



# 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 8839

Douglas J Gilford  
Gilford's Floor Covering, INC.  
533 E Powell Blvd  
Gresham, OR 97030

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/AB-NWR-2021-068

*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 the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$14,800 for performing an asbestos abatement project without being licensed by DEQ and openly accumulating asbestos-containing waste material at a residential property located at 6302 SE Carlton Street, Portland, OR. This Notice also cites you, without penalty, for failing to have an accredited inspector complete an asbestos survey before performing a renovation project and for failing to submit an asbestos abatement project notification to DEQ before commencing 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. The 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 a DEQ-licensed asbestos abatement contractor to properly abate the asbestos containing waste material that had been removed from the residence and stored in a drop box, and for conducting air sampling at DEQ's request. 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 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 – 503-229-6762

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. 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.govonlineaas.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 Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Kara Master, DEQW  
Audrey O'Brien, DEQ  
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: )  
GILFORD'S FLOOR COVERING, INC., ) NOTICE OF CIVIL PENALTY  
an Oregon corporation, ) ASSESSMENT AND ORDER  
Respondent. ) CASE NO. AQ/AB-NWR-2021-068

I. AUTHORITY

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

II. FINDINGS OF FACT

1. On or before July 1, 2020, Respondent was hired by Kohler Meyers & O'Halloran, Inc., a property management company, to replace water-damaged vinyl sheet flooring in the kitchen of a residential rental property located at 6302 SE Carlton Street, Portland, OR (Residence).

2. On July 1, 2020, Respondent submitted a sample of vinyl sheet flooring from the Residence to a laboratory for asbestos analysis.

3. On or about July 6, 2020, Respondent received the sample results from the laboratory.

4. The vinyl sheet flooring contained forty percent (40%) chrysotile asbestos by weight.

5. On July 8, 2020, Respondent removed and replaced approximately 48 square feet of the vinyl sheet flooring from the Residence.

6. The removal and handling of the vinyl sheet flooring by the Contractor, described in Section II, Paragraph 5, above, had the potential to release asbestos fibers into the air.

7. Respondent placed the vinyl sheet flooring in a plastic contractor bag, which was then put in a drop box containing other construction debris to be hauled away for disposal.

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8. On July 24, 2020, Gresham Sanitary Service hauled the drop box containing the vinyl sheet flooring to Environmentally Conscious Recycling, Inc. (ECR), which rejected the load due to a lack of abatement documentation. The drop box was subsequently returned to the Respondent's facility located at 533 E. Powell Blvd, Gresham, OR 97030.

9. On August 8, 2020 a DEQ-licensed asbestos abatement contractor abated approximately 500 square feet of construction debris from the drop box, including the vinyl sheet flooring.

10. Neither Respondent nor the property management company, Kohler Meyers & O'Halloran, Inc., had an asbestos survey performed by an accredited inspector prior to commencing the floor renovation project at the Residence.

11. Respondent did not submit an asbestos abatement project notification to DEQ before commencing the floor renovation project.

12. Respondent is not, and has never been, licensed by DEQ as an asbestos abatement contractor.

### III. CONCLUSIONS

1. On July 8, 2020, Respondent violated OAR 340-248-0110(4) by performing an asbestos abatement project without being licensed by DEQ, as described in Section II, Paragraphs 1-6 and 12 above. Respondent is a “contractor” according to OAR 340-248-0010(16) because it undertook for compensation an asbestos abatement project for the property management company, Kohler Meyers & O’Halloran, Inc. Respondent’s work at the Residence was an “asbestos abatement project,” as defined by OAR 340-248-0010(6) because it was a renovation that involved the removal and handling of asbestos-containing material with the potential to release asbestos fibers into the air. Specifically, Respondent removed and handled vinyl sheet flooring from the kitchen of the Residence. The vinyl sheet flooring is “asbestos-containing material” as defined by OAR 340-248-0010(8) because it is a material containing more than 1% asbestos by weight. This is a Class I violation, according to OAR 340-012-0054(1)(t). DEQ hereby assesses a \$2,800 civil penalty for this violation.

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2. From July 8, 2020 to August 8, 2020, Respondent violated OAR 340-248-0205(1) by openly accumulating asbestos-containing waste material as described in Section II, Paragraphs 1-9 above. Specifically, Respondent stored the vinyl sheet flooring along with other construction debris in a drop box at the Respondent's facility. The approximately 500 square feet of construction debris in the drop box became "asbestos-containing waste material" as defined by OAR 340-248-0010(9) because the construction debris in the drop box was waste that contained or was contaminated by asbestos-containing material. Because the asbestos-containing vinyl sheet flooring was not properly packaged in two 6 mil plastic bags or equivalent, as required by OAR Chapter 340, Division 248, but instead stored in a plastic contractor bag, the vinyl sheet flooring contaminated the entire drop box, and all 500 square feet of material in drop box had to be abated by a DEQ-licensed contractor. This is a Class I violation, according to OAR 340-012-0054(1)(s). DEQ hereby assesses a \$12,000 civil penalty for this violation.

3. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector complete an asbestos survey before performing a renovation as described in Section II, Paragraphs 1-6 and 10 above. The project in the Residence was a “renovation” as defined in OAR 340-248-0010(39) because it involved removing and replacing the flooring, a facility component. This is a Class I violation, according to OAR 340-012-0054(1)(r). DEQ has not assessed a civil penalty for this violation.

4. Respondent violated OAR 340-248-0260(1) by failing to submit to DEQ an asbestos abatement project notification for the vinyl floor replacement renovation project at the Residence, as described in Section II, Paragraphs 1-6 and 11 above. This is a Class II violation, according to OAR 340-012-0054(2)(m). DEQ has not assessed a civil penalty for this violation.

#### IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO: Pay a total civil penalty of \$14,800. The determination of the civil penalties are attached as Exhibits 1 and 2 and are incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, please 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>

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

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

16 Active duty Service members have a right to stay proceedings under the federal Service  
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
20 Department does not have a toll free telephone number.

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

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9 8/18/2021

10 Date

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27 Kieran O'Donnell

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 being a DEQ-licensed asbestos abatement contractor, 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 minor pursuant to OAR 340-012-0135(1)(i)(C) because the violation involved less than 80 square feet of asbestos-containing material. Respondent removed approximately 48 square feet of asbestos-containing flooring from the Residence.
- 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) 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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent removed asbestos-containing flooring on at least one day on July 8, 2020.
- "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. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent is a residential contractor that was first certified by the Construction Contractors Board ("CCB") in 1980. The Residence was constructed in approximately 1979 and Respondent should have known that it may contain asbestos-containing materials. Respondent also should have known that asbestos is a hazardous material that is highly regulated, requiring special licensing and work practices. Prior to the renovation project Respondent did submit a sample of the vinyl sheet flooring to a laboratory for asbestos analysis. Respondent received the lab report that the vinyl sheet flooring contained 40% chrysotile asbestos on or about July 6, 2020, but Respondent's



employees reportedly misread the report. As an experienced residential contractor, Respondent reasonably should have taken care to read the report correctly. Additionally, as a contractor that has received CCB training, Respondent should have known that friable asbestos removal must be performed by a DEQ-licensed asbestos abatement contractor. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct resulting in a violation of conducting an asbestos abatement project without being licensed by DEQ.

"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 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 gained as a result of the violation was offset by the cost Respondent incurred to pay for a DEQ-licensed asbestos abatement contractor to properly abate the construction debris in the drop box and to pay for an asbestos consultant to perform asbestos air sampling within the Residence.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \$\text{EB}$

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$2,000 + (\$200 \times 4) + \$0 \\ &= \$2,000 + \$800 + \$0 \\ &= \$2,800 \end{aligned}$$

## EXHIBIT 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)(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. Respondent openly accumulated approximately 500 square feet of asbestos-containing waste material in the drop box.
- 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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day counts as a separate occurrence of the violation. Respondent openly accumulated asbestos-containing waste material in the drop box from July 8, 2020 until August 8, 2020, when the material was properly abated by a DEQ-licensed asbestos abatement contractor.
- "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. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent is a residential contractor that was first certified by the Construction Contractors Board ("CCB") in 1980. The Residence was constructed in approximately 1979 and Respondent should have known that it may contain asbestos-containing materials. Respondent also should have known that asbestos is a hazardous material that is highly regulated, requiring special licensing and work practices. Prior to the renovation project Respondent did submit a sample of the vinyl flooring to a laboratory for

asbestos analysis. Respondent received the lab report that the vinyl sheet flooring contained 40% chrysotile asbestos on or about July 6, 2020, but Respondent's employees reportedly misread the report. As an experienced residential contractor, Respondent reasonably should have taken care to read the report correctly. Additionally, as a contractor that has received CCB training, Respondent should have known that friable asbestos-containing waste material must be properly packaged according to OAR 340, Division 248 to ensure that asbestos fibers are not released into the air. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct resulting in a violation of openly accumulating asbestos-containing waste material.

"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 hiring an asbestos consultant to conduct asbestos air sampling within the Residence to identify potential asbestos fibers from improper asbestos removal activities and hiring a DEQ-licensed asbestos abatement contractor to properly abate and dispose of the asbestos-containing waste material in the drop box.

"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 gained as a result of the violation was offset by the cost Respondent incurred to hire a DEQ-licensed abatement contractor to abate the asbestos-containing waste material in the drop box and an asbestos consultant to perform asbestos air sampling within the Residence.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{\$EB}$   
=  $\$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 4 + 4 + -3)] + \$0$   
=  $\$8,000 + (\$800 \times 5) + \$0$   
=  $\$8,000 + \$4,000 + \$0$   
=  $\$12,000$

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



State of Oregon  
**DEQ** Department of Environmental Quality

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

DOUG GILFORD  
GILFORD'S FLOOR COVERING, INC.  
533 E. POWELL BLVD.  
GRESHAM, OR 97030

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

INVOICE DATE:	August 18, 2021
DUE DATE:	October 27, 2021
TOTAL AMOUNT DUE:	\$14,800.00

Account Name:	GILFORD'S FLOOR COVERING		
Account Type:	Vendor/Organization/Company	Invoice Number:	CPGFD2100002
SubSystem ID:	7	FIMS Acct. ID:	109

**Billing Summary**

Invoice Period	Current Invoice Amount	Penalty/Interest	Adjustment	Amount Paid	Total Due
07/01/2020 - 06/30/2021	\$ 14,800.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 14,800.00

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>

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PLEASE RETURN THIS PORTION OF YOUR INVOICE WITH YOUR PAYMENT.



GILFORD'S FLOOR COVERING  
533 E. POWELL BLVD.  
GRESHAM, OR 97030

INVOICE NUMBER:	CPGFD2100002		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	DUE DATE:	October 27, 2021
FIMS ACCT. ID:	109	TOTAL AMOUNT DUE:	\$14800.00

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 0095000001094CPGF210000200014800006





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	2021-068 AQ/AB-NWR-2021-068	\$14,800.00

### 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 \_\_\_\_\_