



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

March 12, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 2935

B.A.C.H. Land Development, LLC
c/o Jonathan Velozo, Registered Agent
16295 SW 85th Ave.
Tigard, OR 97224

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-WR-2021-008

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$74,469 for asbestos violations at the Medford Estates mobile home park located at 3555 S. Pacific Highway in Medford, Oregon. The Medford Estates site, with more than two hundred mobile home lots, was severely damaged by the Almeda wildfire in September 2020. Between late November and early December, 2020, you performed an unlicensed asbestos abatement project when you cleared, removed, loaded and packaged asbestos-containing wildfire debris from the site. In addition, you failed to notify the disposal site of the type and volume of asbestos-containing waste material and failed to obtain the disposal site's approval prior to bringing the waste to the disposal site on December 7, 2020.

On October 8, 2020, the Oregon Environmental Quality Commission approved a variance from certain asbestos regulations in wildfire damaged areas, effective through October 1, 2021. The variance does not relieve you from the asbestos rules cited in the Notice. Specifically, under the variance, all asbestos abatement projects in wildfire damaged areas must be conducted by a DEQ licensed contractor with a limited exception for residential property owners (four dwelling units or less) doing their own cleanup work with no paid labor. In addition, the variance does not relieve any owners or operators of wildfire damaged properties from the packaging, labeling, transportation, and disposal requirements for asbestos-containing waste material under OAR 340-248-0280.

DEQ issued this penalty because the 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 prove 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 packaging, labeling, transportation, and disposal requirements under OAR 340-248-0280 are intended to protect public health by preventing the release of asbestos fibers into the air.

\$47,269 of the civil penalty represents the economic benefit you gained by failing to hire a DEQ-licensed contractor to properly clear and abate the asbestos-containing wildfire debris at the site. These avoided costs are included in the civil penalty to “level the playing field” by taking away any economic advantage that you gained as compared to similarly situated parties that hire DEQ-licensed contractors to safely perform asbestos abatement projects.

DEQ appreciates your efforts to minimize the impacts of the violations. Following DEQ’s inspection on December 16, 2020, you covered the remaining piles of asbestos-containing material at the site and properly labeled the wildfire debris as asbestos-containing material. On January 26, 2021, the asbestos-containing material remaining at the site was abated by a DEQ-licensed contractor and properly disposed with accompanying waste shipment forms. These efforts were taken into account in determining the civil penalty.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your 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

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 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 instead of paying a 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/Statutes.aspx> or by calling the number below.

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If you have any questions, please contact Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosure

cc: Bear Klinge, B.A.C.H. Land Development, 16295 SW 85th Ave., Tigard, OR 97224
Douglas S. Winslow, ACG, Inc., 19386 SW 55th Ct., Tualatin, OR 97062
Sheilla Tannert, Cal-Am Properties, Inc., 1201-B E. Skipper Rd., Tampa, FL 33613
Jennifer Horton, DEQ
Claudia Davis, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 B.A.C.H. LAND DEVELOPMENT, LLC,) NOTICE OF CIVIL PENALTY
a Florida limited liability company,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. AQ/AB-WR-2021-008

6 I. AUTHORITY

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

11 II. FINDINGS OF FACT

12 1. B.A.C.H. Land Development, LLC (Respondent) is a general contractor doing business in
13 Oregon. Respondent is licensed under number 215805 by the Oregon Construction Contractors Board
14 (CCB).

15 2. In October 2020, Cal-Am Properties, Inc. (Property Owner) hired Respondent to perform
16 site cleanup work at the Medford Estates mobile home park at 3555 S. Pacific Highway in Medford,
17 Oregon (the Site), after the Site was burned by the Almeda wildfire in September 2020.

18 3. The Site includes approximately 245 mobile home lots and a common building (also known
19 as the community center, rec center or clubhouse). Approximately two thirds of the mobile homes and
20 the common building at the Site were severely burned by the Almeda wildfire.

21 4. In October 2020, Respondent sub-contracted with Asbestos Control Group, Inc. (ACG), a
22 DEQ-licensed Full Scale Asbestos Abatement Contractor, License No. FSC562, to perform an asbestos
23 abatement project at the Site. ACG's bid proposal to Respondent, accepted by Respondent on October
24 19, 2020, states:

25 We hereby propose to furnish the materials and perform the labor for the following Asbestos
26 Abatement Project: Line dumpsters with 2 6 Mil liners (nominal), seal and tag the dumpsters
27 when full, and certify the lot as being clean. Please note the Rec Center will count as 2 lots for
loading and tagging but not for certification. ACG, inc will provide the liners for the dumpsters.
Bach Development is responsible for providing the dumpsters and the dump fees.

