



Oregon

Kate Brown, Governor

Department of Environmental Quality

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August 18, 2016

D.C.I. Properties, LLC
c/o Sheri Damon
1118 Lancaster Dr. NE, #432
Salem, OR 97301

Re: Mutual Agreement and Final Order - Payment Plan
In the Matter of:
D.C.I. Properties, LLC
Case No. AQ/AB-WR-15-210

Dear Ms. Damon:

On behalf of the Environmental Quality Commission, the manager of the Office of Compliance and Enforcement has approved the Mutual Agreement and Final Order (MAO) mitigating the \$15,464 civil penalty in the above case to \$10,644 and incorporating a payment plan. DEQ received the first payment of \$483.75. A copy of the signed MAO, Amended Exhibit No. 1, and Attachment A is attached to this letter.

Pursuant to the MAO and Attachment A, if you fail to make any monthly payment on time, the balance of the total civil penalty and interested shall be immediately due and payable, and the civil penalty will be recorded and filed with county clerks as liens against and property owned by the Respondent and referred for collection.

Thank you for your cooperation. If you have any questions, please call Kieran O'Donnell at 503-229-5012.

Sincerely,

Kieran O'Donnell
Environmental Law Specialist
Office of Compliance and Enforcement

Enclosure

cc: Business Office, DEQ
Dottie Boyd, Salem Office, DEQ
D.C.I. Properties, LLC., c/o Reliable Computer Services, Registered Agent
3785 River Rd. NE, Keizer, OR 97303



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF)
D.C.I. Properties L.C.C.) MUTUAL AGREEMENT
) AND FINAL ORDER
) CASE NO. AQ/AB-WR-15-210
Respondent.)

WHEREAS:

1. On February 24, 2016, the Department of Environmental Quality (DEQ) issued Notice of Civil Penalty Assessment and Order No. Case No. AQ/AB-WR-15-210 (Notice) to Respondent. DEQ assessed a \$15,464 civil penalty against Respondent for violations alleged in the Notice.

2. On March 15, 2016, Respondent filed a timely request for hearing.

I. AGREEMENT

Respondent and DEQ hereby agree that:

1. Based upon new information submitted by Respondent, DEQ agrees to amend Exhibit No. 1 of the Notice by reducing the "M" factor from a value of 8 to a value of 2. This results in a change in the civil penalty for Violation No. 1 from \$15,464 to \$10,664. The amended findings and determination of the civil penalty is attached and incorporated as Amended Exhibit No.

2. DEQ and Respondent agree that the total civil penalty is reduced from \$15,464 to \$10,664.

3. Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violation alleged in the Notice and as amended by this Mutual Agreement and Final Order (MAO), will be treated as a prior significant action in the event a future violation occurs.

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1 4. Respondent agrees to waive any and all rights and objections Respondent may have
2 to the form, content, manner of service and timeliness of the Notice; to a contested case hearing and
3 judicial review of the Notice; and to service of a copy of this MAO, which shall be effective when
4 signed by DEQ.

5 5. This MAO is not intended to limit, in any way, DEQ's right to proceed against
6 Respondent in any forum for any past or future violations not expressly settled herein.

7 6. Respondent agrees that this MAO shall be binding on Respondent and its respective
8 successors, agents, and assigns. The undersigned representative of Respondent certifies that he or
9 she is fully authorized to execute and bind Respondent to this MAO.

10 7. The Department agrees to allow Respondent to and Respondent agrees to pay the
11 10,664 civil penalty plus 9% interest per annum on the unpaid balance until paid in full in
12 accordance with the payment schedule and interest calculation in Attachment A and incorporated by
13 reference. If Respondent defaults by failing to make any monthly payment on time, the balance of
14 the total civil penalty and interest shall be immediately due and payable, and the civil penalty will
15 be recorded and filed with county clerks as liens against any property owned by Respondent and
16 referred for collection.

17 II. FINAL ORDER

18 The Environmental Quality Commission hereby enters a final order:

- 19 1. Imposing upon Respondent a total civil penalty of \$10,664 for the violations alleged
20 in the Notice and as amended by this MAO, \$483.75 of which is due by no later than
21 August 8, 2016, in accordance with Section I, paragraph 7.

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D.C.I. Properties L.L.C.

08/12/2016
Date


Signature
Sheri K. Damon
Name (print)
C.O.O.
Title (print)

DEPARTMENT OF ENVIRONMENTAL QUALITY and
ENVIRONMENTAL QUALITY COMMISSION

8/17/16
Date


Leah K. Feldon, Manager
Office of Compliance and Enforcement
on behalf of DEQ pursuant to OAR 340-012-0170
on behalf of the EQC pursuant to OAR 340-011-0505

AMENDED EXHIBIT No. 1

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

VIOLATION No. 1: Allowing persons other than a licensed asbestos abatement contractor to perform an asbestos abatement project, in violation of ORS 468A.715 and 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 consisted of more than 160 square feet of asbestos-containing material. Specifically, the violation consisted of approximately 225 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, 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 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 only one day, October 2, 2015. Therefore, there was only one occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent should have reasonably known of the requirement.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), 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 \$1,064. This is the amount Respondent gained by avoiding spending approximately \$1,900 to hire a licensed asbestos abatement contractor. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$8,000 + [(0.1 \times \$800) \times (0 + 0 + 0 + 2 + 0)] + \$1,064$
 $= \$8,000 + [\$800 \times 2] + \$1,064$
 $= \$8,000 + \$1,600 + \$1,064$
 $= \$10,664$

