



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

April 28, 2016

CERTIFIED MAIL No. 70142870000133783228

Alumni Construction LLC
c/o Nathan Robert Armstrong, Registered Agent
900 NE 181st Avenue
Portland, OR 97230

Re: Notice of Civil Penalty Assessment and Order
No. AQ/AB-NWR-16-059

This letter is to inform you that DEQ has issued you a total civil penalty of \$17,600 for allowing unlicensed persons to perform an asbestos abatement project, and openly accumulating friable waste material from the project. In addition, DEQ cited you, without civil penalty, for failing to submit an asbestos abatement project notification prior to removing initially non-friable asbestos material. The violations occurred in December 2015 when your employees or agents disturbed and removed asbestos-containing siding while renovating a residence in Portland (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 both violations by hiring a licensed asbestos abatement contractor to conduct a cleanup and abate the remaining asbestos-containing siding. 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.



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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: Killian Condon, Northwest Region, DEQ
Audrey O'Brien, Northwest Region, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 ALUMNI CONSTRUCTION, LLC,) ASSESSMENT AND ORDER
5 an Oregon limited liability company,)
6 Respondent.) NO. AQ/AB-NWR-16-059

7 I. AUTHORITY

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

11 II. FINDINGS OF FACT

12 1. At all material times, Respondent was the “operator,” as defined in OAR 340-
13 248-0010(33), of the single family home located at 1707 SE Reedway Street in Portland,
14 Multnomah County, Oregon (the Facility).

15 2. Respondent is a general contractor licensed by the Oregon Construction
16 Contractors Board.

17 3. The exterior siding material at the Facility contained approximately 20%
18 chrysotile “asbestos,” as defined in OAR 340-248-0010(5).

19 4. On or before December 15, 2015, Respondent began “renovation” activities, as
20 defined in OAR 340-248-0010(36), at the Facility by altering interior and exterior facility
21 components.

22 5. On or about December 15, 2015, Respondent’s employees or agents disturbed or
23 removed approximately 168 square feet of asbestos-containing siding material from the south
24 exterior of the Facility.

25 6. Respondent’s employees or agents removed the siding in a manner that rendered
26 it in a condition that hand pressure can crumble, pulverize or reduce to powder when dry, and
27 therefore “friable” as defined in OAR 340-248-0010(25).

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

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

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

18 Active duty service-members have a right to stay proceedings under the federal Service
19 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
20 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be
21 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
22 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

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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.

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8 April 28, 2016

9 Date

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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: 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:
$$BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$$

"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 was only one but occurrence of the violation. The unlicensed asbestos abatement project occurred on one day: December 15, 2015.

"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 Construction Contractors Board as a general contractor, and is generally aware of asbestos requirements. Prior to beginning the siding removal, Respondent's representative, Nathan Armstrong, contacted DEQ to find out the requirements for removing non-friable asbestos containing siding, and DEQ staff informed him that the material should be removed in a manner that ensured it remained non-friable. When Respondent allowed unlicensed workers to disturb and remove ACM during the renovation project in a manner that rendered it friable, Respondent 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 and abate the remaining asbestos-containing siding.

"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 was greater than the cost of removing the siding in a non-friable manner.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 4 + (-3))] + \$0 \\ &= \$8,000 + [(\$800) \times (1)] + \$0 \\ &= \$8,000 + \$800 + \$0 \\ &= \$8,800 \end{aligned}$$

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:
$$BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$$

"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 was only one but occurrence of the violation. Respondent openly accumulated ACWM on one day: December 15, 2015.

"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 Construction Contractors Board as a general contractor, and is generally aware of asbestos requirements. Prior to beginning the siding removal, Respondent's representative, Nathan Armstrong, contacted DEQ to find out the requirements for removing non-friable asbestos containing siding, and DEQ staff informed him that the material should be removed in a manner that ensured it remained non-friable, and properly packaged and disposed. When Respondent's workers openly accumulated friable ACWM from the unlicensed abatement project on the ground at the Facility, Respondent 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 clean up the ACWM and abate the remaining asbestos-containing siding.

"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 was greater than the cost of removing the siding in a non-friable manner.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 4 + (-3))] + \$0 \\ &= \$8,000 + [(\$800) \times (1)] + \$0 \\ &= \$8,000 + \$800 + \$0 \\ &= \$8,800 \end{aligned}$$