



# 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 29, 2020

CERTIFIED MAIL No. 7017 1450 0000 8310 3282

Iron Fist Construction LLC  
c/o Dalene May Hadley, Registered Agent  
74835 Depot Lane  
Irrigon, OR 97844

Re: Notice of Civil Penalty Assessment and Order  
No. AQ/AB-NWR-2020-034

*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 DEQ has issued you a total civil penalty of \$21,600 for conducting an asbestos abatement project without being licensed by DEQ, and openly accumulating friable waste material. The violations occurred in September 2019 when you removed asbestos-containing flooring materials at residence in Portland during a renovation project (the Facility).

DEQ issued this penalty because as the operator of the Facility, you are responsible for ensuring that asbestos is properly managed. The abatement project did not comply with applicable asbestos regulations, and likely caused the release of asbestos fibers into the atmosphere, creating the potential for public exposure. 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.

DEQ appreciates your efforts to mitigate the effects of the violations by hiring a licensed asbestos abatement contractor to perform a cleanup at the Facility. DEQ considered these efforts when calculating your civil penalties.

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 DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', is written over a horizontal line.

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

Cc: Kara Master, Portland Office, DEQ  
Audrey O'Brien, Portland Office, DEQ  
Accounting, DEQ

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

3  
4 IN THE MATTER OF:                                   )  
IRON FIST CONSTRUCTION LLC,                                   )  
an Oregon limited liability company,                                   )  
5                                   Respondent.                                   )  
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8                                   )  
9                                   )

NOTICE OF CIVIL PENALTY  
ASSESSMENT AND ORDER  
NO. AQ/AB-NWR-2020-034

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13                                   I. AUTHORITY

14                   This Notice of Civil Penalty Assessment and Order is issued pursuant to Oregon Revised  
15 Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A, and Oregon  
16 Administrative Rules (OAR) Chapter 340, Divisions 011, 012 and 248.

17                                   II. FINDINGS OF FACT

18                   1.       Respondent is a general contractor licensed by the Oregon Construction  
19 Contractors Board.

20                   2.       On or about September 9, 2019, Respondent began renovation activities at the  
21 vacant single family residence located at 722 NE Skidmore Street in Portland, Multnomah  
22 County, Oregon (the Facility).

23                   3.       On or about September 10, 2019, Respondent removed sheet flooring material  
24 and subfloor from the back rooms at the Facility, which was a total area of approximately 175  
25 square feet.

26                   4.       The speckled beige sheet flooring at the Facility contained approximately 20%  
27 Chrysotile asbestos by weight.

                  5.       The cream sheet flooring at the Facility contained approximately 14% chrysotile  
asbestos by weight.

                  6.       When Respondent removed the sheet flooring materials described in paragraphs 4  
and 5 above, the materials were broken and fragmented into small pieces.

7. Respondent is not licensed by DEQ to perform asbestos abatement projects.

8. On or about September 10, 2019 through September 12, 2019, Respondent left the broken and fragmented pieces of asbestos-containing sheet flooring in uncovered piles and garbage bags in the yard on the east side of the Facility.

### III. CONCLUSIONS

1. On or about September 10, 2019, Respondent violated ORS 468A.715(1) and OAR 340-248-0110(3) by conducting an asbestos abatement without being licensed by DEQ, as described in Section II above. Specifically, Respondent removed and handled “asbestos-containing materials,” as defined by OAR 340-248-0010(8) because they were materials that contained more than 1% asbestos by weight. The removal and handling of the materials was an “asbestos abatement project,” as defined by OAR 340-248-0010(6) because it was part of the renovation of the Facility that involved the removal and handling of asbestos-containing material with the potential to release asbestos fibers into the air. This is a Class I violation according to OAR 340-012-0054(1)(t). DEQ hereby assesses a \$10,400 civil penalty for this violation.

2. On or about September 10-12, 2019, Respondent violated OAR 340-248-0205(1) by openly accumulating asbestos-containing waste material, as described in Section II above. Specifically, the broken and fragmented pieces stored at the Facility were “asbestos-containing waste materials,” as defined by OAR 340-248-0010(12), because they were wastes from an asbestos abatement project. This is a Class I violation according to OAR 340-012-0054(1)(s). DEQ hereby assesses an \$11,200 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:

Pay a total civil penalty of \$21,600. The determination of the civil penalty is attached as Exhibit Nos. 1 and 2 and incorporated as part of this Notice.

