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

May 31, 2016

CERTIFIED MAIL No. 70142870000133735685

Metro Property Management, LLC
c/o B. B. Bouneff, Registered Agent
2722 NE 33rd Ave.
Portland, OR 97212

Re: Notice of Civil Penalty Assessment and Order
No. AQ/AB-WR-16-075

This letter is to inform you that DEQ has issued you a total civil penalty of $20,800 for allowing unlicensed persons to perform an asbestos abatement project and openly accumulating friable waste material from the project. You also disposed of the waste material at a facility that was not authorized to accept it. The violations occurred in March 2016 when your employee disturbed and removed asbestos-containing vinyl floor tile at a commercial property in Reedsport (the Facility).

DEQ issued this penalty because as 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 unlicensed abatement and open accumulation violations by hiring a licensed asbestos abatement contractor to conduct a cleanup and abate the remaining asbestos-containing materials. DEQ considered these efforts when calculating your civil penalties.

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. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at http://www.deq.state.or.us/programs/enforcement/SEP.htm, or by calling the number below to request a paper copy.

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.

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,

Susan Mathes for

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Martin Abts, Coos Bay Office, Western Region, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: METRO PROPERTY MANAGEMENT, LLC, an Oregon limited liability company, Respondent.	)))))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER NO. AQ/AB-WR-16-075

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, a property management company, was the "operator," as defined in OAR 340-248-0010(33), of the vacant commercial space located in the Umpqua Shopping Center at 1511 Highway Ave. in Reedsport, Douglas County, Oregon (the Facility).

2. On or about March 9-11, 2016, Respondent's employee handled and removed approximately 1,800 square feet of 9" by 9" vinyl floor tile at the Facility.

3. The vinyl floor tile at the Facility contained approximately 20% chrysotile "asbestos," as defined in OAR 340-248-0010(5).

4. Respondent's employee removed the siding in a manner that rendered it in a condition that hand pressure can crumble, pulverize or reduce to powder when dry, and therefore "friable" as defined in OAR 340-248-0010.

5. Neither Respondent nor its employee is licensed by DEQ to perform asbestos abatement projects.

6. The materials described in paragraphs 1 through 5 above became asbestos-containing waste material (ACWM) after being removed by Respondent's employee.

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7. On or about March 9-12, 2016, Respondent left the ACWM scattered on the floor inside the building, on the sidewalk, and in an uncovered dumpster at the Facility.

8. On or about March 12, 2016, Respondent or its agent disposed of the ACWM at the Reedsport waste transfer station.

9. On or about March 14, 2016, the ACWM was ultimately disposed of at the Roseburg landfill.

10. Neither the Reedsport waste transfer station nor the Roseburg landfill is authorized by DEQ to accept ACWM.

III. CONCLUSIONS

1. Respondent violated ORS 468A.715(1) and OAR 340-248-0110(2) by allowing an unlicensed person to perform an asbestos abatement project on a facility Respondent owns or operates, as described in Section II, paragraphs 1-5 above. This is a Class I violation according to OAR 340-012-0054(1)(p). DEQ hereby assesses a $10,400 civil penalty for this violation.

2. Respondent violated OAR 340-248-0205(1) by openly accumulating ACWM, as described in Section II, paragraphs 1-4 and 6-7 above. This is a Class I violation according to OAR 340-012-0054(1)(m). DEQ hereby assesses a $10,400 civil penalty for this violation.

3. On or about March 12-14, 2016, Respondent violated OAR 340-248-0280(5)(a) by failing to dispose of ACWM at a waste disposal site authorized by DEQ to accept ACWM, as described in Section II, paragraphs 1-4, 6, and 8-10 above. This is a Class I violation according to OAR 340-012-0054(1)(o). DEQ has not assessed a 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 $20,800. 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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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, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

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. You must ensure that DEQ receives the 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 exhibit(s), you must include them 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 mail the request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-5100**. 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, or you may represent yourself unless you are a corporation, agency or association.

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

If you fail to file a request for hearing in writing within 20 calendar days of receipt of the Notice, 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.

May 31, 2016
Date

Leah K. Feldon, 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: Allowing a person other than a licensed asbestos abatement contractor to perform an asbestos abatement project on a facility Respondent owns or operates in violation of ORS 468A.715(1) and OAR 340-248-0110(2).

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

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).

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:
BP + [(0.1 x BP) x (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 or about March 9-11, 2016, which is three days of violation.

"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 Real Estate Agency as a property manager, and should be generally aware of the presence of asbestos in older buildings and the need to hire a licensed abatement company to remove it. When Respondent directed or allowed an unlicensed employee to remove asbestos-containing vinyl floor tile, it failed to take reasonable care to avoid a foreseeable risk that it would violate asbestos requirements and potentially expose 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 hired a licensed asbestos abatement contractor to conduct abate the remaining ACM and clean up waste material from the unlicensed project.

"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. The cost of the cleanup and abatement ($13,700) was greater than the estimated cost of properly abating the asbestos-containing vinyl floor tile initially ($6,714).

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 + 2 + 4 + (-3))] + $0
= $8,000 + [($800) x (3)] + $0
= $8,000 + $2,400 + $0
= $10,400

EXHIBIT NO. 2

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

VIOLATION 2: Openly accumulating friable 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)(m).

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.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:
BP + [(0.1 x BP) x (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. Respondent openly accumulated ACWM from on or about March 9, 2016, when it began the unlicensed abatement project, through March 12, 2016, when the dumpster containing ACWM was removed from the Facility, for a total of four days of violation.

"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 Real Estate Agency as a property manager, and should be generally aware of the presence of asbestos in older buildings and the need to hire a licensed abatement company to remove it. When Respondent's employee openly accumulated friable ACWM from the unlicensed abatement project at the Facility, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate asbestos requirements and potentially expose 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 hired a licensed asbestos abatement contractor to conduct clean up the ACWM and abate the remaining asbestos-containing material.

"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. The cost of the cleanup and abatement ($13,700) was greater than the estimated cost of properly abating the asbestos-containing vinyl floor tile initially ($6,714).

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 + 2 + 4 + (-3))] + $0
= $8,000 + [($800) x (3)] + $0
= $8,000 + $2,400 + $0
= $10,400