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 15, 2020

CERTIFIED MAIL No. 7017 1450 0000 8310 0571

J's General Contractor, LLC
c/o Jaime Romero, Registered Agent
19720 NW Tanasbourne Street, Suite 200
Hillsboro, OR 97124

CERTIFIED MAIL No. 7017 1450 0000 8310 0588

J's General Contractor, LLC
c/o Jaime Romero, Member
47 Burdeck Place
Longview, WA 98632

Re: Notice of Civil Penalty Assessment and Order
No. AQ/AB-NWR-2020-048

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 $32,000 for conducting an asbestos abatement project without being licensed by DEQ, and openly accumulating friable asbestos-containing waste material from the project. The violations occurred in March 2018 when you removed asbestos-containing thermal system insulation at residence in Portland (the Facility) while performing renovations at the Facility.

DEQ issued this penalty because as the operator of the Facility, you are responsible for ensuring that asbestos-containing material 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.

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
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,

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

Cc: Zeb Bates, Portland Office, DEQ
Audrey O'Brien, Portland Office, DEQ
Accounting, DEQ
Donald Hendrix, AQ, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: J'S GENERAL CONTRACTOR, LLC, an Oregon limited liability company, Respondent.	)))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER NO. AQ/AB-NWR-2020-048

I. AUTHORITY

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

II. FINDINGS OF FACT

1. At all material times, Respondent was licensed by the Oregon Construction Contractors Board.

2. On or before March 26, 2018, Respondent was hired by the owner of the single family residence located 4703 NE 31st Avenue in Portland, Multnomah County, Oregon (the Facility) to perform renovation activities at the Facility.

3. On or before March 28, 2018, Respondent removed, by breaking and fragmenting into small pieces, approximately 40 linear feet of thermal system insulation (TSI) from the furnace and ducting in the basement of the Facility.

4. The TSI at the Facility contained approximately 75% Chrysotile asbestos by weight.

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

6. On March 28, 2018, Respondent stored three sections of ducting wrapped in TSI in two open contractor bags in the basement at the Facility. There were remnants of TSI scattered on the floor in the basement at the Facility.

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III. CONCLUSIONS

1. On or before March 28, 2018, Respondent violated ORS 468A.715(1) and OAR 340-248-0110(3)[1] by conducting an asbestos abatement project without being licensed by DEQ, as described in Section II above. Specifically, Respondent removed and handled TSI from the Facility. The TSI was an "asbestos-containing material," as defined by OAR 340-248-0010(8) because it contained more than 1% asbestos by weight. The removal of the TSI 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 $16,000 civil penalty for this violation.

2. On or about March 28, 2018, Respondent violated OAR 340-248-0205(1) by openly accumulating asbestos-containing waste material, as described in Section II above. Specifically, Respondent stored broken and fragmented pieces of TSI open contractor bags and scattered on the ground at the Facility. The TSI was an "asbestos-containing waste material," as defined by OAR 340-248-0010(12), because it was waste from an asbestos abatement project. This is a Class I violation according to OAR 340-012-0054(1)(s). DEQ hereby assesses a $16,000 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 $32,000. The determination of the civil penalties are attached as Exhibit Nos. 1 and 2 and incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**.

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[1] OAR 340-248-0110(3) was amended and renumbered as OAR 340-248-0110(4), effective November 15, 2018. The amendments were not substantive and do not affect the penalty.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

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

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

5/15/2020
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. The violation involved 40 linear feet of asbestos-containing material (ACM), which corresponds to moderate magnitude according to OAR 340-012-0135(1)(h)(B). Respondent removed 40 linear feet of thermal system insulation (TSI) that contained approximately 75% Chrysotile asbestos. Pursuant to OAR 340-012-0135(1)(h)(D), the magnitude is increased by one level because the material was comprised of more than five percent asbestos.

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 0 according to OAR 340-012-0145(4)(a), because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent acted with actual knowledge of the requirement. Respondent's principal, Jaime Romero, previously worked for a company that was cited for removing asbestos-containing TSI from a furnace and ductwork without a DEQ license and openly accumulating the waste material (Case No. AQ/AB-NWR-2016-119). Mr. Romero

was the lead worker on the project, and DEQ staff specifically informed him of the applicable asbestos abatement requirements. When Respondent removed asbestos-containing TSI during its renovation project despite not being licensed to do this work, it acted with actual knowledge of the requirement.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). The property owner hired a licensed abatement contractor to conduct abatement and decontamination 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:

Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $8,000 + [(0.1 x $8,000) x (0 + 0 + 0 + 8 + 2)] + $0
= $8,000 + [($800) x (10)] + $0
= $8,000 + $8,000 + $0
= $16,000

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. Respondent openly accumulated 40 linear feet of asbestos-containing thermal system insulation (TSI), which corresponds to moderate magnitude according to OAR 340-012-0135(1)(h)(B). Because the ACWM contained approximately 75% Chrysotile asbestos, the magnitude is increased by one level pursuant to OAR 340-012-0135(1)(h)(D). The TSI was commingled with construction debris at the Facility, so the actual amount of ACWM was likely larger.

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 0 according to OAR 340-012-0145(4)(a), because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent acted with actual knowledge of the requirement. Respondent's principal, Jaime Romero, previously worked for a company that was cited for removing asbestos-containing TSI from a furnace and ductwork without a DEQ license and openly accumulating the waste material (Case No. AQ/AB-NWR-2016-119). Mr. Romero was the lead worker on the project, and DEQ staff specifically informed him of the

applicable asbestos abatement requirements. When Respondent removed asbestos-containing TSI during its renovation project and openly accumulated the waste material, it acted with actual knowledge of the requirement.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). The property owner hired a licensed abatement contractor to conduct abatement and decontamination 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:

Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $8,000 + [(0.1 x $8,000) x (0 + 0 + 0 + 8 + 2)] + $0
= $8,000 + [($800) x (10)] + $0
= $8,000 + $8,000 + $0
= $16,000