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1 If you do not file a request for hearing as set forth in Section V below, your check or money  
2 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ,**  
3 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you  
4 pay the penalty, the Findings of Fact, Conclusions and Order become final.

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

6 You have a right to a contested case hearing on this Notice, if you request one in writing.  
7 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
8 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
9 Notice or attached exhibits, you must do so in your request for hearing, as factual matters not  
10 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
11 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your  
12 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
13 **600, Portland, Oregon 97232,** fax it to **503-229-5100** or email it to  
14 [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge employed by the Office of  
15 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
16 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
17 attorney at the hearing, however you are not required to be. If you are an individual, you may  
18 represent yourself. If you are a corporation, partnership, limited liability company,  
19 unincorporated association, trust or government body, you must be represented by an attorney or  
20 a duly authorized representative, as set forth in OAR 137-003-0555.

21 Active duty Service members have a right to stay proceedings under the federal Service  
22 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
23 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
24 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
25 Department does not have a toll free telephone number.

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

7  
8 5/29/2020

9 Date



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement



EXHIBIT NO. 1

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

- VIOLATION 1: Conducting an asbestos abatement project without being licensed by DEQ in violation of ORS 468A.710(1) and OAR 340-248-0110(3).
- 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)(h)(A), because the violation involved more than 160 square feet of asbestos-containing material (ACM). Respondent removed approximately 175 square feet of ACM at the Facility.
- 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).
- "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 or not the violation was repeated or ongoing and receives a value 2 according to OAR 340-012-0145(4)(b), because there were more than one but less than seven occurrences of the violation. The unlicensed asbestos abatement project occurred on at least three days, September 10-12, 2019.
- "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. Respondent is licensed by the Oregon Construction Contractors Board as a general contractor, and is generally aware of asbestos requirements. When Respondent removed asbestos-containing flooring during its renovation project, it failed to take reasonable care to avoid a foreseeable risk that it would violate asbestos requirements and potentially expose workers and the public to asbestos fibers.

"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. Respondent promptly hired an accredited inspector to perform an asbestos survey, and hired a licensed abatement contractor to conduct a cleanup at the Facility.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 2 + 4 - 3)] + \$0 \\ &= \$8,000 + [(\$800) \times (3)] + \$0 \\ &= \$8,000 + \$2,400 + \$0 \\ &= \$10,400\end{aligned}$$



EXHIBIT NO. 2

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

VIOLATION 2: Openly accumulating asbestos-containing waste material (ACWM), in violation of OAR 340-248-0205(1).

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)(h)(A), because the violation involved more than 160 square feet of ACWM. Respondent openly accumulated approximately 175 square feet of asbestos-containing flooring commingled with construction debris.

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).

"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 or not the violation was repeated or ongoing and receives a value 3 according to OAR 340-012-0145(4)(c), because there were more than 7 but less than 28 occurrences of the violation. Respondent openly accumulated ACWM from on or about September 10, 2019 when it began the unlicensed abatement project, through September 21, 2019, when a licensed contractor began the asbestos abatement and cleanup project at the Facility, which is 21 days. Each day of violation is a separate occurrence.

"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. Respondent is licensed by the Oregon Construction Contractors Board as a general contractor, and is generally aware of asbestos requirements. When Respondent openly accumulated friable ACWM from the unlicensed abatement project outside the Facility, it failed to take reasonable care to avoid a foreseeable risk that it would violate asbestos requirements and potentially expose workers and the public to asbestos fibers.

"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 made reasonable efforts to minimize the effects of the violation. Respondent promptly hired a licensed asbestos abatement contractor to conduct clean up the ACWM at the Facility.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 3 + 4 + (-3))] + \$0 \\ &= \$8,000 + [(\$800) \times (4)] + \$0 \\ &= \$8,000 + \$3,200 + \$0 \\ &= \$11,200\end{aligned}$$