



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 11, 2016

CERTIFIED MAIL No. 70142870000133782702

IRS Environmental of Portland, Inc.
c/o Bruce Korum, Registered Agent
777 SW Armco Ave.
Hillsboro, OR 97123

Re: Notice of Civil Penalty Assessment and Order
No. AQ/AB-NWR-16-069

This letter is to inform you that DEQ has issued you a civil penalty of \$1,470 for failing to notify DEQ before a change in the completion date of your asbestos abatement project at a residence in Beaverton in January 2016.

DEQ issued this penalty because as a licensed asbestos abatement contractor, you are responsible for ensuring that you submit a complete and accurate notification to DEQ, including revising notifications when necessary. DEQ is particularly concerned about this violation, as you have been cited for numerous notification violations in the past. DEQ relies on project notifications in order to perform its oversight role, including conducting compliance inspections. In this instance, your failure to revise the notification to include the actual project completion date resulted in DEQ staff visiting the project site to perform an inspection only to discover that the project had been completed.

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.



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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
David F. Bartz, Jr., Schwabe, Williamson & Wyatt, 1211 SW Fifth Ave., Suite 1900
Portland, OR 97204

1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a total civil penalty of \$1,470. The determination of the civil penalty is attached as
5 Exhibit No. 1 and is 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
9 May 11, 2016
Date

Sarah Wheeler for
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: Failing to notify DEQ before a change in the scheduled completion date of an asbestos abatement project, in violation of OAR 340-248-0260(1)(f).

CLASSIFICATION: This is a Class III violation pursuant to OAR 340-012-0054(3)(d) because Respondent failed to revise a notification of an asbestos abatement project when necessary.

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) because Respondent violated an asbestos statute or rule and is not a residential owner-occupant.

"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 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had two Class I violations and one Class II violation in Case No. AQ/AB-WR-09-212, one Class II violation in Case No. AQ/AB-NWR-10-239, one Class II violation in Case No. AQ/AB-WR-11-136, and one Class II violation in AQ/AB-WR-14-217.

"H" is Respondent's history of correcting prior significant actions and receives a value of -2 according to OAR 340-012-0145(3)(a), because Respondent corrected all violations cited as prior significant actions.

"O" is whether or not the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. Respondent failed to submit a revised notification when it completed the asbestos abatement project, on or about January 26, 2016.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent is a licensed asbestos abatement contractor and has knowledge of DEQ rules regarding notification requirements for asbestos abatement projects. Respondent previously received penalties for notification violations in Case Nos. AQ/AB-WR-09-212, AQ/AB-NWR-10-239, AQ/AB-WR-11-136, AQ/AB-WR-14-217, and AQ/AB-WR-15-099. Additionally, Respondent has received

numerous warning letters for various notification violations. Despite this familiarity with the rules and history of enforcement, Respondent failed to ensure that it revised this notification. As a result of this failure, DEQ staff visited the project site on January 27, 2016 to perform a compliance inspection only to discover that the project had been completed.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f), because the violation or the effects of the violation could not be corrected or minimized.

"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:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$700 + [(0.1 \times \$700) \times (5 + (-2) + 0 + 8 + 0)] + \$0 \\ &= \$700 + [(\$70) \times (11)] + \$0 \\ &= \$700 + \$770 + \$0 \\ &= \$1,470 \end{aligned}$$