &= \$8,400 \end{aligned}$$

EXHIBIT No. 2

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

VIOLATION No. 2: Failing to install a minimum of one viewing window in a negative pressure enclosure, in violation of OAR 340-248-0270(7)(e).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(1)(h)(B) because the violation consisted of between 40 and 260 linear feet of asbestos containing material. The violation consisted of approximately 80 linear feet of asbestos containing TSI.

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)(ii) 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 6 according to OAR 340-012-0145(2)(a), because Respondent has three Class I violations and two Class III violations in case no. AQ/AB-WR-07-121, one Class I violation in case no. AQ/AB-WR-12-067, and one Class I violation in case no. AQ/AB-WR-15-072.

"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. Each day of violation constitutes a separate occurrence. The violation occurred on a single day, November 30, 2015.

"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. Respondent has been licensed by DEQ as an asbestos abatement contractor for at least 10 years. However, Respondent has a history of noncompliance with DEQ's asbestos rules. Specifically, Respondent was penalized for similar work practice violations in Case Nos. AQ/AB-WR-07-121 and AQ/AB-WR-15-072. Therefore, Respondent's failure to install a viewing window in a negative pressure enclosure constitutes a conscious disregard of a substantial and unjustifiable risk that its conduct would result in a violation. In addition, this disregard for

risk of a violation is gross deviation of the standard of care a licensed asbestos abatement contractor would observe in a similar situation.

"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. Respondent corrected the work practice violations before the conclusion of DEQ's inspection of the project.

"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 Respondent did not realize an economic benefit by submitting an incomplete notification.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (6 + 0 + 0 + 8 + -3)] + \$0 \\ &= \$4,000 + [\$400 \times 11] + \$0 \\ &= \$4,000 + \$4,400 + \$0 \\ &= \$8,400 \end{aligned}$$