



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 30, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3596

Banyan Tree Investments, LLC
c/o Tom Sloan, Registered Agent
2161 SE Yamhill Street, #3
Portland, OR 97205

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ-AB-NWR-2021-070

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 \$7,200 for allowing a person not licensed by DEQ to perform an asbestos abatement project at the C-Bar located at 2886 SE Gladstone Street in Portland, Oregon. The Notice also cites you, without penalty, for openly accumulating asbestos-containing waste material by allowing the contractor to leave the material unsecured, improperly packaged and broken on your property.

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 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 and prohibits open accumulation of asbestos-containing waste material. The open accumulation of asbestos-containing waste material presents a significant risk to public health and the environment.

DEQ appreciates your efforts to provide information and bring the site back into compliance once you were notified of the violations by DEQ. DEQ considered these efforts when determining the amount of civil penalty.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

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.oregon.gov

Via fax – 503-229-6762

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.

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.

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

Enclosures

cc: Kara Master, DEQ, NW Region Asbestos Control Specialist
Audrey O'Brien, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	BANYAN TREE INVESTMENTS, LLC,)	ASSESSMENT AND ORDER
5	Respondent.)	CASE NO. AQ-AB-NWR-2021-070

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 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
10 and 248.

11 II. FINDINGS OF FACT

12 1. Banyan Tree Investments, LLC (the Respondent) is the owner of the C-Bar restaurant
13 located at 2886 SE Gladstone Street in Portland, Oregon (the Facility).

14 2. Respondent hired Zien Phan (the Contractor) to remove and replace damaged siding at the
15 Facility.

16 3. The Contractor was not, and has never been, licensed by DEQ as an asbestos abatement
17 contractor.

18 4. On August 19, 2020, the Contractor removed approximately 450 square feet of exterior
19 cement board siding from the first floor of the Facility, on the side of the building along SE 29th
20 Avenue. The manner in which the Contractor removed the cement board siding from the Facility,
21 which included breaking it into small, fragmented pieces, rendered the material friable and had the
22 potential to release asbestos fibers into the air.

23 5. On or before August 20, 2020, the Contractor placed the removed siding in unsecured and
24 unlabeled black contractor bags which were located on the ground and in an open garbage can along the
25 sidewalk, and in the back of an open vehicle parked along the side of the Facility. The Contractor
26 collected the bags and transported them to his residence.

27 \\\

1 abatement project waste. This is a Class I violation according to OAR 340-012-0054(1)(s). DEQ has not
2 assessed a civil penalty for this violation.

3 IV. ORDER TO PAY CIVIL PENALTY

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

6 1. Pay a total civil penalty of \$7,200. The determination of the civil penalty is attached as Exhibit
7 1 and is incorporated as part of this Notice.

8 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as
9 follows:

10 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:
11 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
12 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US
13 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
14 charges.

15 Pay by check or money order: Make checks payable to “Department of Environmental
16 Quality” and mail to the address on the enclosed payment slip. Please make sure to include the payment
17 slip with your check or money order.

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

19 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
20 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
21 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
22 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
23 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
24 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
25 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
26 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
27 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS

1 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
2 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
3 you may represent yourself. If you are a corporation, partnership, limited liability company,
4 unincorporated association, trust or government body, you must be represented by an attorney or a duly
5 authorized representative, as set forth in OAR 137-003-0555.

6 Active duty Service members have a right to stay proceedings under the federal Service
7 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
8 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
9 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
10 Department does not have a toll free telephone number.

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

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19
20 3/30/2022

21 Date

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21 Kieran O'Donnell, Manager
22 Office of Compliance and Enforcement
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EXHIBIT 1

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

- VIOLATION NO. 1 Allowing a person not licensed by DEQ to perform an asbestos abatement project in violation of OAR 340-248-0110(2).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-054(1)(v).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(i)(A) because the violation involved over 160 square feet of asbestos-containing material. Respondent allowed the removal and handling of approximately 450 square feet of cement board siding 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)(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 of violation constitutes a separate occurrence. Respondent allowed the removal of cement board siding from the Facility on August 19, 2020.
- "M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. Respondent is the owner of a commercial building constructed in 1912. It is commonly known that buildings constructed during that time often contained asbestos-containing materials. In addition, it is commonly known that asbestos is a hazardous and highly regulated material, requiring special licensing and work practices. Thus, Respondent reasonably should have known of the requirement to hire a licensed asbestos abatement contractor to conduct a friable asbestos abatement project.

"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 by providing information requested by DEQ and ensuring that steps were taken to return the Facility to compliance with asbestos requirements once notified of the violations by DEQ.

"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 Respondent gained as a result of this violation is de minimis.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 2 + -3)] + \$0 \\ &= \$8,000 + (\$800 \times -1) + \$0 \\ &= \$8,000 + -\$800 + \$0 \\ &= \$7,200 \end{aligned}$$

Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100



State of Oregon
Department of Environmental Quality

Phone: 503-229-5437
Fax: 503-229-5850

CIVIL PENALTY - ORS 468.135(2)

TOM SLOAN
BANYAN TREE INVESTMENTS, LLC
2161 SE YAMHILL STREET, #3
PORTLAND, OR 97205

DATE:	March 30, 2022
RESPONSE DATE :	June 8, 2022
TOTAL PENALTY:	\$7,200.00

Account Name:	BANYAN TREE INVESTMENTS, LLC		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2200027
SubSystem ID:	39	FIMS Acct. ID:	7038

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 7,200.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 7,200.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



TOM SLOAN
BANYAN TREE INVESTMENTS, LLC
2161 SE YAMHILL STREET, #3
PORTLAND, OR 97205

REFERENCE NO.	CPGFD2200027		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	June 8, 2022
FIMS ACCT. ID:	7038	TOTAL PENALTY DUE:	\$7200.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244
PO BOX 4244
PORTLAND OR 97208-4244

Check this box if updated address information has been provided on the back of the form.

00401 7400 10040 74001 0500 000000 0095000070383(CPGF)220002700007200005



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

Penalty Detail

Transaction Date	Description	Amount
3/28/2022	2021-070 AQ/AB-NWR-2021-070	\$7,200.00

SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

Address Changes

Please visit <https://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name _____
Address _____
City, State, Zip _____