



# 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

August 19, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5017

Mark Wells  
d/b/a Mark Wells Construction  
15679 Old Highway 99 North  
Oakland, OR 97462

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ-AB-WR-2022-528

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$23,200 for performing a friable asbestos abatement project without a license and for openly accumulating asbestos-containing waste material at the property located at 2517 Roberts Creek Rd. in Roseburg, Oregon. Specifically, in March 2022, you removed asbestos-containing materials from one of the buildings at the property and placed them in unsecured debris piles. DEQ has also cited you, without penalty, for failing to have an asbestos survey conducted and failing to submit the required notification to DEQ before beginning the project.

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. To protect the public from asbestos exposure, DEQ requires training and licensing for those who handle asbestos-containing material and prohibits open accumulation of asbestos-containing waste material, as open accumulation of asbestos-containing waste material presents a significant risk to public health and the environment.

DEQ appreciates your efforts to minimize the impacts of the violation by hiring an accredited asbestos inspector to conduct an asbestos survey and by hiring a DEQ-licensed asbestos abatement contractor to remove the asbestos-containing waste. DEQ considered these efforts when determining the amount of civil penalty.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to “Department of Environmental Quality” and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order and note the case number on your check.

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.oregon.gov](mailto:DEQappeals@deq.oregon.gov)

Via fax – 503-229-6762

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.

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 Emily Knobbe at (971) 300-9770.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Jennifer Horton, Medford  
Keith Andersen, DEQ  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 MARK WELLS, an individual ) ASSESSMENT AND ORDER  
5 d/b/a MARK WELLS CONSTRUCTION )  
6 Respondent. ) CASE NO. AQ-AB-WR-2022-528

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, ORS 468.126 through 468.140,  
10 ORS Chapter 183 and 468A, Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and  
11 248.

12 II. FINDINGS OF FACT

13 1. Mark Wells (the Respondent) has been licensed as a construction contractor by the  
14 Oregon Construction Contractors Board since 2018. At all material times, Respondent was not certified  
15 or licensed by DEQ as an asbestos abatement contractor.

16 2. On or before March 9, 2022, Respondent was hired by G & N Enterprises (the Owner)  
17 to conduct a major renovation of a residential property located at 2517 Roberts Creek Rd. in Roseburg,  
18 Oregon (the Property), including the removal of all the interior and exterior finishing materials (the  
19 Project). The Property has at least two buildings, including a one-story, single-family home (the Main  
20 Residence) and a one-story accessory dwelling unit (the ADU) that were both constructed in  
21 approximately 1950.

22 3. Between approximately March 9, 2022, and March 21, 2022, the Respondent removed  
23 about 615 square feet of building materials from the ADU, including drywall, sheetrock, lumber,  
24 insulation, and the following:

- 25 a. White living room ceiling popcorn texture containing 10% chrysotile;
- 26 b. Green/grey vinyl containing 10% chrysotile asbestos by weight;
- 27 c. White/grey vinyl containing 10% chrysotile asbestos by weight;
- d. Grey siding containing 5% chrysotile asbestos by weight;

1 e. Chimney liner containing 3% chrysotile asbestos by weight; and

2 f. White popcorn texture containing 5% chrysotile asbestos by weight.

3 4. The way the Respondent removed the material, which included breaking it into small,  
4 fragmented pieces, rendered some of the material friable and had the potential to release fibers into the  
5 air.

6 5. Neither Respondent nor the Owner hired an accredited asbestos inspector to conduct an  
7 asbestos survey prior to beginning the Project on or about March 9, 2022.

8 6. Respondent did not submit a written notification to DEQ prior to starting the Project on  
9 or about March 9, 2022.

10 7. On or before March 21, 2022, Respondent placed the removed material in several debris  
11 piles, which together contained approximately 2,000 square feet of building materials. On or before  
12 March 24, 2022, Respondent hired Northwest Hazmat, an accredited asbestos inspector, to complete an  
13 asbestos survey of the debris piles and the remaining building materials that would be removed from  
14 the Main Residence and the ADU.

15 8. On March 28, 2022, the debris piles were located just outside the ADU and covered with  
16 tarps.

