



# 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

May 22, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 2650

Corpac Construction Company  
c/o Trisha Cauthorn, Registered Agent  
700 SW 5<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
Portland OR 97204

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/AB-NWR-2020-065

***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 \$26,400 for performing an asbestos abatement project without certification or a license and for openly accumulating asbestos containing material and asbestos containing waste material at the Troutdale Riverfront Redevelopment Project in Troutdale, Oregon. In addition, DEQ has cited you without penalty for failing to submit to DEQ an asbestos abatement project notification at least ten days 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 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 friable asbestos-containing material and asbestos-containing waste material. The performance of an asbestos abatement project without a license and the open accumulation of asbestos-containing waste material presents a significant risk to public health and the environment.

DEQ appreciates your efforts to address the violations by covering the demolition debris and hiring a licensed asbestos abatement contractor to remove the asbestos-containing material and the asbestos-

containing waste material piled outside. 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 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](mailto: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.

If you have any questions, please contact Anzie St. Clair at 971-808-7368 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Zeb Bates, DEQ, Northwest Region  
Audrey O'Brien, DEQ  
Accounting, DEQ  
Donald Hendrix, AQ, DEQ



1           5. Respondent began Project Site work in August 2018. At all material times during the  
2 Project, Respondent was not licensed as an asbestos abatement contractor and its employees at the Site  
3 were not certified as asbestos supervisors or workers.

4           6. On or about August 24, 2018, Respondent sent a draft subcontract agreement to IRS  
5 Environmental for the abatement of asbestos-containing materials, or "ACM" on the Site.  
6 Respondent's proposed agreement stated that the subcontract price included the remediation of "Tar  
7 based, Non friable ACM roofing material (Building 3)," and "Friable ACM Floor tile and mastic (500  
8 sf [square feet] identified in the survey, has yet to be located)."

9           7. On August 29, 2018, without IRS Environmental or any other licensed asbestos abatement  
10 contractor at the Site, Respondent, by and through its employee, demolished the Lab Building and the  
11 Control Building down to their foundations. During the demolition, Respondent broke up and removed  
12 tile, mastic, and black felt paper from the Lab and Control Buildings and commingled it with the  
13 remaining debris from the demolition. Respondent placed the commingled demolition debris in dry  
14 uncovered piles immediately adjacent to the building footprints.

15           8. In the afternoon of August 29, 2018, after a Site inspection by the City of Troutdale's  
16 environmental consultant, Respondent placed plastic sheeting on top of the demolition debris piles and  
17 foundations. The demolition debris was not fully enclosed.

18           9. On September 4, 2018, IRS Environmental collected samples from the demolition debris  
19 piles and submitted samples to a certified laboratory. The laboratory results stated that the black felt  
20 paper in the demolition pile near the Lab Building contained approximately 50% Chrysotile asbestos by  
21 weight.

22           10. Respondent did not submit to DEQ an asbestos abatement project notification at least ten  
23 days before commencing the August 29, 2018 demolition of the Lab and Control Buildings.

24           11. Respondent hired a licensed asbestos abatement contractor who began work on October 4,  
25 2018 to properly decontaminate, package, remove, abate, and dispose of the demolition debris that had  
26 been commingled with the tile and mastic flooring and black felt paper described in Section II,  
27 paragraph 7 and 8 above.

### III. CONCLUSIONS

1. Respondent has violated OAR 340-248-0120(1)<sup>1</sup> by performing an asbestos abatement project without a license or certification from DEQ, as described in Section II above. Specifically, Respondent is a “contractor” as defined by OAR 340-248-0010(16) and conducted an “asbestos abatement project” as defined by OAR 340-248-0010(6) because it removed and handled asbestos-containing material from the Lab Building and Control Building during the Project. The tile and mastic flooring and black felt paper were “asbestos containing material” as defined by OAR 340-248-0010(8) because they each contained more than one-percent asbestos by weight. Respondent did not have a license, nor were its employees certified. The Project had the potential to release fibers into the air because Respondent removed inherently friable materials, fragmented nonfriable materials rendering them friable, and stored asbestos containing materials in an unpackaged manner. This is a Class I violation according to OAR 340-012-0054(1)(t). DEQ hereby assesses a \$14,400 civil penalty for this violation.

2. Respondent has violated OAR 340-248-0205(1) by openly accumulating asbestos-containing material and asbestos-containing waste material, as described in Section II above. Specifically, Respondent handled and stored friable and unpackaged asbestos-containing material and commingled it with other waste material in a debris pile outside at the Site. The comingled demolition debris is “asbestos-containing waste material,” as defined by OAR 340-248-0010(12) because it is waste generated from an asbestos abatement project as described in Section III, paragraph 1 above. These are Class I violations according to OAR 340-248-0054(1)(s). DEQ hereby assesses a \$12,000 civil penalty for these violations.

3. Respondent has violated OAR 340-248-0260(1) by failing to submit to DEQ an asbestos abatement project notification at least ten days before commencing the project, as described in Section II above. This is a Class II violation according to OAR 340-012-0054(2)(m). DEQ has not assessed a civil penalty for this violation.

