



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

June 10, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5272

Minority Abatement Contractors, Inc.
c/o Corporation Service Company
1127 Broadway Street NE, Ste 310
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-WR-16-071

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,680 for failing to submit air clearance sample results to DEQ within 30 days of completing an asbestos abatement project. These violations occurred at: 103 SW Memorial Place and 1800 SW Campus Way in Corvallis, and 1406 SE Melrose Avenue in McMinnville. DEQ issued this penalty because you have received numerous notices of non-compliance and warning letters in the past for the failure to submit air clearance sample results to DEQ in a timely manner.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

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 it 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 in lieu of paying your penalty. Further detail regarding SEPs may be found on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.



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If you have any questions, please contact DEQ Environmental Law Specialist Susan Elworth, at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dottie Boyd, WR, Salem office, DEQ
Oregon State University, 664 SW 13th Avenue, Corvallis OR 97333
Linfield College, 900 SE Baker Street, McMinnville OR 97128
Cindy Troupe, AQ, HQ

1 notification form states that the project would involve the removal of 200 square feet of asbestos
2 material and would end on February 15, 2016.

3 7. On April 12, 2016, Respondent submitted to DEQ air clearance sample results for the
4 abatement project described in paragraph 6 above.

5 III. CONCLUSION

6 Respondent violated OAR 340-248-270(4)(k)(D) by failing to submit air clearance sampling
7 results to DEQ within 30 days after the completion date of the asbestos abatement project for three
8 projects, as described in section II above. OAR 340-248-0270(4)(k) requires that the person
9 performing an abatement project which involves more than 160 square feet of asbestos-containing
10 material, collect at least one air sample prior to removing the containment. These are Class III
11 violations, according to OAR 340-012-0054(3)(e). DEQ hereby assesses a \$1,680 civil penalty for these
12 violations.

13 IV. ORDER TO PAY CIVIL PENALTY

14 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is hereby
15 ORDERED TO pay a total civil penalty of \$1,680. The determination of the civil penalty is attached as
16 Exhibit 1 and is incorporated as part of this Notice.

17 If you do not file a request for hearing as set forth in Section V below, your check or money
18 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
19 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of
20 Fact, Conclusions and Order become final.

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

22 You have a right to a contested case hearing on this Notice, if you request one in writing. You
23 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
24 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
25 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters
26 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
27

1 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
2 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
3 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the
4 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
5 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
6 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
7 association.

8 Active duty service-members have a right to stay proceedings under the federal Service
9 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
10 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
11 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
12 <http://legalassistance.law.af.mil/content/locator.php>.

13 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
14 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
15 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
16 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
17 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
18 information submitted by you, as the record for purposes of proving a prima facie case.
19
20

21
22 June 10, 2016

23 Date

21
22 Saman Wheeler for

23 Leah K. Feldon, Manager
24 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: Failing to submit air clearance sampling results to DEQ within 30 days after the completion date of the asbestos abatement project, in violation of OAR 340-248-270(4)(k)(D).

CLASSIFICATION: These are Class III violations pursuant to OAR 340-012-0054(3)(e).

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 \$700 for a Class III violation in the matrix listed in OAR 340-012-0140(3)(b)(C) 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 6 according to OAR 340-012-0145(2)(a), because Respondent has five Class I or Class I equivalent violations in case nos. AQ/AB-NWR-11-010, AQ/AB-WR-15-090, AQ/AB-WR-15-102 and AQ/AB-NWR-15-178.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 was late submitting air clearance sample results for three separate projects, thus there were three occurrences of the violation.

"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 or failed to act intentionally with actual knowledge of the requirement. Respondent is a licensed asbestos abatement contractor and has knowledge of DEQ rules. Respondent has filed numerous air clearance sample reports with DEQ and knows that the report must be filed 30 days after completing a project. Since 2003, Respondent has received notification from DEQ regarding late submittal of air clearance sample results on at least 10 occasions. When Respondent failed to submit the results until after DEQ contacted Respondent regarding the results, it acted intentionally 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)(d), because Respondent eventually made some efforts to mitigate the violation. Respondent submitted the air clearance sample results.

"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 there is insufficient information on which to make an estimate.

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

$$\begin{aligned} &= \$700 + [(0.1 \times \$700) \times (6 + 0 + 2 + 8 - 2)] + \$0 \\ &= \$700 + [\$70 \times 14] + \$0 \\ &= \$700 + \$980 + \$0 \\ &= \$1,680 \end{aligned}$$