17 9. Between April 6 and 13, 2022, a DEQ-licensed asbestos abatement contractor hired by  
18 Respondent abated and removed the remaining asbestos-containing materials at the Property, including  
19 the waste piles.

### 20 III. CONCLUSIONS

21 1. From about March 9, 2022, to March 21, 2022, Respondent violated OAR 340-248-0110(4) by  
22 performing an asbestos abatement project without certification or licensure by DEQ, as described in  
23 Section II above. Specifically, Respondent removed and handled asbestos containing building materials  
24 from the ADU. The building materials were "asbestos-containing materials" as defined by OAR 340-248-  
25 0010(8) because they contained more than 1% asbestos by weight. Respondent's work at the ADU was an  
26 "asbestos abatement project," as defined in OAR 340-248-0010(6) because it was a renovation activity that  
27 involved the removal and handling of asbestos-containing materials with the potential to release asbestos

1 fibers into the air. This is a Class I violation, according to OAR 340-012-0054(1)(t). DEQ hereby assesses  
2 an \$11,200 civil penalty for this violation.

3 2. From at least March 21, 2022, to April 13, 2022, Respondent violated OAR 340-248-0205(1)  
4 by openly accumulating asbestos-containing waste material, as described in Section II above. Specifically,  
5 Respondent stored fragmented pieces of asbestos-containing building materials in multiple open debris  
6 piles at the Property. The debris piles were “asbestos-containing waste material” as defined by OAR 340-  
7 248-0010(12) because they contained asbestos abatement project waste. In addition, Respondent “open  
8 accumulated,” as defined by OAR 340-248-0010(34), the debris piles because they were not securely  
9 packaged in leak tight containers according to the requirements of OAR Chapter 340, Division 248. This is  
10 a Class I violation, according to OAR 340-012-0054(1)(s). DEQ hereby assesses a \$12,000 civil penalty  
11 for this violation.

12 3. On or about March 9, 2022, Respondent violated OAR 340-248-0270(1) by failing to have  
13 an accredited inspector complete a survey before performing a renovation, as described in Section II  
14 above. The removal of building materials from the ADU is a “renovation” as defined in OAR 340-248-  
15 0010(39) because Respondent altered one or more facility components by removing drywall, sheetrock,  
16 lumber, insulation, siding, vinyl and other building materials. This is a Class I violation, according to  
17 OAR 340-012-0054(1)(r). DEQ has not assessed a civil penalty for this violation.

18 4. Respondent violated ORS 340-248-0260(1) by failing to submit or require the Owner to submit  
19 written notice of an asbestos abatement project to DEQ at least ten days before beginning the project. This  
20 is a Class II violation according to OAR 340-012-0054(2)(m). DEQ has not assessed a civil penalty for this  
21 violation.

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

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

25 1. Pay a total civil penalty of \$23,200. The determination of the civil penalties are attached as  
26 Exhibits 1 and 2 and are incorporated as part of this Notice.

27 ///

1 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as  
2 follows:

3 Pay online with e-check (ACH) or credit card. Go to Your DEQ Online here:  
4 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account  
5 dashboard. Enter the reference number and Account ID included on the attached payment slip. Note: US  
6 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional  
7 charges, or

8 Pay by check or money order: Make check payable to “Department of Environmental Quality”  
9 and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with  
10 your check or money order and note the case number on your check.

#### 11 V. 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 for hearing **within 20 calendar days** from the date you receive this Notice. If  
14 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
15 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
16 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
17 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
18 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
19 it to **503-229-6762** or email it to [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge  
20 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
21 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
22 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
23 you may represent yourself. If you are a corporation, partnership, limited liability company,  
24 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
25 authorized representative, as set forth in OAR 137-003-0555.

26 Active duty Service members have a right to stay proceedings under the federal Service  
27 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-

1 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
2 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
3 Department does not have a toll free telephone number.

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

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8/19/2022  
Date


  
Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION NO. 1 Performing an asbestos abatement project without a license issued by DEQ in violation of OAR 340-248-0110(4).

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)(i)(A) because the violation involved over 160 square feet of asbestos-containing material. Respondent removed and handled approximately 615 square feet of 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, 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) because 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)(b) because there were from seven to 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. The Respondent performed an asbestos abatement project for 14 days from March 9, 2022, through March 21, 2022, when DEQ inspected the Property and informed the Respondent that an asbestos survey was required.

