



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 10, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 3534

Yagnapurush Investments LLC
Chetankumar Jagdish Patel, Registered Agent
6627 N.W. 165th Avenue
Portland OR 97229

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-WR-2020-059

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 \$18,200 for the removal of approximately 500 square feet of wall and flooring materials that contained chrysotile asbestos from your hotel located at 1713 N.W. 21st Street in Lincoln City, Oregon. Without a license or certification issued by DEQ, you removed asbestos containing materials from 28 guest rooms at your hotel, leaving the material in open bags or on the floor of the guest rooms and adjacent hallway. In addition, DEQ cited you, without penalty, for failing to wet the material during its removal and failing to have the hotel surveyed for asbestos prior to the renovation.

DEQ requires that asbestos abatement projects be performed only by trained and licensed contractors to protect the public from exposure to asbestos fibers. Licensed asbestos abatement contractors are trained in the methods of proper removal, packaging labeling, and disposal of asbestos containing materials. Asbestos fibers are a respiratory hazard proven to cause lung cancer, mesothelioma and asbestosis, making it a danger to public health for which there is no known safe level of exposure.

DEQ appreciates your efforts to minimize the impacts of the violation by hiring a licensed abatement contractor to properly package and dispose of the remaining asbestos containing 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,

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

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dottie Boyd, WR, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
YAGNAPURUSH INVESTMENTS, LLC) ASSESSMENT AND ORDER
Respondent.) CASE NO. AQ/AB-WR-2020-059

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. Since May 2019, Respondent has owned a hotel property located at 1713 N.W. 21st Street in Lincoln City, Oregon (the Property).

2. On or before January 6, 2020, Respondent removed eight-foot by two-foot sections of wall material containing joint compound from 28 rooms in the hotel, along with sections of vinyl flooring in several of those 28 rooms. Respondent used hand tools to remove the wall sections and a scraper to remove the vinyl flooring without wetting these materials during removal over several days.

3. Following the removal, Respondent stored the resulting debris in open bags or on the floor in either the 28 renovated rooms or in the adjacent hallway.

4. On January 8, 2020, an accredited inspector collected samples of the wall and vinyl flooring material stored at the Property. The analysis of the samples show the joint compound in the wall material and the vinyl flooring contained 3% and 20% Chrysotile asbestos by weight, respectively.

5. On February 3 through 8, 2020, a licensed asbestos abatement contractor properly packaged the debris being stored at the Property and disposed of the debris as asbestos-containing waste material (ACWM).

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

7. 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.

III. CONCLUSIONS

1 1. The hotel is a “facility,” as defined by OAR 340-248-0010(20) because it is a building
2 or structure.

3 2. The removal of the walls and vinyl flooring was a “renovation,” as defined in OAR 340-
4 248-0010(39) because it altered one or more facility components.

5 3. The joint compound and the vinyl flooring were “asbestos-containing material,” as
6 defined by OAR 340-248-0010(8) because each contained more than one-percent asbestos by weight.

7 4. The removal of the joint compound and vinyl flooring was an “asbestos abatement
8 project,” as defined by OAR 340-248-0010(6) because it was a renovation that involved the removal,
9 handling and disposal of ACM with the potential of releasing asbestos fibers into the air when the
10 flooring was removed with a scrapper, and the flooring and walls were removed without being wetted
11 and then stored in unsealed bags.

12 5. The debris described in Section II, paragraph 3 was “asbestos containing waste
13 material,” as defined by OAR 340-248-0010(9) because it was generated during an asbestos abatement
14 project.

15 6. Respondent violated OAR 340-248-0110(2) by allowing a person to perform an asbestos
16 abatement project without a license or certification from DEQ, when it removed asbestos containing
17 materials from the Property as described in Section II above. This is a Class I violation according to
18 OAR 340-012-0054(1)(t). DEQ assesses an \$8,800 civil penalty for this violation.

