



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

FAX (503) 229-5100

TTY: 711

May 9, 2017

CERTIFIED MAIL No. 70162140000024203174

Courtesy Restoration Inc.  
c/o Brent Aldinger, Registered Agent  
12752 SE Blackstone Ave.  
Happy Valley, OR 97086

Re: Notice of Civil Penalty Assessment and Order  
No. AQ/AB-NWR-2017-078

This letter is to inform you that DEQ has issued you a total civil penalty of \$6,000 for conducting an asbestos abatement project without being licensed by DEQ, and openly accumulating friable waste material. The violations occurred on September 27, 2016, when you disturbed and removed asbestos-containing flooring materials at an apartment building in Portland where you were performing a renovation (the Facility). You were also cited, without penalty, for failing to have an accredited inspector thoroughly survey the Facility for the presence of asbestos prior to performing the renovation activity.

DEQ issued this penalty because as the 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 perform an abatement and cleanup. DEQ considered these efforts when calculating your civil penalties.

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.

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.



Courtesy Restoration Inc.  
No. AQ/AB-NWR-2017-078  
Page 2

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,



Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement

Enclosures

cc: Courtesy Restoration Inc., c/o Trampus Story, 2008 C Street, Vancouver, WA 98663  
Zeb Bates, Portland Office, DEQ  
Audrey O'Brien, Portland Office, DEQ  
Shaumae Hall, Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 COURTESY RESTORATION INC. ) ASSESSMENT AND ORDER  
a Washington corporation, )  
5 ) NO. AQ/AB-NWR-2017-078  
Respondent. )  
6 )

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 apartment building known as “The Allendale” located at 730 SW Saint  
14 Clair Avenue in Portland, Multnomah County, Oregon (the Facility).

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

17 3. On or about September 27, 2016, Respondent began “renovation” activities, as  
18 defined in OAR 340-248-0010(36), at the Facility by removing and replacing carpet in the  
19 hallway on the first floor, which is altering an interior facility component.

20 4. On or about September 27, 2016, Respondent removed carpet from a hallway on  
21 the first floor at the Facility. Respondent pulled up a small amount of linoleum flooring, under  
22 80 square feet, which was underneath the carpet.

23 5. The backing on the linoleum flooring at the Facility contained approximately 40%  
24 Chrysotile “asbestos,” as defined in OAR 340-248-0010(5).

25 6. The asbestos-containing material (ACM) described in paragraphs 4 and 5 above  
26 was in a condition that hand pressure can crumble, pulverize or reduce to powder when dry, and  
27 was therefore “friable” under OAR 340-248-0010(25).

1 7. Respondent is not licensed by DEQ to perform asbestos abatement projects.

2 8. Respondent did not have an accredited inspector thoroughly survey the Facility  
3 for the presence of ACM prior to beginning renovation activities.

4 9. The ACM described in paragraphs 1 through 6 above became asbestos-containing  
5 waste material (ACWM) after being removed by Respondent.

6 10. On or about September 27, 2016, Respondent failed to adequately wet the  
7 ACWM to make sure they remained wet until delivered to an authorized landfill and package the  
8 ACWM in leak-tight containers such as two plastic bags each with a minimum thickness of 6  
9 millimeters.

10 11. On or about September 27, 2016, Respondent left the ACWM on the floor inside  
11 the Facility.

### 12 III. CONCLUSIONS

13 1. On or about September 27, 2016, Respondent violated ORS 468A.715(1) and  
14 OAR 340-248-0120(1) by conducting an asbestos abatement project without being licensed by  
15 DEQ, as described in Section II, paragraphs 1 through 8 above. This is a Class I violation  
16 according to OAR 340-012-0054(1)(n). DEQ hereby assesses a \$3,200 civil penalty for this  
17 violation.

18 2. On or before September 27, 2016, Respondent violated 340-248-0270(1) by  
19 failing to have an accredited inspector thoroughly survey the Facility for the presence of ACM  
20 prior to beginning renovation activities at a Facility that Respondent operated, as described in  
21 Section II, paragraphs 1 through 7 above. This is a Class I violation according to OAR 340-012-  
22 0054(1)(l). DEQ has not assessed a civil penalty for this violation.

23 3. On or about September 27, 2016, Respondent violated OAR 340-248-0205(1) by  
24 openly accumulating ACWM, as described in Section II, paragraphs 1-6 and 9-11 above. This is  
25 a Class I violation according to OAR 340-012-0054(1)(m). DEQ hereby assesses a \$2,800 civil  
26 penalty for this violation.

27 ///

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 \$6,000. The determination of the civil penalty is attached as  
5 Exhibit Nos. 1 and 2 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, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you  
9 pay the penalty, 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 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
13 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
14 Notice or attached exhibits, you must do so in your request for hearing, as factual matters not  
15 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
16 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your  
17 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
18 **600, Portland, Oregon 97232,** fax it to **503-229-5100** or email it to  
19 **DEQappeals@deq.state.or.us.** An administrative law judge employed by the Office of  
20 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
21 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
22 attorney at the hearing, however you are not required to be. If you are an individual, you may  
23 represent yourself. If you are a corporation, partnership, limited liability company,  
24 unincorporated association, trust or government body, you must be represented by an attorney or  
25 a duly authorized representative, as set forth in OAR 137-003-0555.

26 ///

27 ///

1 Active duty service-members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be  
4 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services  
5 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

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

12  
13  
14 May 9, 2017

15 Date

Sarah Wheeler

16 Sarah G. Wheeler, Acting Manager  
17 Office of Compliance and Enforcement  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

EXHIBIT NO. 1

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

VIOLATION 1: Conducting an asbestos abatement project without being licensed by DEQ in violation of ORS 468A.710(1) and OAR 340-248-0120(1).

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(h)(C), because the violation involved less than 80 square feet of asbestos-containing material.

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 \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) 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 occurrence of the violation. The unlicensed asbestos abatement project occurred on or about September 27, 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. Respondent is licensed by the Oregon Construction Contractors Board as a general contractor, and is generally aware of asbestos requirements and that flooring materials can contain asbestos. When Respondent removed asbestos-containing linoleum flooring during its renovation project, it failed to take reasonable care to avoid a foreseeable risk that it would violate asbestos requirements and potentially expose workers and Facility residents to asbestos fibers.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). Respondent did not hire an abatement contractor to abate the remaining asbestos-containing flooring at the Facility, but installed new carpeting over it.

"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:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 4 + 2)] + \$0 \\ &= \$2,000 + [(\$200) \times (6)] + \$0 \\ &= \$2,000 + \$1,200 + \$0 \\ &= \$3,200 \end{aligned}$$

EXHIBIT NO. 2

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

VIOLATION 3: 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 minor pursuant to OAR 340-012-0135(1)(h)(C), because the violation involved less than 80 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 \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) 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: September 27, 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. Respondent is licensed by the Oregon Construction Contractors Board as a general contractor, and is generally aware of asbestos requirements. When Respondent failed to properly package friable ACWM from the unlicensed abatement project and left the materials on the floor 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 Facility residents to asbestos fibers.

"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. The ACWM was disposed of the same day it was generated, so Respondent could not clean up the ACWM at the Facility.

"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:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$2,000 + [(\$200) \times (4)] + \$0 \\ &= \$2,000 + \$800 + \$0 \\ &= \$2,800 \end{aligned}$$