



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

April 22, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3510

Multnomah County
Department of County Human Services
Weatherization & Energy Services Program
Attn: Jack Baikov, Gary Walsworth
Main DCHS Office
Five Oak Building
209 SW 4th Ave
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-2021-063

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$3,211 for allowing a contractor not licensed by DEQ to perform an asbestos abatement project at a residential property located at 6847 N. Maryland Avenue, Portland, OR 97217. This Notice also cites you, without penalty, for failing have an asbestos survey conducted by an accredited asbestos inspector before commencing the project.

DEQ issued this penalty because the violations described in the attached Notice could have released asbestos fibers into the air and exposed workers or the homeowner 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. Asbestos surveys, conducted by an accredited inspector, are required to detect the presence or absence of asbestos-containing materials prior to a renovation or demolition.

DEQ appreciates your efforts to minimize the impacts of the violation by having a sample of the impacted material, provided by the homeowner, analyzed by a laboratory, and for facilitating the proper abatement and removal of the asbestos-containing waste material that remained in the basement of the residence, in addition to air sampling. 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
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 MULTNOMAH COUNTY,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. AQ-AB-NWR-2021-063

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. Respondent, Multnomah County, operates a Weatherization & Energy Services Program
13 (the Program) through its Department of County Human Services. Through the Program, Respondent
14 conducts energy audits for Multnomah County homeowners, identifies energy saving opportunities, and
15 funds certain energy efficiency upgrades.

16 2. In early 2020, Respondent conducted a home energy audit at a residence located at 6847 N.
17 Maryland Avenue, Portland, OR 97217 (the Residence). The audit identified an oil furnace in the
18 basement and proposed to replace it with a natural gas fired furnace. Respondent did not identify any
19 suspect asbestos-containing material during the audit.

20 3. On June 2, 2020, Respondent hired Aladdin Heating & Air Conditioning Corporation (the
21 Contractor) to perform the furnace replacement project at the Residence. Neither Respondent's bid
22 request or Respondent's work order for the Contractor indicated that an asbestos survey was needed or
23 that the Contractor could bill Respondent for costs arising from compliance with asbestos survey
24 requirements or the cost to have a DEQ-licensed asbestos abatement contractor remove suspect material
25 that was presumed to be asbestos-containing.

26 4. Neither Respondent nor the Contractor are, or have even been, licensed by DEQ as an
27 asbestos abatement contractor.

1 furnace in the basement of the Residence is a “renovation” as defined in OAR 340-248-0010(39) because
2 it altered one or more facility components. This is a Class I violation according to OAR 340-012-
3 0054(1)(r). DEQ has not assessed a civil penalty for this violation.

4 IV. ORDER TO PAY CIVIL PENALTY

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

7 1. Pay a total civil penalty of \$3,211. The determination of the civil penalty is attached as Exhibit
8 1 is incorporated as part of this Notice.

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

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

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

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

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

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

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

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

18
19
20
21 4/22/2022
Date


21 
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 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 340-012-0054(1)(v).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(i)(C) because the violation involved less than 40 linear feet of asbestos-containing material. Respondent allowed the Contractor to cut into approximately 10 linear feet of asbestos-containing duct seam tape in the basement of the Residence.

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 \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) 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 constitutes a separate occurrence of the violation. Respondent allowed the Contractor to perform an asbestos abatement project at the Residence on June 25, 2020.

"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. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent runs a home energy audit program and issues work orders to contractors to perform residential renovations. Duct seam tape used in older heating and air conditioning systems is a common asbestos-containing material. As public agency working in the area of energy efficiency projects that commonly involve the repair or replacement of heating or air conditioning systems, Respondent should have known that the old oil furnace being replaced may have asbestos-containing duct seam tape on the furnace ducting and that an asbestos survey should have been conducted to confirm the presence or absence of such

material. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct resulting in a violation of conducting an asbestos abatement project without being licensed by DEQ.

"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. When presented with a sample of the duct seam tape by the homeowner, Respondent had the sample analyzed by a laboratory, which confirmed that the material was asbestos-containing. Respondent then worked with the Contractor to facilitate the proper removal, abatement and disposal of the duct seam tape in the basement of the Residence, and to have air clearance sampling conducted. Respondent cooperated and provided information to 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 \$1,011, which is the amount Respondent gained by avoiding approximately \$1,000 in labor, materials and disposal costs to have a DEQ-licensed asbestos abatement contractor complete the cutting and removal of the duct seam tape. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{\$EB}$
 $= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 4 + -3)] + \$1,011$
 $= \$2,000 + (\$200 \times 1) + \$1,011$
 $= \$2,000 + \$200 + \$1,011$
 $= \$3,211$

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)

JACK BAIKOV
 MULTNOMAH COUNTY DEPARTMENT OF
 COUNTY HUMAN SERVICES
 WEATHERIZATION & ENERGY SERVICES
 PROGRAM
 209 SW 4TH AVE
 PORTLAND, OR 97204

DATE:	April 21, 2022
RESPONSE DATE :	June 30, 2022
TOTAL PENALTY:	\$3,211.00

Account Name:	MULTNOMAH COUNTY DEPARTMENT OF COUNTY HUMAN SERVICES WEATHERIZATION & ENERGY SERVICES PROGRAM		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2200028
SubSystem ID:	41	FIMS Acct. ID:	7328

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 3,211.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 3,211.00

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



JACK BAIKOV
 MULTNOMAH COUNTY DEPARTMENT OF
 COUNTY HUMAN SERVICES WEATHERIZATION
 & ENERGY SERVICES PROGRAM
 209 SW 4TH AVE

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

REFERENCE NO.	CPGFD2200028		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	June 30, 2022
FIMS ACCT. ID:	7328	TOTAL PENALTY DUE:	\$3211.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

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

00401 7400 10040 74001 0500 000000 0095000073285(CPGFD)220002800003211002



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
4/19/2022	2021-063 AQ/AB-NWR-2021-063	\$3,211.00

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 _____