1 5. On October 25 and 26, 2020, an accredited asbestos inspector collected samples of the
2 wildfire debris at the Site, based on a DEQ-approved sampling plan. The wildfire debris collected at the
3 Site contained the following percentages of asbestos by weight:

- 4 a. Samples from Lot 9 contained 3% and 5% Chrysotile asbestos;
- 5 b. Samples from Lot 27 contained 10% Chrysotile asbestos;
- 6 c. A sample from Lot 29 contained 2% Chrysotile asbestos;
- 7 d. Samples from Lot 42 contained 3% and 5% Chrysotile asbestos;
- 8 e. Samples from Lot 50 contained 5% Chrysotile asbestos;
- 9 f. Samples from Lot 65 contained 12% and 65% Chrysotile asbestos;
- 10 g. A sample from Lot 66 contained 5% Chrysotile asbestos;
- 11 h. A sample from Lot 100 contained 5% Chrysotile asbestos;
- 12 i. A sample from Lot 180 contained 11% Chrysotile asbestos;
- 13 j. A sample from Lot 209 contained 5% Chrysotile asbestos;
- 14 k. A sample from Lot 210 contained 9% Chrysotile asbestos; and
- 15 l. A sample from Lot 242 contained 7% Chrysotile asbestos.

16 6. Between late November 2020 and December 9, 2020, Respondent cleared more than 6,000
17 square feet of wildfire debris from twelve lots at the Site: Lots 9, 27, 29, 42, 50, 65, 66, 100, 209, 210
18 and 242. With the exception of the debris from Lot 100 and Lot 180, Respondent placed the wildfire
19 debris in large totes with the lot number spray painted on the side.

20 7. The clearing of the wildfire debris described in Section II, Paragraph 7 above had the
21 potential to release asbestos fibers into the air.

22 8. On December 7, 2020, Respondent transported several loads of the wildfire debris described
23 in Section II, Paragraph 7 above to the Dry Creek Landfill in Medford, Oregon.

24 9. Respondent did not complete a DEQ waste shipment form prior to transporting the waste to
25 the Dry Creek Landfill.

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1 10. On December 7, 2020, the Dry Creek Landfill rejected the load of material from the Site due
2 to inadequate documentation of the contents of the material. Specifically, Respondent did not provide
3 documentation to the landfill regarding whether the wildfire debris was asbestos-containing or not.

4 11. DEQ inspected the Site on December 9, 2020 and December 16, 2020.

5 12. On December 9, 2020 and on December 16, 2020, the totes described in Section II,
6 Paragraph 7 above were stored at the Site. The totes were not labeled to indicate that they contained
7 asbestos.

8 13. As of December 16, 2020, Respondent had gathered the wildfire debris on Lots 100 and 180
9 into piles, but the debris had not yet been placed in a tote.

10 14. Respondent is not, and has never been, licensed by DEQ as an asbestos abatement
11 contractor.

12 15. On or before December 17, 2020, Respondent covered the remaining piles of asbestos-
13 containing waste material at the Site with 6 mil plastic and properly labeled the totes of wildfire debris
14 as asbestos-containing material.

15 16. On January 26, 2021, ACG properly removed and disposed of the asbestos-containing waste
16 material remaining at the Site.

17 III. CONCLUSIONS

18 1. Between late November 2020 and December 9, 2020, Respondent violated OAR 340-248-
19 0110(4) by performing an asbestos abatement project without being licensed by DEQ, as described in
20 Section II, Paragraphs 1-7 and 11-14 above. Specifically, Respondent removed and handled wildfire
21 debris from twelve lots at the Site. The wildfire debris is an “asbestos-containing material” as defined
22 by OAR 340-248-0010(8) because it is material containing more than 1% asbestos by weight.
23 Respondent’s work at the Site was an “asbestos abatement project,” as defined by OAR 340-248-
24 0010(6), because it was a construction or maintenance activity of a facility that involved the removal
25 and handling of asbestos-containing material with the potential to release asbestos fibers into the air.
26 This is a Class I violation, according to OAR 340-012-0054(1)(t). DEQ hereby assesses a \$61,669 civil
27 penalty for this violation.

2. On December 7, 2020, Respondent violated OAR 340-248-0280(6) by failing to notify the disposal site of the type and volume of asbestos-containing waste material, and failing to obtain the disposal site's approval prior to bringing the waste to a permitted disposal site, as described in Section II, Paragraphs 5-6 and 8-10 above. This is a Class I violation, according to OAR 340-012-0054(1)(u). DEQ hereby assesses a \$12,800 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 \$74,469. The determination of the civil penalties 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, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**.

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. DEQ must receive your 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 exhibits, you must do so 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 send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. 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, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company,

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1 unincorporated association, trust or government body, you must be represented by an attorney or a duly
2 authorized representative, as set forth in OAR 137-003-0555.

3 Active duty Service members have a right to stay proceedings under the federal Service
4 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
5 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
6 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
7 Department does not have a toll free telephone number.

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

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3/12/2021

Date



Kieran O'Donnell, 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 NO. 1 Performing an asbestos abatement project without being licensed by DEQ, in violation OAR 340-248-0110(4).

