



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

May 29, 2020

CERTIFIED MAIL No.: 7017 1450 0000 8310 2483

Frederick Homes, LLC  
c/o Lisa Howard, Registered Agent  
8720 N. Hamlin  
Portland, OR 97217

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/AB-NWR-2020-062

***DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.***

This letter is to inform you that DEQ has issued you a civil penalty of \$15,127 for allowing a contractor that is not licensed by DEQ to perform an asbestos abatement project at a residence you own in Portland (the Facility). The violation occurred in September 2019 when the contractor removed asbestos-containing flooring materials while renovating the Facility.

DEQ issued this penalty because as the owner 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.

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

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us)

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.

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The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review 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 instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

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,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell", written in a cursive style.

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

Cc: Kara Master, Portland Office, DEQ  
Audrey O'Brien, Portland Office, DEQ  
Accounting, DEQ

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

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 FREDERICK HOMES, LLC, ) ASSESSMENT AND ORDER  
5 an Oregon limited liability company, )  
6 Respondent. ) NO. AQ/AB-NWR-2020-062

7  
8 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. At all material times, Respondent owned the vacant single family residence  
14 located at 722 NE Skidmore Street in Portland, Multnomah County, Oregon (the Facility).

15 2. On or before September 9, 2019, Respondent hired a contractor, Iron Fist  
16 Construction LLC, to perform renovation activities at the Facility.

17 3. On or about September 10, 2019, Iron Fist Construction, LLC removed sheet  
18 flooring material and subfloor from the back rooms at the Facility, which was a total area of  
19 approximately 175 square feet.

20 4. The speckled beige sheet flooring at the Facility contained approximately 20%  
21 chrysotile asbestos by weight.

22 5. The cream sheet flooring at the Facility contained approximately 14% chrysotile  
23 asbestos by weight.

24 6. Iron Fist Construction, LLC is not licensed by DEQ to perform asbestos  
25 abatement projects.

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1 III. CONCLUSION

2 On or about September 10, 2019, Respondent violated ORS 468A.710(1) and OAR 340-  
3 248-0110(2) by allowing a contractor that is not licensed by DEQ to perform an asbestos  
4 abatement project at a Facility Respondent owns, as described in Section II above. Specifically,  
5 Respondent allowed the contractor to remove and handle flooring materials which were  
6 "asbestos-containing materials," as defined by OAR 340-248-0010(8) because they contained  
7 more than 1% asbestos by weight. The removal and handling of the Materials was an "asbestos  
8 abatement project," as defined by OAR 340-248-0010(6) because it was part of the renovation of  
9 the Facility that involved the removal and handling of asbestos-containing materials with the  
10 potential to release asbestos fibers into the air. This is a Class I violation according to OAR 340-  
11 012-0054(1)(v). DEQ hereby assesses a \$15,127 civil penalty for this violation.

12 IV. ORDER TO PAY CIVIL PENALTY

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

15 Pay a civil penalty of \$15,127. The determination of the civil penalty is attached as Exhibit  
16 No. 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,**  
19 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you  
20 pay the penalty, the Findings of Fact, Conclusion 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.  
23 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
24 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
25 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not  
26 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
27 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your

1 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
2 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to  
3 [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge employed by the Office of  
4 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
5 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
6 attorney at the hearing, however you are not required to be. If you are an individual, you may  
7 represent yourself. If you are a corporation, partnership, limited liability company,  
8 unincorporated association, trust or government body, you must be represented by an attorney or  
9 a duly authorized representative, as set forth in OAR 137-003-0555.

10 Active duty Service members have a right to stay proceedings under the federal Service  
11 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
12 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
13 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
14 Department does not have a toll free telephone number.

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

21  
22  
23  
24 5/29/2020  
25 Date

24   
25 Kieran O'Donnell, Manager  
26 Office of Compliance and Enforcement  
27

EXHIBIT NO. 1

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

VIOLATION: Allowing an unlicensed contractor to perform an asbestos abatement project at a Facility Respondent owns, 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)(v).

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). Respondent allowed an unlicensed contractor to remove approximately 175 square feet of ACM at the Facility.

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 at least three days, September 10-12, 2019.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. Respondent purchased an older home to renovate and sell. Respondent reasonably should have known that older homes can contain asbestos building materials and that asbestos must be removed by a licensed abatement contractor.