



# 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 18, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8846

Clements Enterprises LLC  
c/o Erick E. Clements, Registered Agent  
3185 Madrona Lane  
Medford, OR 97501

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/AB-WR-2021-096

*DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.*

This letter is to inform you that DEQ has issued you a civil penalty of \$7,668 for allowing a contractor that is not licensed by DEQ to perform an asbestos abatement project at a residential property you own in Phoenix (the Facility). In October 2020, a contractor who was not licensed by DEQ handled asbestos-containing vinyl flooring material when cleaning up wildfire debris.

DEQ issued this penalty because as the owner 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.

On October 8, 2020, the Oregon Environmental Quality commission approved a variance from certain asbestos regulations in wildfire damaged areas, effective through October 1, 2021. The variance does not relieve you from complying with the asbestos rules cited in the Notice. Specifically, under the variance, all asbestos abatement projects in wildfire damaged areas must be conducted by a DEQ licensed contractor with a limited exception for residential property owners (four dwelling units or less) doing their own cleanup work with no paid labor. In addition, the variance does not relieve any owners or operators of wildfire damaged properties from complying with the packaging, labeling, transportation and disposal requirements for asbestos-containing waste material under OAR 340-248-0280.

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 via check, money order, or e-check (ACH) by following the instructions on the attached invoice and logging in to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>

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 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: Jennifer Horton, Medford Office, DEQ  
Claudia Davis, Salem Office, 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 CLEMENTS ENTERPRISES LLC, ) ASSESSMENT AND ORDER  
5 an Oregon limited liability company, )  
6 Respondent. ) NO. AQ/AB-WR-2021-096

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 owned the residential rental property located at  
13 808 E. Bolz Road in Phoenix, Jackson County, Oregon (the Facility).

14 2. In September 2020, the Facility was damaged in the Almeda wildfire.

15 3. On or before September 20, 2020, Respondent hired Western States  
16 Environmental Services, LLC, an accredited asbestos inspector, to conduct an asbestos survey at  
17 the Facility. A sample of vinyl flooring debris collected on September 20, 2020 contained  
18 approximately 15% chrysotile asbestos by weight. An additional sample of vinyl flooring debris  
19 collected on October 1, 2020 contained approximately 25% chrysotile asbestos by weight.

20 4. On or about October 4, 2020, Respondent hired a contractor, Dirt Doctor, LLC  
21 (the Contractor), to clean up the debris at the Facility.

22 5. On or about October 5, 2020, the Contractor handled and removed approximately  
23 100 square feet of asbestos-containing vinyl flooring at the Facility.

24 6. The vinyl flooring at the Facility had been damaged by fire and was in poor  
25 condition, such that handling the material crumbled, pulverized or reduced it to powder when  
26 dry, causing the potential to release asbestos fibers into the air.

27 7. The Contractor is not licensed by DEQ to perform asbestos abatement projects.

1 III. CONCLUSION

2 On or about October 5, 2020, Respondent violated ORS 468A.710(1) and OAR 340-248-  
3 0110(2) by allowing a contractor that is not licensed by DEQ to perform an asbestos abatement  
4 project at a Facility Respondent owns, as described in Section II above. Specifically, Respondent  
5 allowed the Contractor to remove and handle vinyl flooring, which was an “asbestos-containing  
6 material” as defined by OAR 340-248-0010(8) because it contained more than 1% asbestos by  
7 weight. The removal and handling of the asbestos-containing vinyl flooring was an “asbestos  
8 abatement project,” as defined by OAR 340-248-0010(6) because it was part of the demolition or  
9 maintenance of the Facility that involved the removal and handling of asbestos-containing  
10 materials with the potential to release asbestos fibers into the air. This is a Class I violation  
11 according to OAR 340-012-0054(1)(v). DEQ hereby assesses a \$7,668 civil penalty for this  
12 violation.

13 IV. ORDER TO PAY CIVIL PENALTY

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

16 Pay a civil penalty of \$7,668. The determination of the civil penalty is attached as Exhibit  
17 Nos. 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, please pay the  
19 penalty via check, money order, or e-check (ACH) by following the instructions on the attached  
20 invoice and logging in to Your DEQ Online here: [https://ordeq-edms-](https://ordeq-edms-public.govonlineaas.com/pub/login)  
21 [public.govonlineaas.com/pub/login](https://ordeq-edms-public.govonlineaas.com/pub/login)

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.

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

Active duty Service members have a right to stay proceedings under the federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

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

8/18/2021  
Date


  
Kieran O'Donnell, 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: Allowing an unlicensed contractor to perform an asbestos abatement project at a facility Respondent owns, 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)(v).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(1)(i)(C) because the violation involved from 80 square feet up to and including 160 square feet of asbestos-containing material (ACM). Approximately 100 square feet of ACM was handled by an unlicensed contractor.

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) 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. The unlicensed asbestos abatement project occurred on one day: October 5, 2020.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted intentionally with actual knowledge of the requirement. Respondent had an asbestos survey which identified the vinyl flooring as ACM and stated that the material must be abated by a licensed asbestos abatement contractor prior to remodel or demolition. Additionally, Respondent is a CCB-licensed contractor and has knowledge of asbestos requirements. When Respondent hired an unlicensed contractor to remove and dispose of ACM at the Facility, it had actual knowledge that it was required to hire a licensed asbestos abatement contractor to perform this work.

"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 \$468. This is the amount Respondent gained by avoiding spending \$700 to hire a licensed abatement contractor to remove the ACM.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 8 + 0)] + \$468 \\ &= \$4,000 + [(\$400) \times (8)] + \$468 \\ &= \$4,000 + \$3,200 + \$468 \\ &= \$7,668\end{aligned}$$

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



State of Oregon  
Department of Environmental Quality

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

ERICK CLEMENTS  
CLEMENTS ENTERPRISES LLC  
3185 MADRONA LANE  
MEDFORD, OR 97501

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

INVOICE DATE:	August 18, 2021
DUE DATE:	October 27, 2021
TOTAL AMOUNT DUE:	\$7,668.00

Account Name:	CLEMENTS ENTERPRISES LLC		
Account Type:	Vendor/Organization/Company	Invoice Number:	CPGFD2100004
SubSystem ID:	9	FIMS Acct. ID:	114

**Billing Summary**

Invoice Period	Current Invoice Amount	Penalty/Interest	Adjustment	Amount Paid	Total Due
07/01/2020 - 06/30/2021	\$ 7,668.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 7,668.00

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

Fee in accordance with:

Sign up to **Go Paperless** or **pay online** at <https://yourdeqonline.oregon.gov>

----- ✂ -----  
PLEASE RETURN THIS PORTION OF YOUR INVOICE WITH YOUR PAYMENT.



CLEMENTS ENTERPRISES LLC  
3185 MADRONA LANE  
MEDFORD, OR 97501

INVOICE NUMBER:	CPGFD2100004		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	DUE DATE:	October 27, 2021
FIMS ACCT. ID:	114	TOTAL AMOUNT DUE:	\$7668.00

AMOUNT ENCLOSED:

MAKE CHECK(S) PAYABLE TO: Department of Environmental Quality

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

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

00401 7400 10040 74001 0500 000000 0095000001145CPGFD210000400007668005



State of Oregon  
Department of  
Environmental  
Quality

# State of Oregon Department of Environmental Quality

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

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

## Billing Detail

Transaction Date	Description	Amount
8/16/2021	2021-096 AQ/AB-WR-2021-096	\$7,668.00

## 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://yourdeqonline.oregon.gov> to update your mailing address online or provide the following information:

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