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

MAGNITUDE: The magnitude of the violation is major according to OAR 340-012-0135(1)(i)(A) because the violation involved more than 160 square feet of asbestos containing waste material. Respondent removed and handled more than 6,000 square feet of asbestos containing waste material from Lots 9, 27, 29, 42, 43, 50, 65, 100, 180, 209, 210, and 242 at the Site.

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) because Respondent is not a residential owner-occupant.

"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 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Each day is a separate occurrence of the violation. Respondent removed and handled wildfire debris from twelve lots at the Site between late November 2020 and December 9, 2020. Respondent cleared 12 lots with asbestos-containing material. Respondent's contract with the Property Owner states that the cleanup work would occur at a rate of four lots per day. Therefore, there were at least three days of 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 acted intentionally with actual knowledge of the requirement. Respondent is a general contractor licensed by the Oregon Construction Contractors Board. CCB licensed contractors receive training on the hazards of asbestos, including the requirement that asbestos abatement projects be completed by DEQ-licensed contractors. Moreover, Respondent knew that DEQ-licensed contractors must be used for

the cleanup of asbestos-containing wildfire debris. Respondent contracted with ACG, a DEQ-licensed asbestos contractor, to develop an asbestos survey plan and hire an accredited asbestos inspector to complete a survey of the Site. The asbestos survey results showed that 12 of the Lots at the Site were positive for asbestos. Nevertheless, Respondent did not have ACG conduct the removal and handling of the wildfire debris on the 12 lots, but instead conducted the removal, handling, and loading activities itself. Respondent only hired ACG to label the asbestos-containing waste material once it was loaded, and certify the lots as clean. Therefore, Respondent acted intentionally with actual knowledge of the requirement that asbestos abatement projects must be completed by a DEQ-licensed contractor.

"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 DEQ's inspection on December 16, 2020, Respondent covered the remaining piles of asbestos-containing material at the Site with 6 mil plastic and properly labeled the totes of wildfire debris as 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 \$47,269. This is the amount Respondent gained by avoiding spending \$65,400, the estimated cost to hire a DEQ-licensed contractor to properly clear and abate the 12 lots with asbestos-containing wildfire debris. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 2 + 8 + -2)] + \$47,269$
= $\$8,000 + (\$800 \times 8) + \$47,269$
= $\$8,000 + \$6,400 + \$47,269$
= $\$61,669$

EXHIBIT 2

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

VIOLATION NO. 2 Failing to notify the disposal site of the type and volume of asbestos-containing waste material, and failing to obtain the disposal site's approval prior to bringing the waste to a permitted disposal site, in violation of OAR 340-248-0280(6).

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

MAGNITUDE: The magnitude of the violation is major according to OAR 340-012-0135(1)(i)(A) because the violation involved more than 160 square feet of asbestos containing waste material. On December 7, 2020, Respondent attempted to dispose of several loads, amounting to at least 270 square feet of asbestos containing waste material at the Dry Creek Landfill without notifying the disposal site or obtaining its approval.

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) because Respondent is not a residential owner-occupant.

"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 is a separate occurrence of the violation. Respondent's asbestos-containing waste material from the Site was rejected by the Dry Creek Landfill due to inadequate documentation on December 7, 2020.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted intentionally with actual knowledge of the requirement. Respondent is a general contractor licensed by the Oregon Construction Contractors Board. CCB licensed contractors receive training on the hazards of asbestos, including packaging, labeling, transportation and disposal requirements. Respondent knew

that an asbestos survey had been conducted at the Site and that the survey results were available, showing which lots contained asbestos. In addition, Respondent's October 20, 2020 contract with the Property Owner references Dry Creek Landfill's requirements regarding the disposal of asbestos containing wildfire debris. Nevertheless, Respondent did not complete a waste shipment form or otherwise provide adequate documentation to the Dry Creek Landfill of the type and volume of asbestos-containing waste material hauled to the landfill, and failed to obtain the disposal site's approval prior to bringing the waste to the permitted disposal site. Therefore, Respondent acted intentionally with actual knowledge of the requirement that it must provide adequate documentation and obtain the disposal site's approval, prior to bringing asbestos-containing waste material to the disposal site.

"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. On January 26, 2021, asbestos-containing waste material remaining at the Site was properly abated and removed by ACG, a DEQ-licensed contractor, and properly disposed at the Dry Creek Landfill with accompanying waste shipment forms.

"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 any economic benefit that Respondent received as a result of this violation is de minimis. Respondent ultimately incurred the cost of proper disposal of the asbestos-containing material plus the extra cost of transporting the material from the Site to the landfill and back on December 7, 2020.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 8 + -2)] + \$0 \\ &= \$8,000 + (\$800 \times 6) + \$0 \\ &= \$8,000 + \$4,800 + \$0 \\ &= \$12,800 \end{aligned}$$