



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

July 1, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 3129

Red Bull Development, LLC
c/o Daniel Kim, Registered Agent
12984 SW Pineview St.
Tigard, OR 97224

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-16-077

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$25,709 for performing an asbestos abatement project without a license and for disposing of asbestos-containing waste material at an unauthorized location. In addition, DEQ cited you, without penalty, for failing to perform an asbestos survey prior to commencing a renovation project and failing to submit to DEQ an asbestos abatement project notification.

DEQ issued this penalty because the violations 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. DEQ requires that an accredited inspector perform an asbestos survey prior to commencing a renovation project at a commercial building in order to identify potentially harmful asbestos-containing material before it is disturbed. To protect the public from asbestos exposure, DEQ requires training and licensing for those who handle asbestos-containing material. In addition, DEQ requires generators of asbestos containing waste material to properly dispose of these materials at authorized locations. The failure to obtain the proper licensing and the failure to properly dispose of asbestos-containing waste material presents a significant risk to public health and the environment.

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.

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 Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Zeb Bates, NWR, DEQ
Cindy Troupe, AQ, HQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

| | | | |
|---|---------------------------|---|---------------------------|
| 3 | IN THE MATTER OF: |) | NOTICE OF CIVIL PENALTY |
| 4 | RED BULL DEVELOPMENT, LLC |) | ASSESSMENT AND ORDER |
| 5 | |) | CASE NO. AQ/AB-NWR-16-077 |
| 6 | Respondent. |) | |

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,
10 468A, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and
11 248.

12 II. FINDINGS OF FACT

- 13 1. On or before February 11, 2016, Respondent performed a renovation project (the Project) at
- 14 a commercial office building located at 121 NW First Street, in Gresham, Oregon 97030 (the Facility).
- 15 2. The Project entailed the removal of approximately 250 square feet of green vinyl floor tile.
- 16 3. The green vinyl floor tile was approximately 3% chrysotile asbestos by weight.
- 17 4. Respondent is not licensed by DEQ as an asbestos abatement contractor.
- 18 5. Respondent did not have an accredited inspector perform an asbestos survey prior to
- 19 commencing the Project.
- 20 6. Respondent did not submit to DEQ notification that it would remove and handle asbestos
- 21 containing material at the Facility during the Project.
- 22 7. On or before February 11, 2016, Respondent disposed of unenclosed renovation debris from
- 23 the Project, including fragmented pieces of vinyl floor tile, at Environmentally Conscious Recycling,
- 24 Inc., a material recovery facility located at 12409 NE San Rafael St., in Portland (the MRF).
- 25 8. The MRF is not permitted to accept asbestos containing material.

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1 III. CONCLUSIONS

2 1. Respondent has violated ORS 468A.710(1) and OAR 340-248-0110(3) by performing an
3 asbestos abatement project without a DEQ asbestos abatement license, as described in Section II above.
4 The Project was an “asbestos abatement project,” as defined by OAR 340-248-0010(6), because it
5 involved the removal and handling of asbestos-containing material with the potential of releasing
6 asbestos fibers into the air. The green vinyl floor tile was “asbestos-containing material,” as defined by
7 OAR 340-248-0010(8), because it contained more than 1% asbestos by weight. This is a Class I
8 violation according to OAR 340-012-0054(1)(n). DEQ hereby assesses a \$12,800 civil penalty for this
9 violation.

10 2. Respondent has violated OAR 340-248-0280(5) by failing to dispose of asbestos-containing
11 waste material at an authorized location, as described in Section II above. The unenclosed renovation
12 debris, which included fragmented pieces of green vinyl flooring, was “asbestos-containing waste
13 material,” as defined by OAR 340-248-0010(12), because it was asbestos abatement project waste. The
14 Respondent failed to properly dispose of the renovation debris when it deposited it at the MRF, a
15 location not authorized to receive asbestos-containing waste material. This is a Class I violation
16 according to OAR 340-012-0054(1)(o). DEQ hereby assesses a \$12,909 civil penalty for this violation.

17 3. Respondent has violated OAR 340-248-0270(1) by failing to have an accredited inspector
18 perform an asbestos survey on the Facility prior to commencing the Project, as described in Section II
19 above. This is a Class I violation pursuant to OAR 340-248-0054(1)(l). DEQ has not assessed a civil
20 penalty for this violation.

21 4. Respondent has violated OAR 340-248-0260(1) by failing to submit to DEQ a notification
22 of an asbestos abatement project at least ten days before commencing the Project, as described in
23 Section II above. This is a Class II violation pursuant to OAR 340-248-0054(2)(l). DEQ has not
24 assessed a civil penalty for this violation.

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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 \$25,709. The determination of the civil penalties are attached as
5 Exhibits Nos. 1 and 2 and are 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 order
7 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
8 **811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of Fact,
9 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. You
12 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
13 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
14 this Notice or attached exhibits you must include them in your request for hearing, as factual matters
15 not 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 mail the request
17 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
18 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the
19 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
20 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
21 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
22 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 found
26 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
27 <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 OAR
3 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
4 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
5 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
6 information submitted by you, as the record for purposes of proving a prima facie case.
7
8
9

10 July 1, 2016

11 Date

10 Sarah Muehlen for

11 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 No. 1: Performing an asbestos abatement project without a license issued by DEQ, in violation of ORS 468A.710(1) and OAR 340-248-0110(3).

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

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. The violation included approximately 250 square feet of asbestos containing green vinyl floor tile.

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 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 is a separate occurrence. The violation occurred on at least one day on or prior to February 11, 2016. Therefore there was at least one occurrence of the violation.

"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 has been a licensed contractor by the Oregon Construction Contractors Board (CCB) since 2008. The CCB tests its licensees on how to identify asbestos and DEQ's asbestos abatement licensing requirement. Chapter 9 of the CCB's Reference Manual specifically lists vinyl floor tile as a material that may commonly contain asbestos. Therefore, Respondent failed to take reasonable care to avoid the foreseeable risk of violation by removing the asbestos-containing material without a DEQ license.

"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).

"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 DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from delaying paying the appropriate notification fee.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 0 + 4 + 2)] + \$0
= \$8,000 + [\$800 x 6] + \$0
= \$8,000 + \$4,800 + \$0
= \$12,800

EXHIBIT No. 2

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

VIOLATION No. 2: Disposing of asbestos containing waste material at an unauthorized location, in violation of OAR 340-248-0280(5).

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

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. The violation included approximately 250 square feet of asbestos containing waste material, including the green vinyl floor tile.

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 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 is a separate occurrence. The violation occurred on at least one day on or prior to February 11, 2016. Therefore there was at least one occurrence of the violation.

"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 has been a contractor licensed by the Oregon Construction Contractors Board (CCB) since 2008. The CCB tests its licensees on how to identify asbestos and DEQ's asbestos disposal requirements. Chapter 9 of the CCB's Reference Manual specifically lists vinyl floor tile as a material that may commonly contain asbestos. Therefore, Respondent failed to take reasonable care to avoid the foreseeable risk of violation by disposing of asbestos-containing waste material at an unauthorized location.

"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).

"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 \$109. This is the amount Respondent gained by avoiding spending an additional \$193 to properly dispose of the material as asbestos containing material. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 0 + 4 + 2)] + \$109
= \$8,000 + [\$800 x 6] + \$109
= \$8,000 + \$4,800 + \$109
= \$12,909