



# 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

July 5, 2017

CERTIFIED MAIL No. 70162140000024204669

In Line Commercial Construction, Inc.  
c/o Bruce M. Weinsoft, Registered Agent  
6500 SW Macadam Ave. Suite 300  
Portland, OR 97239

Re: Notice of Civil Penalty Assessment and Order  
No. AQ/AB-NWR-2017-076

This letter is to inform you that DEQ has issued you a total civil penalty of \$27,200 for conducting an asbestos abatement project without being licensed by DEQ, and failing to dispose of asbestos-containing waste material at a waste disposal site authorized by DEQ to accept it. The violations occurred in July 2016 when you disturbed and removed asbestos-containing flooring materials at a building on the Oregon Health & Science University campus in Beaverton (the Facility) and improperly disposed of the project waste at the Farmington landfill in Aloha. 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 renovation activity, and for openly accumulating asbestos containing-waste material.

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, both at the Facility and the landfill. 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.

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.



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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: In Line Commercial Construction, Inc., Attn: Trygve Berge, PO Box 5837, Aloha, OR  
97006  
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	IN LINE COMMERCIAL	)	ASSESSMENT AND ORDER
5	CONSTRUCTION, INC.,	)	
6	an Oregon corporation,	)	NO. AQ/AB-NWR-2017-076
7		)	
8	Respondent.	)	

9 I. AUTHORITY

10 This Notice of Civil Penalty Assessment and Order is issued pursuant to Oregon Revised  
11 Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A, and Oregon  
12 Administrative Rules (OAR) Chapter 340, Divisions 011, 012 and 248.

13 II. FINDINGS OF FACT

14 1. At all material times, Respondent was the “operator,” as defined in OAR 340-  
15 248-0010(33), of the industrial building known as the “Colony Annex” on the Oregon Health &  
16 Science University campus located at 505 NW 185<sup>th</sup> Avenue in Beaverton, Washington County,  
17 Oregon (the Facility).

18 2. Respondent is a general contractor licensed by the Oregon Construction  
19 Contractors Board.

20 3. On or about June 13, 2016, Respondent or its agents began “renovation”  
21 activities, as defined in OAR 340-248-0010(36), at the Facility by altering interior facility  
22 components, including non-load-supporting walls and the concrete slab.

23 4. On or about July 6, 2016, Respondent or its agents began removing portions of  
24 the concrete slab using a wet saw-cutting method, cutting through the sheet vinyl flooring that  
25 was attached to the concrete slab.

26 5. On or about July 6-7, 2016, Respondent or its agents removed approximately 875  
27 square feet of sheet vinyl flooring at the Facility.

28 6. The vinyl flooring at the Facility contained approximately 23% Chrysotile  
29 “asbestos,” as defined in OAR 340-248-0010(5).



1 is a Class I violation according to OAR 340-012-0054(1)(m). DEQ has not assessed a civil  
2 penalty for this violation.

3 4. On three occasions between July 8 and July 14, 2016, Respondent violated OAR  
4 340-248-0280(5)(a) by failing to dispose of ACWM at a waste disposal site authorized by DEQ to  
5 accept ACWM, as described in Section II, paragraphs 1-6, 10, and 12-13 above. This is a Class I  
6 violation according to OAR 340-012-0054(1)(o). DEQ hereby assesses a \$14,400 civil penalty for  
7 this violation.

#### 8 IV. ORDER TO PAY CIVIL PENALTY

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

11 Pay a total civil penalty of \$27,200. The determination of the civil penalty is attached as  
12 Exhibit Nos. 1 and 2 and incorporated as part of this Notice.

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

#### 17 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

18 You have a right to a contested case hearing on this Notice, if you request one in writing.  
19 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
20 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
21 Notice or attached exhibits, you must do so in your request for hearing, as factual matters not  
22 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
23 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your  
24 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
25 **600, Portland, Oregon 97232,** fax it to **503-229-5100** or email it to  
26 **DEQappeals@deq.state.or.us.** An administrative law judge employed by the Office of  
27 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter

1 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
2 attorney at the hearing, however you are not required to be. If you are an individual, you may  
3 represent yourself. If you are a corporation, partnership, limited liability company,  
4 unincorporated association, trust or government body, you must be represented by an attorney or  
5 a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

17  
18  
19 July 5, 2017

20 Date

20 Sarah G. Wheeler

21 Sarah G. Wheeler, Acting Manager  
22 Office of Compliance and Enforcement  
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 340-248-0110(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 (ACM). Respondent removed or disturbed approximately 875 square feet of asbestos-containing sheet vinyl flooring.

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 or not the violation was repeated or ongoing and receives a value 2 according to OAR 340-012-0145(4)(b), because there were more than one but less than seven occurrences of the violation. The unlicensed asbestos abatement project occurred on or about July 6-7, 2016, which is two days of 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 is licensed by the Oregon Construction Contractors Board as a general contractor, and is generally aware of asbestos requirements. When Respondent or its agents removed asbestos-containing sheet vinyl flooring, it failed to take reasonable care to avoid a foreseeable risk that it would violate asbestos requirements and potentially expose workers and Facility employees 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 by Respondent. The Facility owner arranged for abatement of the remaining ACM.

"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:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 2 + 4 + 0)] + \$0 \\ &= \$8,000 + [(\$800) \times (6)] + \$0 \\ &= \$8,000 + \$4,800 + \$0 \\ &= \$12,800 \end{aligned}$$

EXHIBIT NO. 2

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

- VIOLATION 4: Failing to dispose of asbestos-containing waste materials (ACWM) at a waste disposal site authorized by DEQ to accept ACWM, in violation of 340-248-0280(5)(a).
- 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 ACWM. Respondent disposed of approximately 875 square feet of asbestos-containing sheet vinyl flooring that was attached to or commingled with concrete.
- 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 or not the violation was repeated or ongoing and receives a value 2 according to OAR 340-012-0145(4)(b), because there were more than one but less than seven occurrences of the violation. Respondent disposed of ACWM at an unauthorized facility on three occasions between July 8 and July 14, 2016, which is three occurrences 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 is licensed by the Oregon Construction Contractors Board as a general contractor, and is generally aware of asbestos requirements. When Respondent or its agents improperly disposed of ACWM, it failed to take reasonable care to avoid a foreseeable risk that it would violate asbestos requirements and potentially expose workers and landfill employees 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). The Facility owner arranged for decontamination of the Farmington landfill.

"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:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 2 + 4 + 2)] + \$0 \\ &= \$8,000 + [(\$800) \times (8)] + \$0 \\ &= \$8,000 + \$6,400 + \$0 \\ &= \$14,400 \end{aligned}$$