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<sup>1</sup> The references in this Notice to Oregon Administrative Rules (OAR) Chapter 340, Division 248 refer to the rules in effect at the time of the violations. Respondent may obtain a copy of these rules by contacting DEQ. Please contact Anzie St. Clair, DEQ Office of Compliance and Enforcement, 503-229-5422 or [stclair.anzie@deq.state.or.us](mailto:stclair.anzie@deq.state.or.us). Division 248 was updated by a rulemaking on November 15, 2018.

1 IV. ORDER TO PAY CIVIL PENALTY

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

4 1. Pay a total civil penalty of \$26,400. The determination of the civil penalties are attached as  
5 Exhibits 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  
7 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**  
8 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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 **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. 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-  
26 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
27 ///

1 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
2 Department does not 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.

9  
10  
11 5/22/2020

12 Date

13 Kieran O'Donnell

14 Kieran O'Donnell, Manager  
15 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 1: Violating OAR 340-248-0120(1) by performing an asbestos abatement project without a license or certification from DEQ.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012- 0054(1)(t).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(i)(A) because there were more than 160 square feet of asbestos containing material involved in the violation. Specifically, the demolition involved the removal of approximately 500 square feet of tile and mastic, and at least 300 square feet of black felt paper.
- 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 violated an asbestos rule and the Site is commercial property.
- "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. Specifically, Respondent performed an unlicensed and uncertified asbestos abatement project on August 29, 2018.
- "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. Reckless is the conscious disregard of a substantial and unjustifiable risk that the result would occur or that the circumstance existed. Respondent is an experienced construction contractor and has held a CCB license since 2012. Respondent was aware that the Site contained hazardous building materials, including asbestos, and knew that it was responsible for retaining a licensed asbestos abatement contractor to complete asbestos removal before beginning building demolition. Respondent was aware that roofing material on the Control Building contained asbestos. Respondent, nonetheless, began demolishing buildings, including the Control Building,



disregarding the construction schedule and without having an abatement contractor on Site to identify and remove asbestos in accordance with Oregon law. Respondent's demolition exposed its workers to dust that may have contained asbestos fibers. Accordingly, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate asbestos laws when it demolished one or more buildings that it knew contained asbestos without appropriate abatement measures or the supervision of a licensed abatement contractor.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"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. Respondent did not gain any economic advantage because the costs Respondent incurred to stop work and hire a licensed asbestos abatement contractor to enclose, remove, and dispose asbestos containing waste material exceeded the cost Respondent avoided by performing the demolition without asbestos containment measures.

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 x \$8,000) x (0 + 0 + 0 + 8 + 0)] + \$0  
= \$8,000 + (\$800 x 8) + \$0  
= \$8,000 + \$6,400 + \$0  
= \$14,400

## EXHIBIT 2

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

VIOLATION 2: Violating OAR 340-248-0205(1) by openly accumulating friable asbestos-containing material and asbestos-containing waste material.

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(i)(A) because there were more than 160 square feet of asbestos-containing waste material involved in the violation. Specifically, there was approximately 20,600 square feet of asbestos-containing waste material in dry uncovered piles 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 violated an asbestos rule and the Site is commercial property.

"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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Specifically Respondent placed friable asbestos-containing material and asbestos-containing waste material in dry uncovered piles at the Site on August 29, 2018. Respondent covered the piles and building foundations with plastic on the afternoon of that same day. However, it was not until October 4, 2018 that a licensed asbestos abatement contractor began work to securely enclose, remove, and dispose of the asbestos-containing material and waste material. This amounts to at least 36 days.

"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. Reckless is the conscious disregard of a substantial and unjustifiable risk that the result would occur or that the circumstance existed. Respondent is an experienced general construction contractor and has held a CCB

license since 2012. Respondent was aware that the Site contained hazardous building materials, including asbestos, and knew that it was responsible for retaining a licensed asbestos abatement contractor to complete asbestos removal before beginning building demolition. Respondent was aware that roofing material on the Control Building contained asbestos. Respondent, nonetheless, began demolishing buildings, including the Control Building, disregarding the construction schedule and without having an abatement contractor on Site to identify and remove asbestos in accordance with Oregon law. Respondent's demolition resulted in dry uncovered piles of friable asbestos-containing material and waste materials and exposed its workers to dust that may have contained asbestos fibers. Accordingly, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate asbestos laws when it demolished one or more buildings that it knew contained asbestos without appropriate abatement measures or the supervision of a licensed abatement contractor.

"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. In the afternoon of August 29, 2018, Respondent covered the demolition debris piles and the Lab and Control Building foundations with plastic. Respondent later hired a licensed asbestos abatement contractor to securely enclose and remove asbestos-containing material and waste material from the Site.

"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. Respondent did not gain any economic advantage because the costs Respondent incurred to stop work and hire a licensed asbestos abatement contractor to enclose, remove, and dispose asbestos containing waste material exceeded the cost Respondent avoided by performing the demolition without asbestos containment measures.

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 x \$8,000) x (0 + 0 + 0 + 8 + -3)] + \$0  
= \$8,000 + (\$800 x 5) + \$0  
= \$8,000 + \$4,000 + \$0  
= \$12,000