



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 9, 2016

CERTIFIED MAIL No. 70142870000133735715

Mauricio Alvarez
621 SE Francis Ave.
Gresham, OR 97080

Re: Notice of Civil Penalty Assessment and Order
No. AQ/AB-NWR-16-083

This letter is to inform you that DEQ has issued you a civil penalty of \$10,400 for allowing unlicensed persons to perform an asbestos abatement project by demolishing an unoccupied dwelling at your property in Damascus, Oregon (the Facility). The Facility contained thermal system insulation that was comprised of approximately 50% chrysotile asbestos. You failed to have an accredited inspector thoroughly survey the Facility for the presence of asbestos-containing material prior to the demolition activity, and allowed the waste from the unlicensed project to be openly accumulated at the property.

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 violations by hiring a licensed asbestos abatement contractor to conduct a cleanup. DEQ considered these efforts when calculating your civil penalty.

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.



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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,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Zeb Bates, Northwest Region, DEQ
Audrey O'Brien, Northwest Region, DEQ

1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a total civil penalty of \$10,400. The determination of the civil penalty is attached as
5 Exhibit No. 1 and 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,**
8 **Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty,
9 the Findings of Fact, Conclusions and Order become final.

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

11 You have a right to a contested case hearing on this Notice, if you request one in writing.
12 You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the
13 date you receive this Notice. If you have any affirmative defenses or wish to dispute any
14 allegations of fact in this Notice or attached exhibit, you must include them in your request for
15 hearing, as factual matters not denied will be considered admitted, and failure to raise a defense
16 will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests
17 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**
18 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204,** or fax it to **503-229-**
19 **5100.** An administrative law judge employed by the Office of Administrative Hearings will
20 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR
21 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
22 may represent yourself unless you are a corporation, agency or association.

23 Active duty service-members have a right to stay proceedings under the federal Service
24 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
25 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be
26 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
27 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

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

7
8 June 9, 2016

9 Date

8 Sarah Mucke for

9 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 persons 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 340-012-0130(3) because DEQ finds that the violation had a significant adverse impact on human health or the environment. DEQ does not have sufficient information to apply the selected magnitudes in OAR 340-012-0130(1)(h), thus DEQ cannot make a finding as to how much asbestos-containing material (ACM) was involved in the violation. However, the thermal system insulation involved was a highly friable material and was comprised of approximately 50% chrysotile asbestos. No water was used during the demolition and no other precautions were taken to minimize exposure of workers or the public to ACM. The violation occurred in a residential area, where members of the public could have been exposed to asbestos fibers.

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 approximately two days: February 13 and 14, 2016.
- "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. Prior to demolishing the unoccupied dwelling, Respondent should have conducted an asbestos survey to determine whether it contained ACM. When Respondent allowed unlicensed workers to demolish the residence that contained ACM, he 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 hired a licensed asbestos abatement contractor to conduct a cleanup at the property.
- "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 was greater than the cost of properly abating the ACM prior to demolition.

PENALTY CALCULATION:

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