



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 19, 2017

CERTIFIED MAIL: 7016 2140 0000 2420 3167

Schwabe, Williamson & Wyatt
c/o David Bartz, Attorney for Respondent
1211 SW 5th Avenue, Suite 1900
Portland, OR 97204

CERTIFIED MAIL: 7016 2140 0000 2420 3150

Rose City Contracting, Inc.
c/o David Chaff, Registered Agent
29791 SW Kinsman Rd.
Wilsonville, OR 97070

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-2017-075

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$10,000 for failing to adequately wet friable asbestos-containing material during removal and for openly accumulating asbestos-containing waste material at a residential asbestos abatement project site, located in Oregon City.

DEQ issued this penalty because the asbestos abatement work practice violation and the open accumulation of asbestos-containing waste material described in the attached Notice could have released asbestos fibers into the air and exposed workers and the public to asbestos. 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. To protect the public from asbestos exposure, DEQ requires training and licensing for those who handle asbestos-containing material. The failure to employ the required protective asbestos abatement work practices presents a significant risk to public health and the environment.

DEQ appreciates your efforts to minimize the effects of the violations after DEQ's inspection of the project. DEQ considered these efforts when determining the amount of civil penalty.

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

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.

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 Kieran O'Donnell at 503-229-5012 or toll free in Oregon at 800-452-4011, extension 5012.

Sincerely,



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

Enclosures

cc: Zeb Bates, DEQ, NWR
Audrey O'Brien, DEQ, NWR
Shaumae Hall, DEQ, Accounting
Donald Hendrix, DEQ, AQ

1 DEQ hereby assesses a \$5,000 civil penalty for this violation.

2 2. Respondent has violated OAR 340-248-0205(1) by openly accumulating asbestos-containing
3 waste material, as described in Section II above. Specifically, Respondent scattered pieces of vinyl flooring
4 outside the containment area. The pieces of vinyl flooring located outside the containment area was
5 "asbestos-containing waste material," as defined by OAR 340-248-0010(12), because it is waste generated
6 from an asbestos abatement project. The Project was an "asbestos abatement project," as defined by OAR
7 340-248-0010(6) because it was a renovation activity at a private facility that included the removal and
8 handling of asbestos-containing material with the potential to release asbestos fibers. This is a Class I
9 violation, according to OAR 340-012-0054(1)(m). DEQ hereby assesses a \$5,000 civil penalty for this
10 violation.

11 IV. ORDER TO PAY CIVIL PENALTY

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

14 Pay a total civil penalty of \$10,000. The determination of the civil penalties are attached as Exhibit
15 Nos. 1 and 2 and are incorporated as part of this Notice.

16 If you do not file a request for hearing as set forth in Section V below, your check or money order
17 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
18 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty, the
19 Findings of Fact, Conclusions and Order become final.

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

21 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
22 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
23 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
24 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
25 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
26 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
27 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax

1 | it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
2 | employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
3 | Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
4 | represented by an attorney at the hearing, however you are not required to be. If you are an individual,
5 | you may represent yourself. If you are a corporation, partnership, limited liability company,
6 | unincorporated association, trust or government body, you must be represented by an attorney or a duly
7 | authorized representative, as set forth in OAR 137-003-0555.

8 | Active duty service-members have a right to stay proceedings under the federal Service
9 | Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
10 | 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
11 | online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
12 | <http://legalassistance.law.af.mil/content/locator.php>.

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

19 |
20 |
21 |
22 | May 19, 2017

23 | Date

22 | Sarah G. Wheeler

23 | Sarah G. Wheeler, Acting Manager
24 | 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 No.1: Failing to adequately wet friable asbestos-containing material during removal, in violation of OAR 340-248-0270(4)(e)(A).

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(h)(C) because the violation consisted of less than 80 square feet of asbestos-containing material. The violation consisted of approximately 75 square feet of asbestos-containing vinyl flooring 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 10 according to OAR 340-012-0145(2)(a), because Respondent has three Class I violations and two Class III violations in case no. AQ/AB-WR-07-121, one Class I violation in case no. AQ/AB-12-067, one Class I violation in case no. AQ/AB-WR-15-072, one Class II violation in case no. AQ/AB-WR15-103, three class I violations in case no. AQ/AB-NWR-16-001, and one Class I violation in case no. AQ/AB-NWR-2016-110.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether 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. Each day of violation constitutes a separate occurrence. The violation occurred on at least one day, October 5, 2016, the day of DEQ's inspection. Therefore, there was at least one occurrence of the violation.

"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 has been licensed by DEQ as a licensed asbestos abatement contractor for at least ten years. However, Respondent has a history of noncompliance with DEQ's asbestos rules. Specifically,

Respondent was similarly cited and penalized for work practice violations at least four times in the past ten years. Therefore, Respondent consciously disregarded a substantial and unjustifiable risk that its failure to adequately wet the material would result in a violation. In addition, considering Respondent's extensive history of noncompliance, the disregard of the risk represents a gross deviation from the standard of care a reasonable person would observe in the situation.

"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 mitigate the effects of the violation. Respondent wetted the asbestos-containing material it had removed after DEQ's inspection and continued to wet the remaining material before completing the Project.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. 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 the economic benefit from not applying water to the asbestos-containing removal was likely de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$2,000 + [(0.1 x \$2,000) x (10 + 0 + 0 + 8 + -3)] + \$0
= \$2,000 + (\$200 x 15) + \$0
= \$2,000 + \$3,000 + \$0
= \$5,000

EXHIBIT No. 2

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

- VIOLATION No.2: Openly accumulating asbestos-containing waste material, 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 consisted of less than 80 square feet of asbestos-containing material. Respondent openly accumulated small fragments of asbestos-containing waste material equaling less than 80 square feet of 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 10 according to OAR 340-012-0145(2)(a), because Respondent has three Class I violations and two Class III violations in case no. AQ/AB-WR-07-121, one Class I violation in case no. AQ/AB-12-067, one Class I violation in case no. AQ/AB-WR-15-072, one Class II violation in case no. AQ/AB-WR15-103, three class I violations in case no. AQ/AB-NWR-16-001, and one Class I violation in case no. AQ/AB-NWR-2016-110.
- "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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether 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. Each day of violation constitutes a separate occurrence. The violation occurred on at least one day, October 5, 2016, the day of DEQ's inspection. Therefore, there was at least one occurrence of the violation.
- "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 has been licensed by DEQ as a licensed asbestos abatement contractor for at least ten years. However, Respondent has a history of noncompliance with DEQ's asbestos rules. Specifically,

Respondent has been repeatedly cited and penalized for work practice and notification violations. Therefore, Respondent consciously disregarded a substantial and unjustifiable risk that its failure to keep all asbestos-containing waste material within containment would result in a violation. In addition, considering Respondent's extensive history of noncompliance, the disregard of the risk represents a gross deviation from the standard of care a reasonable person would observe in the situation.

"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 mitigate the effects of the violation. Respondent gathered all openly accumulated asbestos-containing waste material and properly wetted and packaged it in leak tight containers after DEQ's inspection.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. 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 the economic benefit from allowing the open accumulation of asbestos-containing waste material was likely de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$2,000 + [(0.1 x \$2,000) x (10 + 0 + 0 + 8 + -3)] + \$0
= \$2,000 + (\$200 x 15) + \$0
= \$2,000 + \$3,000 + \$0
= \$5,000