



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 3428

Zien Phan
14218 NE Brazee St.
Portland, OR 97230
CCB # 96231

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ-AB-NWR-2021-069

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 \$19,200 for performing an asbestos abatement project without a license from DEQ and openly accumulating asbestos-containing waste material at the C-Bar located at 2886 SE Gladstone Street in Portland, Oregon. The Notice also cites you, without penalty, for failing to have an accredited inspector perform a complete survey for asbestos containing materials prior to renovation and for failing to submit an asbestos abatement project notification to DEQ.

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 minimize the effects of the violations following DEQ's inspection, by having an asbestos survey performed and by properly disposing of the asbestos-containing waste material. 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 Becca 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 paragraphs 5, 8, and 10, above. Specifically, Respondent stored broken pieces of cement board siding on a
2 tarp outside the Facility and in unsecured black contractor bags along the sidewalk outside the facility. The
3 black contractor bags containing the cement board siding were not packaged in labeled and leak tight
4 containers as required according to OAR 340-248-0280(2)(b), and thus this constituted “open
5 accumulation” as that term is defined in OAR 340-248-0010(34). The pieces of cement board siding are
6 “asbestos-containing waste material” as defined in OAR 340-248-0010(9) because they are asbestos
7 abatement project waste. This is a Class I violation according to OAR 340-012-0054(1)(s). DEQ hereby
8 assesses a \$10,400 civil penalty for this violation.

9 3. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector
10 complete an asbestos survey according to OAR 340-248-0270(3) before performing a renovation, as
11 described in Section II, paragraphs 3, 4 and 7 above. The removal and replacement of the Facility’s siding
12 is a “renovation” as defined in OAR 340-248-0010(39) because Respondent altered one or more facility
13 components by removing siding from the Facility’s exterior wall. This is a Class I violation according to
14 OAR 340-012-0054(1)(r). DEQ has not assessed a civil penalty for this violation.

15 4. Respondent violated OAR 340-248-0260 by failing to submit a written notification to DEQ at
16 least 5 days prior to commencing a non-friable asbestos abatement project or at least 10 days prior to
17 commencing a friable asbestos abatement project, as described in Section II, paragraph 5, above. This is a
18 Class II violation according to OAR 340-012-0054(2)(m). DEQ has not assessed a civil penalty for this
19 violation.

20 IV. ORDER TO PAY CIVIL PENALTY

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

23 1. Pay a total civil penalty of \$19,200. The determination of the civil penalties is attached as
24 Exhibits 1 and 2 and are incorporated as part of this Notice.

25 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as
26 follows:
27

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

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

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

10 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
11 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
12 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
13 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
14 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
15 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
16 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
17 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
18 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
19 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
20 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
21 you may represent yourself. If you are a corporation, partnership, limited liability company,
22 unincorporated association, trust or government body, you must be represented by an attorney or a duly
23 authorized representative, as set forth in OAR 137-003-0555.

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

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

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12 3/30/2022
13 Date


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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 a DEQ licensed asbestos abatement contractor in violation of OAR 340-248-0110(4).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-054(1)(t).

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 removed 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. Respondent removed cement board siding from the Facility on August 19, 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 is a residential general contractor that was first licensed by the Oregon Construction Contractors Board in 1994. The Facility was constructed in 1912. It is commonly known that commercial buildings constructed during that time often contained asbestos-containing materials. In addition, it is commonly known that that asbestos is a hazardous material that is highly regulated, requiring special licensing and work practices. As an experienced residential general contractor, Respondent reasonably should have known there was a possibility asbestos could be present at the Facility and that a licensed asbestos abatement contractor should be hired to conduct any asbestos removal. Thus,

Respondent failed to take reasonable care to avoid a foreseeable risk of conduct resulting in a violation of OAR 340-248-0110(4).

"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 hiring an accredited inspector to perform a survey and properly disposing of the 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 \$0 because any economic benefit that Respondent received as a result of this violation was offset by the costs Respondent incurred by hiring an accredited asbestos inspector to conduct a survey and by properly packaging and disposing of the project waste.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 4 + -3)] + \$0 \\ &= \$8,000 + (\$800 \times 1) + \$0 \\ &= \$8,000 + \$800 + \$0 \\ &= \$8,800 \end{aligned}$$

EXHIBIT 2

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

VIOLATION NO. 2 Openly accumulating 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(s).

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 stored approximately 450 square feet of broken cement board siding material in unsecured black contractor bags.

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 was more than one but less than seven occurrences of the violation. Respondent openly accumulated asbestos-containing waste material on at least two days on August 19, 2020, and August 20, 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 is a residential general contractor that was first licensed by the Oregon Construction Contractors Board in 1994. The Facility was constructed in 1912. It is commonly known that commercial buildings constructed during that time often contained asbestos-containing materials. In addition, it is commonly known that that asbestos is a hazardous material that is highly regulated, requiring special licensing and work practices. As an experienced residential general contractor, Respondent reasonably should have known there was a possibility asbestos could be present at the Facility and could become a

hazard if not properly removed, packaged and stored. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of openly accumulating asbestos-containing waste material.

"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 hiring an accredited inspector to perform a survey and by properly disposing of the 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 \$0 because any economic benefit that Respondent received as a result of this violation was offset by the costs Respondent incurred by hiring an accredited asbestos inspector to conduct a survey and by properly packaging and disposing of the project waste.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 2 + 4 + -3)] + \$0 \\ &= \$8,000 + (\$800 \times 3) + \$0 \\ &= \$8,000 + \$2,400 + \$0 \\ &= \$10,400 \end{aligned}$$

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

ZIEN PHAN

CIVIL PENALTY - ORS 468.135(2)

14218 NE BRAZEE ST
PORTLAND, OR 97230

DATE:	March 30, 2022
RESPONSE DATE :	June 8, 2022
TOTAL PENALTY:	\$19,200.00

Account Name:	ZIEN PHAN		
Account Type:	Individual	Reference Number:	CPGFD2200026
SubSystem ID:	38	FIMS Acct. ID:	7037

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 19,200.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 19,200.00

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



ZIEN PHAN

14218 NE BRAZEE ST
PORTLAND, OR 97230

REFERENCE NO.	CPGFD2200026		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	June 8, 2022
FIMS ACCT. ID:	7037	TOTAL PENALTY DUE:	\$19200.00

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 0095000070376(CPGFD)220002600019200003



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	2021-069 AQ/AB-NWR-2021-069	\$19,200.00

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 _____