



# 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. 70162140000024204676

Oregon Health & Science University  
c/o Janet Billups, Authorized Representative  
3181 SW Sam Jackson Park Road  
Portland, OR 97239

Re: Notice of Civil Penalty Assessment and Order  
No. AQ/AB-NWR-2017-126

This letter is to inform you that DEQ has issued you a civil penalty of \$10,400 for failing to hire a licensed contractor to perform an asbestos abatement project. The violation occurred in July 2016 when your contractor disturbed and removed asbestos-containing sheet vinyl flooring at your Colony Annex facility in Beaverton (the Facility). 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.

DEQ issued this penalty because as owner and 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. 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 appreciates your efforts to mitigate the effects of the violations by hiring a licensed asbestos abatement contractor to perform an abatement of the remaining asbestos at the facility, and decontaminating the landfill where the asbestos was disposed. DEQ considered these efforts when calculating your civil penalties.

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: Skai Dancey, Assoc. Vice President, Facilities, OHSU, 3181 SW Sam Jackson Park  
Road, Portland, OR 97239  
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	OREGON HEALTH &	)	ASSESSMENT AND ORDER
4	SCIENCE UNIVERSITY,	)	
5		)	NO. AQ/AB-NWR-2017-126
6	Respondent.	)	

7   I. AUTHORITY

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

11   II. FINDINGS OF FACT

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

16                   2.       On or about June 13, 2016, Respondent’s contractor, In Line Commercial  
17 Construction, Inc., began “renovation” activities, as defined in OAR 340-248-0010(36), at the  
18 Facility by altering interior facility components, including non-load-supporting walls and the  
19 concrete slab.

20                   3.       On or about July 6-7, 2016, In Line Commercial Construction, Inc. removed  
21 approximately 875 square feet of sheet vinyl flooring at the Facility.

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

24                   5.       In Line Commercial Construction, Inc. is not licensed by DEQ to perform  
25 asbestos abatement projects.

26                   6.       Respondent did not have an accredited inspector thoroughly survey the Facility  
27 for the presence of asbestos-containing material prior to the renovation activities.

1 III. CONCLUSIONS

2 1. On or about July 6-7, 2016, Respondent violated ORS 468A.715(1) and OAR  
3 340-248-0110(2) by failing to hire a licensed contractor to perform an asbestos abatement project  
4 on a facility Respondent owns and operates, as described in Section II, paragraphs 1 through 5  
5 above. This is a Class I violation according to OAR 340-012-0054(1)(p). DEQ hereby assesses a  
6 \$10,400 civil penalty for this violation.

7 2. On or before July 6, 2016, Respondent violated OAR 340-248-0270(1) by failing  
8 to have an accredited inspector thoroughly survey the Facility for the presence of asbestos-  
9 containing material prior to beginning renovation activities at a Facility that Respondent owned  
10 and operated, as described in Section II, paragraphs 1 through 6 above. This is a Class I  
11 violation according to OAR 340-012-0054(1)(l). DEQ has not assessed a civil penalty for this  
12 violation.

13 IV. ORDER TO PAY CIVIL PENALTY

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

16 Pay a civil penalty of \$10,400. The determination of the civil penalty is attached as Exhibit  
17 No. 1 and incorporated as part of this Notice.

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

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

23 You have a right to a contested case hearing on this Notice, if you request one in writing.  
24 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
25 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
26 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not  
27 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.

1 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your  
2 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
3 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to  
4 **DEQappeals@deq.state.or.us**. An administrative law judge employed by the Office of  
5 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
6 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
7 attorney at the hearing, however you are not required to be. If you are an individual, you may  
8 represent yourself. If you are a corporation, partnership, limited liability company,  
9 unincorporated association, trust or government body, you must be represented by an attorney or  
10 a duly authorized representative, as set forth in OAR 137-003-0555.

11 Active duty service-members have a right to stay proceedings under the federal Service  
12 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
13 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be  
14 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services  
15 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

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

22  
23  
24 July 5, 2017

25 Date

24 Sarah Wheeler

25 Sarah G. Wheeler, Acting Manager  
26 Office of Compliance and Enforcement  
27

EXHIBIT NO. 1

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

VIOLATION 1: Failing to hire a licensed asbestos abatement contractor to perform an asbestos abatement project on a facility Respondent owns or operates in violation of ORS 468A.715(1) and OAR 340-248-0110(2).

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

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's contractor disturbed and removed 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 has a Facilities division, which is responsible for overseeing its buildings and ensuring that renovations comply with safety and environmental regulations, including asbestos requirements. Respondent has hired licensed abatement contractors to perform asbestos abatement projects on numerous occasions, so it is aware of the requirement to hire a licensed abatement

contractor. When Respondent hired an unlicensed contractor to perform renovation work that involved disturbing and removing asbestos-containing sheet vinyl flooring, without first having an accredited inspector perform a survey for the presence of ACM, 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 -3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to minimize the effects of the violation by hiring a licensed asbestos abatement contractor to abate the remaining ACM at the Facility, and decontaminated the landfill where the asbestos was improperly disposed by Respondent's unlicensed contractor.

"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:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 2 + 4 - 3)] + \$0 \\ &= \$8,000 + [(\$800) \times (3)] + \$0 \\ &= \$8,000 + \$2,400 + \$0 \\ &= \$10,400 \end{aligned}$$