



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
FAX (503) 229-5787
TTY 711

July 10, 2018

CERTIFIED MAIL No. 7016 0750 0000 3470 2602

ServiceMaster of Salem, Inc.
c/o SG Corporate Services, LLC., Registered Agent
2275 Judson St SE.
Salem, OR 97302

Re: Notice of Civil Penalty Assessment and Order
No. AQ/AB-WR-2018-072

This letter is to inform you that DEQ has issued you a civil penalty of \$3,833 for failing to have an accredited inspector thoroughly survey a building for the presence of asbestos-containing material prior to performing renovation activities. The violation occurred in April, 2018 at Prince of Peace Church (the Facility) in Salem, Oregon.

DEQ issued this penalty because, as the restoration contractor, you are responsible for ensuring that asbestos in the Facility is properly managed. While your technicians did take samples, it is required that an accredited inspector survey the Facility. This requirement is important to ensure that all asbestos is found and properly managed. 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

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.



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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, 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,

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dottie Boyd, Salem Office, Western Region, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 SERVICEMASTER OF SALEM, INC,) NOTICE OF CIVIL PENALTY
an Oregon corporation,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. AQ/AB-WR-2018-072

6 I. AUTHORITY

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

11 II. FINDINGS OF FACT

12 1. Respondent was hired as the restoration contractor for a renovation project at Prince of
13 Peace Church, located at 1525 Glen Creek Road NW in Salem, Oregon (the Facility).

14 2. On or about March 27, 2018 Respondent's technician, Darren Slusser, collected three
15 samples for asbestos testing.

16 3. On or about March 29, 2018 Respondent's technician, Darren Slusser, collected four
17 samples for asbestos testing.

18 4. On or about April 4, 2018 Respondent's technician, Wes Rios, collected two samples for
19 asbestos testing.

20 5. At all material times, neither Darren Slusser nor Wes Rios were accredited asbestos
21 inspectors.

22 6. Asbestos was found in four of the samples taken by Respondent's technicians: gypsum
23 board in an office contained 5% chrysotile asbestos, gypsum board in a break room contained 3%
24 chrysotile asbestos, floor vinyl floor tile from the sanctuary contained 5% chrysotile asbestos, and black
25 mastic contained 10% chrysotile asbestos.

26 7. On or about April 9-12, 2018, Abate Right, Inc. abated approximately 1,357 square feet
27 of asbestos-containing materials at the Facility.

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

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

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

24
25 7/10/18
26 Date

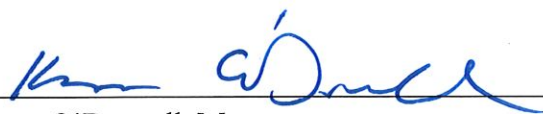
25 
26 Kieran O'Donnell, Manager
27 Office of Compliance and Enforcement

EXHIBIT NO. 1

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

- VIOLATION: Failing to have an accredited inspector thoroughly survey the affected facility for the presence of asbestos-containing material prior to performing a renovation activity on a facility Respondent owns or operates, in violation of OAR 340-248-0270(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(I).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and the Department finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. In making this finding, the Department considered the following reasonably available information: OAR 340-012-0135(1)(h) does not apply because the violation does not cause the potential for human exposure to asbestos fibers because the Respondent took samples and got the facility abated before performing any renovation activities.
- 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 \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) 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 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. Each day of violation constitutes a separate offense. Respondent began a renovation project without first having an accredited asbestos survey on a single day, around March 28 to April 4, 2018.

"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. Respondent had arranged for accredited asbestos surveys at other properties it was renovating in March and April 2018 prior to beginning renovation work, so it was aware of the survey requirement. When Respondent began a renovation project at the Facility without first having an accredited inspector conduct an asbestos survey, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate this requirement. This risk was of such a nature and degree that disregarding it constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"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.

"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 \$233. This is the amount Respondent gained by avoiding spending \$360 to hire an accredited asbestos inspector survey the Facility prior to renovation. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 8 + 0)] + \$233 \\ &= \$2,000 + [(\$200) \times (8)] + \$233 \\ &= \$2,000 + \$1,600 + \$233 \\ &= \$3,833 \end{aligned}$$