



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 8822

Kohler Meyers & O'Halloran, Inc.
Attention: Suzanne O'Halloran
15 NE Third St.
Gresham, OR 97030

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-2021-067

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 \$3,880 for allowing a person not licensed by DEQ to perform an asbestos abatement project and failing to have an accredited inspector conduct a survey prior to a renovation project at a residential property located at 6302 SE Carlton Street, Portland, OR.

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 requires asbestos surveys prior to renovation and demolition projects.

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 – 503-229-6762

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.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 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, DEQ
Audrey O'Brien, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
KOHLER MEYERS &
O'HALLORAN, INC.,
an Oregon corporation,

Respondent.)

) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

) CASE NO. AQ/AB-NWR-2021-067

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. Respondent is a real estate brokerage and property management company that manages a residential rental property located at 6302 SE Carlton Street, Portland, OR (Residence).

2. On or before July 1, 2020, Respondent hired Gilford's Floor Covering, Inc. (Contractor) to remove and replace water-damaged vinyl sheet flooring in the kitchen of the Residence.

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

4. The vinyl sheet flooring described in Section II, Paragraph 3 above contained forty percent (40%) chrysotile asbestos by weight.

5. The removal and handling of the vinyl sheet flooring by the Contractor, described in Section II, Paragraph 3, above, had the potential to release asbestos fibers into the air.

6. The Contractor is not, and has never been, licensed by DEQ as an asbestos abatement contractor.

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

\\

1 8. Neither Respondent the Contractor had an asbestos survey performed by an accredited
2 inspector prior to commencing the floor renovation project at the Residence.

3 III. CONCLUSIONS

4 1. On July 8, 2020, Respondent violated OAR 340-248-0110(2) by allowing a person not
5 licensed by DEQ to perform an asbestos abatement project. The work at the Residence was an
6 “asbestos abatement project,” as defined by OAR 340-248-0010(6) because it was a renovation that
7 involved the removal and handling of asbestos-containing material with the potential to release asbestos
8 fibers into the air. Specifically, the Contractor removed and handled vinyl sheet flooring from the
9 kitchen of the Residence. The vinyl sheet flooring is “asbestos-containing material” as defined by OAR
10 340-248-0010(8) because it is a material containing more than 1% asbestos by weight. This is a Class I
11 violation, according to OAR 340-012-0054(1)(v). DEQ hereby assesses a \$3,880 civil penalty for this
12 violation.

13 2. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector
14 complete an asbestos survey before performing a renovation as described in Section II, Paragraphs 1-3
15 and 8 above. The project in the Residence was a “renovation” as defined in OAR 340-248-0010(39)
16 because it involved removing and replacing the flooring, a facility component. This is a Class I
17 violation, according to OAR 340-012-0054(1)(r). DEQ has not assessed a civil penalty for this violation.

18 IV. ORDER TO PAY CIVIL PENALTY

19 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
20 hereby ORDERED TO: Pay a total civil penalty of \$3,880. The determination of the civil penalty is
21 attached as Exhibit 1 and is incorporated as part of this Notice.

22 If you do not file a request for hearing as set forth in Section V below, please pay the penalty via
23 check, money order, or e-check (ACH) by following the instructions on the attached invoice and logging in
24 to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>

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

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If

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 **503-229-6762** 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 contact the Oregon State Bar at 1-800-
15 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
16 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
17 Department does not have a toll free telephone number.

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
26 8/18/2021
27 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 Allowing a person not licensed by DEQ 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)(v).
- 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 allowed the removal of 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 real estate brokerage and property management company. As the property manager, Respondent should have known that the Residence was constructed in approximately 1979 and that it may contain asbestos-containing materials. As a property manager and real estate brokerage, Respondent has experience in the building management and renovation industry and should have known of the requirement to hire a DEQ-licensed asbestos abatement contractor for the floor renovation project. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct resulting in a violation of allowing a person not licensed by DEQ to perform an asbestos abatement project.

"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 \$1,080. Of this total EB, \$126 is the amount Respondent gained by avoiding spending approximately \$165 to have an asbestos survey completed by an accredited inspector before the project, and \$954 is the amount Respondent gained by avoiding spending \$1,250 to hire a DEQ licensed asbestos abatement contractor to complete the project. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 4 + 0)] + \$1,080 \\ &= \$2,000 + (\$200 \times 4) + \$1,080 \\ &= \$2,000 + \$800 + \$1,080 \\ &= \$3,880 \end{aligned}$$

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

MARY ANN MEYERS
KOHLER MEYER & O'HALLORAN, INC.
15 NE 3RD ST.
GRESHAM, OR 97030

CIVIL PENALTY - ORS 468.135(2)
INVOICE

INVOICE DATE:	August 18, 2021
DUE DATE:	October 27, 2021
TOTAL AMOUNT DUE:	\$3,880.00

Account Name:	KOHLER MEYERS & O'HALLORAN INC		
Account Type:	Vendor/Organization/Company	Invoice Number:	CPGFD2100001
SubSystem ID:	6	FIMS Acct. ID:	95

Billing Summary

Invoice Period	Current Invoice Amount	Penalty/Interest	Adjustment	Amount Paid	Total Due
07/01/2020 - 06/30/2021	\$ 3,880.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 3,880.00

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.



KOHLER MEYERS & O'HALLORAN INC
15 NE 3RD ST.
GRESHAM, OR 97030

INVOICE NUMBER:	CPGFD2100001		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	DUE DATE:	October 27, 2021
FIMS ACCT. ID:	95	TOTAL AMOUNT DUE:	\$3880.00

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 0095000000955CPGF210000100003880006



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	2021-067 AQ/AB-NWR-2021-067	\$3,880.00

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 _____