19 7. Respondent violated OAR 340-248-0205(1) by open accumulating ACWM.
20 Specifically, Respondent openly accumulated ACWM when it maintained the wall and flooring debris
21 in open packaging at the Property. This is a Class I violation according to OAR 340-012-0054(1)(s).
22 DEQ assesses a \$9,600 civil penalty for this violation.

23 8. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector
24 survey the facility for ACM prior to the renovation. This is a Class I violation according to OAR 340-
25 012-0054(1)(r). DEQ did not assess a civil penalty for this violation.

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1 9. Respondent violated OAR 340-248-0270(8)(c) when it failed to wet the ACM when the
2 ACM was removed. This is a Class I violation according to OAR 340-012-0054(1)(r). DEQ did not
3 assess a civil penalty for this violation.

4 IV. ORDER TO PAY CIVIL PENALTY

5 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
6 hereby ORDERED TO pay a total civil penalty of \$18,400. The determinations of the civil penalty are
7 attached as Exhibits 1 and 2 and are incorporated as part of this Notice. If you do not file a request for
8 hearing as set forth in Section V below, your check or money order must be made payable to "**State**
9 **Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street,**
10 **Suite 600, Portland, Oregon 97232.**

11 VI. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

12 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
13 must receive your request **within 20 calendar days** from the date you receive this Notice. If you have
14 any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits,
15 you must do so in your request, as factual matters not denied will be considered admitted, and failure to
16 raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about
17 requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement,**
18 **700 NE Multnomah Street, Suite 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 Administrative
20 Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and
21 OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing but it is
22 not required. If you are an individual, you may represent yourself. If you are a corporation,
23 partnership, limited liability company, unincorporated association, trust or government body, you must
24 be represented by an attorney or a duly authorized representative, per OAR 137-003-0555.

25 Active duty Service members have a right to stay proceedings under the federal Service
26 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-552-8260, the
27 Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal

1 Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not
2 have a toll free telephone number.

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

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10
11 7/10/2020
12 Date

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12 Kieran O'Donnell, Manager
13 Office of Compliance and Enforcement
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EXHIBIT 1

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

- VIOLATION 1: Allowing a person to perform an asbestos abatement project without a license or certification from DEQ, in violation of OAR 340-248-0110(2).
- 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 ACM. There was approximately 500 square feet of wall material and flooring removed by Respondent.
- 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). 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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent removed the walls and flooring over the course of several days.
- "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. Prior to beginning the renovation project, Respondent contacted the local disposal company to obtain a dumpster. The paperwork provided to Respondent included information on the types of materials that could contain ACM. Based on this information, Respondent reasonably should have known that asbestos could be present in the materials it removed from the hotel and that its employee could not remove, handle or dispose of those materials.

"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 took reasonable affirmative efforts to minimize the effects of the violation. Respondent hired a licensed asbestos abatement contractor to properly 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 hiring an asbestos abatement contractor for approximately one month would be de minimus.

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 + 2 + 2 - 3)] + \$0
= \$8,000 + (\$800 x 1) + \$0
= \$8,000 + \$800 + \$0
= \$8,800

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. There was approximately 500 square feet of wall material and flooring improperly packaged by Respondent.

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). 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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent began removing the walls and flooring on or about January 6 2020. A licensed asbestos abatement contractor began the proper packaging and disposal of the ACWM on February 3, 2020 and the ACWM was actually disposed of on February 5, 2020. The ACWM was openly accumulated from January 6th until February 3rd, for a total of 28 days.

"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. Prior to beginning the renovation project, Respondent contacted the local disposal company to obtain a dumpster. The paperwork provided to Respondent included information on the types of materials that could contain ACM and that ACM could not be disposed of in a dumpster. Based on this information, Respondent reasonably should have known that asbestos could be present in the materials it removed from the hotel and that it could not store those materials without proper packaging.

"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 took reasonable affirmative efforts to minimize the effects of the violation. Respondent hired a licensed asbestos abatement contractor to properly 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 3 + 2 - 3)] + \$0
= \$8,000 + (\$800 x 2) + \$0
= \$8,000 + \$1,600 + \$0
= \$9,600