



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

July 28, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5999

OHM Equity Partners, LLC
c/o Carmen Kessi, Registered Agent
33470 Chinook Plaza, Ste. 213
Scappoose, OR 97056

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-2016-093

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$19,200 for failing to hire a licensed asbestos abatement contractor to perform an asbestos abatement project and for openly accumulating asbestos-containing waste material. In addition, DEQ has cited you, without penalty, for failing to hire an accredited inspector to perform an asbestos survey prior to a residential demolition.

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 and a hazardous air contaminant for which there is no known safe level of exposure. DEQ requires that an accredited inspector perform an asbestos survey prior to commencing a residential demolition project in order to identify potentially harmful asbestos-containing material before it is disturbed. To protect the public from asbestos exposure, DEQ requires training and licensing for those who handle asbestos-containing material. The failure to obtain the proper licensing and the open accumulation of asbestos-containing waste material presents a significant risk to public health and the environment.

DEQ appreciates your efforts to correct the violation by hiring a licensed asbestos abatement contractor to properly remove and dispose of the remaining openly accumulated asbestos-containing waste material. 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 contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

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 it 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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



fw Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Zeb Bates, DEQ, NWR

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	OHM EQUITY PARTNERS LLC,)	ASSESSMENT AND ORDER
5)	CASE NO. AQ/AB-NWR-2016-093
6	Respondent.)	

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,
10 468A, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and
11 248.

12 II. FINDINGS OF FACT

13 1. Respondent owns real property located at 52525 North Road, in Scappoose, Oregon (the
14 Facility).

15 2. On or before March 28, 2016, Respondent hired a contractor (the Contractor) to demolish
16 the Facility.

17 3. On March 28, 2016, DEQ inspected the Facility. At the time of the inspection, there were
18 fragmented pieces of siding material scattered around the foundation of the demolished residential
19 building and piles of construction debris with fragmented pieces of siding material.

20 4. The siding material contained approximately 15% asbestos by weight.

21 5. Respondent is not licensed by DEQ as an asbestos abatement contractor.

22 6. The Contractor did not have an asbestos abatement license issued by DEQ.

23 7. Respondent did not have an accredited asbestos inspector survey the Facility prior to its
24 demolition.

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1 III. CONCLUSIONS

2 1. Respondent has violated OAR 340-248-0110(2) by allowing an unlicensed contractor to
3 perform an asbestos abatement project, as described in Section II above. The siding material was
4 “asbestos-containing material,” as defined by OAR 340-248-0010(8) because it contained more than
5 1% asbestos by weight. The demolition of the Facility was an “asbestos abatement project,” as defined
6 by OAR 340-248-0010(6) because it involved the removal and handling of the siding material with the
7 potential of releasing asbestos containing fibers into the air. This is a Class I violation according to
8 OAR 340-012-0054(1)(p). DEQ hereby assesses an \$8,800 civil penalty for this violation.

9 2. Respondent has violated OAR 340-248-0205(1) by openly accumulating asbestos-containing
10 waste material, as described in Section II above. The scattered pieces of siding materials and piles of
11 demolition debris that included pieces of siding material were “asbestos-containing waste materials,” as
12 defined by OAR 340-248-0010(12) because they were wastes from an asbestos abatement project. As
13 stated above, the demolition of the Facility was an “asbestos abatement project,” as defined by OAR 340-
14 248-0010(6), because it involved the removal and handling of siding material with the potential of
15 releasing asbestos containing fibers into the air. This is a Class I violation according to OAR 340-012-
16 0054(1)(m). DEQ hereby assesses a \$10,400 civil penalty for this violation.

17 3. Respondent has violated OAR 340-248-0270(1) by failing to have an accredited inspector
18 perform an asbestos survey on the Facility prior to the demolition of a residential building, as described
19 in Section II above. This is a Class I violation pursuant to OAR 340-248-0054(1)(l). DEQ has not
20 assessed a civil penalty for this violation.

21 IV. ORDER TO PAY CIVIL PENALTY

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

24 Pay a total civil penalty of \$19,200. The determination of the civil penalties are attached as
25 Exhibits Nos. 1 and 2 and are incorporated as part of this Notice.

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1 If you do not file a request for hearing as set forth in Section V below, your check or money order
2 must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office,**
3 **811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of Fact,
4 Conclusions and Order become final.

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

6 You have a right to a contested case hearing on this Notice, if you request one in writing. You
7 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
8 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
9 this Notice or attached exhibits, you must include them in your request for hearing, as factual matters
10 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
11 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
12 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
13 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the
14 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
15 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
16 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
17 association.

18 Active duty service-members have a right to stay proceedings under the federal Service
19 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
20 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
21 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
22 <http://legalassistance.law.af.mil/content/locator.php>.

23 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
24 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
25 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
26 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
27 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including

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information submitted by you, as the record for purposes of proving a prima facie case.

July 28, 2016
Date


jm Leah K. Feldon, Manager
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 No. 1: Allowing an unlicensed contractor to perform an asbestos abatement project, in violation of 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. Prior to the demolition the exterior of the residential building was covered in asbestos containing siding. Therefore, there were more than 160 square feet of asbestos containing material.

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, moderate 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 the violation was repeated or ongoing and receives a value of 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 occurrence. The violation occurred on at least on day on or before March 28, 2016. Therefore, there was at least one occurrence 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. OHM is in the business of residential property development. As a residential property developer it should recognize asbestos siding material and should know that asbestos must be handled and removed by a licensed asbestos abatement contractor. Therefore, Respondent failed to take reasonable care to avoid a foreseeable risk that its conduct may result in a violation.

"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. After obtaining actual knowledge of the violation, Respondent hired a licensed asbestos abatement contractor to properly handle and dispose of the remaining asbestos-containing waste material.

"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 DEQ has determined that any economic benefit gained as a result of these violations is de minimis.

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 \times \$8,000) \times (0 + 0 + 0 + 4 + -3)] + \0
 $= \$8,000 + [\$800 \times 1] + \$0$
 $= \$8,000 + \$800 + \$0$
 $= \$8,800$

EXHIBIT No. 2

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

VIOLATION No. 2: Openly accumulating asbestos-containing waste material, in violation of OAR 340-248-0205(1).

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

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. There were more than 160 square feet of asbestos-containing waste material combined in scattered pieces of siding material and piles of demolition debris.

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, moderate 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 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. Each day of violation constitutes a separate occurrence. The violation began at the latest on March 28, 2016, when DEQ inspected the Facility. The violation ended at the earliest on March 30, 2016, when Respondent hired an asbestos abatement contractor to properly handle and dispose of the remaining asbestos-containing waste material. Therefore, there were at least 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. OHM is in the business of residential property development. As a residential property developer it should recognize asbestos siding material and should know that asbestos must not be openly accumulated in piles. Therefore, Respondent failed to take reasonable care to avoid a foreseeable risk that its conduct may result in a violation.

"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. After DEQ notified Respondent of the violation, Respondent hired a licensed asbestos abatement contractor to properly handle and dispose of the remaining asbestos-containing waste material.

"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 DEQ has determined that any economic benefit gained as a result of these violations is de minimis.

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 + 4 + (-3))] + \$0
= \$8,000 + [\$800 x 3] + \$0
= \$8,000 + \$2,400 + \$0
= \$10,400