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent has been a licensed contractor since 2018. Asbestos rules are a part of licensing classes. In addition, it is commonly known that asbestos is a hazardous and highly regulated material, requiring special licensing and work practices. Thus, Respondent failed to take reasonable care to hire a licensed asbestos abatement contractor to conduct a friable asbestos abatement project.



"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 by ensuring that steps were taken to return the Properties to compliance with asbestos requirements once DEQ notified Respondent of the violations. Within three days after the survey confirmed the presence of asbestos materials, the Respondent and the Owner hired a DEQ-licensed asbestos abatement contractor to properly handle and remove the asbestos materials.

"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 because any economic benefit that Respondent received as a result of this violation was offset by the costs Respondent incurred by hiring a licensed asbestos abatement contractor to complete the asbestos abatement project.

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 + 4 + -3)] + \$0  
= \$8,000 + (\$800 x 4) + \$0  
= \$8,000 + \$3,200 + \$0  
= \$11,200

EXHIBIT 2

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

VIOLATION NO. 2 Open accumulation of friable asbestos-containing waste materials 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)(i)(A) because the violation involved over 160 square feet of asbestos-containing waste material. There were approximately 2,000 square feet of material stored at the Properties in a debris pile.

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 the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent openly accumulated asbestos-containing waste material for at least 29 days from March 21, 2022, through April 13, 2022.

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent has been a licensed contractor since 2018. Asbestos rules are a part of licensing classes. In addition, it is commonly known that asbestos is a hazardous and highly regulated material, requiring special licensing and work practices. Thus, Respondent failed to take reasonable care when Respondent piled asbestos abatement waste in debris piles.

"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. Within three days after the survey confirmed the presence of asbestos materials, Respondent hired a DEQ-licensed asbestos abatement contractor to properly handle and remove the asbestos materials.

"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 because any economic benefit that Respondent received as a result of this violation was offset by the costs Respondent incurred by hiring a licensed asbestos abatement contractor to properly package and dispose of the project waste.

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 + 4 + 4 + -3)] + \$0  
= \$8,000 + (\$800 x 5) + \$0  
= \$8,000 + \$4,000 + \$0  
= \$12,000

Oregon Department of Environmental Quality  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100



State of Oregon  
Department of Environmental Quality

Phone: 503-229-5437  
Fax: 503-229-5850

MARK WELLS

**CIVIL PENALTY - ORS 468.135(2)**

15679 OLD HIGHWAY 99 NORTH  
OAKLAND, OR 97462

<b>DATE:</b>	August 19, 2022
<b>RESPONSE DATE :</b>	October 28, 2022
<b>TOTAL PENALTY:</b>	\$23,200.00

<b>Account Name:</b>	MARK WELLS	<b>Reference Number:</b>	CPGFD2300015
<b>Account Type:</b>	Individual	<b>FIMS Acct. ID:</b>	8723
<b>SubSystem ID:</b>	47		

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 23,200.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 23,200.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



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PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



MARK WELLS

15679 OLD HIGHWAY 99 NORTH  
OAKLAND, OR 97462

Check this box if updated address information has been provided on the back of the form.

<b>REFERENCE NO.</b>	CPGFD2300015		
<b>PAYCODE:</b>	00401 7400 10040 74001 0500 000000 00		
<b>FEE PROGRAM ID:</b>	950	<b>RESPONSE DATE:</b>	October 28, 2022
<b>FIMS ACCT. ID:</b>	8723	<b>TOTAL PENALTY DUE:</b>	\$23200.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244  
PO BOX 4244  
PORTLAND OR 97208-4244

00401 7400 10040 74001 0500 000000 0095000087230CPGF230001500023200008



State of Oregon  
Department of  
Environmental  
Quality

# State of Oregon Department of Environmental Quality

**CIVIL PENALTY - ORS 468.135(2)**

700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
Phone: 503-229-5437  
Fax: 503-229-5850

## Penalty Detail

Transaction Date	Description	Amount
8/16/2022	2022-528 AQ/AS-WR-2022-528	\$23,200.00

### SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

## Address Changes

Please visit <https://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_