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

July 2, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 3497

AZH Painting, Inc.
SW&W Registered Agents, Inc., Registered Agent
1211 S.W. 5th Avenue, Suite 1900
Portland OR 97204

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-2020-064

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 $25,600 for conducting an asbestos abatement project without a license and for openly accumulating asbestos-containing material at a commercial property located at 1205 E. Powell Boulevard in Gresham. Specifically, you removed sections of walls, flooring, and ceilings covered in popcorn texture from four of the 1st floor units of the building and you stored these materials in piles and open bags inside the building and in a dumpster. In addition, DEQ cited you, without penalty, for failing to have the building surveyed by an accredited inspector for asbestos-containing materials prior to the renovation.

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 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 and prohibits open accumulation of asbestos-containing waste material. The open accumulation of asbestos-containing waste material presents a significant risk to public health and the environment.

DEQ appreciates your efforts to minimize the impacts of the violation by hiring a licensed abatement contractor to properly decontaminate the units and package and dispose the asbestos-containing waste materials. 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 Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Zeb Bates, NWR, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: AZH PAINTING INC. doing business as ACE BUILDING MAINTENANCE, an inactive registered assumed business name, Respondent.	)))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. AQ/AB-NWR-2020-064

I. AUTHORITY

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

II. FINDINGS OF FACT

1. Sometime prior to January 2019, Respondent removed flooring, interior walls, and approximately 300 square feet of popcorn textured sections of gypsum board ceiling from four first floor units of a commercial building located at 1205 E. Powell Boulevard in Gresham (the Property).

2. On January 4, 2019, DEQ conducted an inspection of the Property. At the time of the inspection, Respondent was storing renovation debris, including broken pieces of gypsum board with popcorn texture in piles and open bags inside, and a closed-lidded dumpster outside at the Property.

3. On January 9, 2019, an accredited inspector collected samples of the renovation debris stored at the Property, including pieces of gypsum board with popcorn texture. The popcorn texture material contained 4% Chrysotile asbestos by weight.

4. On January 19 through 22, 2019, a licensed asbestos abatement contractor packaged and disposed of the renovation debris stored at the Property as asbestos-containing waste material (ACWM).

5. Prior to the removal of the interior floors, walls and ceilings, Respondent did not have an accredited inspector survey the building for the presence of asbestos-containing materials (ACM).

6. As of the date of this Notice, Respondent has not applied for a license under OAR 340-248-0120 or for a certification under OAR 340-248-0130.

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III. CONCLUSIONS

1. The Property is a "facility," as defined by OAR 340-248-0010(20) because it is a building or structure.

2. The removal of the interior floors, walls, and ceilings was a "renovation," as defined in OAR 340-248-0010(39) because it altered one or more facility components.

3. The popcorn texture material was ACM, as defined by OAR 340-248-0010(8), because it contained more than one-percent asbestos by weight.

4. The removal of the gypsum board with popcorn texture was an "asbestos abatement project," as defined by OAR 340-248-0010(6), because it was a renovation that involved the removal and handling of ACM with the potential of releasing asbestos fibers into the air when the gypsum board was removed in pieces and then stored in piles or open bags.

5. The waste described in Section II, paragraph 2 was ACWM, as defined by OAR 340-248-0010(9), because it was generated during an asbestos abatement project.

6. Respondent was an "operator," as defined by OAR 340-248-0010(35), because it controlled or supervised the renovation.

7. Respondent violated OAR 340-248-0110(3) by conducting an asbestos abatement project without a license or certification from DEQ. This is a Class I violation according to OAR 340-012-0054(1)(t). DEQ assesses an $9,600 civil penalty for this violation.

9. Respondent violated OAR 340-248-0205(1) by openly accumulating ACWM. Specifically, Respondent openly accumulated ACWM when it stored the broken gypsum board with the popcorn texture in open bags, in piles, and in the dumpster at the Property. This is a Class I violation according to OAR 340-012-0054(1)(s). DEQ assesses a $16,000 civil penalty for this violation.

10. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector survey the facility for ACM prior to the renovation. This is a Class I violation according to OAR 340-012-0054(1)(r). DEQ did not assess a civil penalty for this violation.

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ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO pay a total civil penalty of $25,600. The determinations of the civil penalty are attached as Exhibits 1 and 2 and are incorporated as part of this Notice. If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**.

VI. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing but it is not required. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, per OAR 137-003-0555.

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

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

7/2/2020
Date

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION 1: Performing an asbestos abatement project without a license or certification from DEQ, in violation of OAR 340-248-0110(3).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(A) because the asbestos abatement project involved more than 160 square feet of asbestos-containing material (ACM). Respondent removed approximately 300 square feet of textured celling.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: BP + [(0.1 x BP) x (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). This asbestos violation is not classified under any other penalty matrix as Respondent is not a residential owner occupant.

"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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). It is unknown on how many days Respondent performed the asbestos abatement project.

"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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent has been a Construction Contractors Board (CCB) licensed contractor with the State of Oregon since 2004. The training required by the CCB provides information on asbestos. Based on this training, Respondent reasonably should have known that asbestos could be present in building materials such as ceiling texture. When Respondent failed to ensure that it did not remove the textured ceiling during the renovation,

Respondent failed to take reasonable care to avoid the foreseeable risk of conducting an asbestos abatement project without a 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)(d) because Respondent eventually made some efforts to to minimize the effects of the violation. After DEQ's inspection, Respondent hired a licensed asbestos abatement contractor to properly decontaminate, package and dispose of the ACWM.

"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 as any benefit Respondent gained from delaying, from November 2018 until January 2019, hiring an asbestos abatement contactor to remove the ceiling would be de minimus.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $8,000 + [(0.1 x $8,000) x (0 + 0 + 0 + 4 - 2)] + $0
= $8,000 + ($800 x 2) + $0
= $8,000 + $1,600 + $0
= $9,600

EXHIBIT 2

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

VIOLATION 2: Open accumulating ACWM, in violation of OAR 340-248-0205(1).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(A) because Respondent open accumulated more than 160 square feet of ACWM. The notification for the abatement and decontamination project received by DEQ stated that 2,736 square feet of ACWM was to be packaged and disposed of.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: BP + [(0.1 x BP) x (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). This asbestos violation is not classified under any other penalty matrix as Respondent is not a residential owner occupant.

"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 4 according to OAR 340-012-0145(4)(d) because there was more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent began removing the ceiling in November 2018 and a licensed asbestos abatement contractor began the proper packaging and disposal of the ACWM in January 2019. The ACWM was openly accumulated from November 2018 until January 2019.

"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. Reckless means Respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or the circumstance existed. Respondent has been a Construction Contractors Board (CCB) licensed contractor with the state of Oregon since 2004. The training required by the contractor's board provides information on asbestos. Based on this training, Respondent should have known that asbestos could be present in common construction materials including gypsum board, joint compound and texture. Additionally, on multiple occasions

starting in July 2018, the company contacted by Respondent to haul the dumpster informed Respondent that the dumpster contained suspected ACM and that the waste could not be disposed of as demolition debris. The disposal company also informed Respondent that the texture needed to be properly packaged and disposed of by a licensed abatement contractor if determined to be asbestos-containing. When Respondent continued to store the gypsum board in the dumpster and in other open locations, it disregarded the risk that it would be improperly storing the ACWM, which was a gross deviation from the standard of care a reasonable person would have observed in the same situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of --2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to correct the violation. After DEQ's inspection, Respondent hired a licensed asbestos abatement contractor to properly decontaminate, package and dispose of the ACWM.

"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 as any costs delayed or avoided as a result of this violation, were captured in Exhibit 1.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $8,000 + [(0.1 x $8,000) x (0 + 0 + 4 + 8 - 2)] + $0
= $8,000 + ($800 x 10) + $0
= $8,000 + $8,000 + $0
= $16,000