



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

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TTY: 711

June 22, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 3112

Davis Hearn Anderson & Turner
c/o Eugene V. Anderson, Attorney for Respondent
515 East Main Street
Ashland, OR 97520

CERTIFIED MAIL: 7014 2870 0001 3373 5746

Maria Madeline Egbert
3104 Southside Bypass
Klamath Falls, OR 97603

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-ER-16-055

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$59,896 for openly accumulating asbestos containing material at your property located on Cross Road in Klamath Falls, Oregon.

DEQ issued this penalty because the violations described in the attached Notice of Civil Penalty Assessment and Order (Notice) pose the risk of releasing asbestos fibers into the air and exposing 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 prohibits the open accumulation of asbestos containing materials.

Included in Section IV of the Notice is an order requiring you to hire a licensed asbestos abatement contractor to properly abate the asbestos containing material. \$48,696 of the civil penalty represents the economic benefit you gained by failing to properly abate the asbestos containing material. If you complete the requirement, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly. DEQ appreciates that you have made some efforts to cover the material and reduce the risk of human exposure to asbestos fibers. DEQ considered these efforts when determining the amount of the civil penalty.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

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 by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it 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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Frank Messina, DEQ, Bend Office
Cindy Troupe, DEQ, HQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	MARIA MADELINE EGBERT)	ASSESSMENT AND ORDER
	<i>an individual</i>)	
5)	CASE NO. AQ/AB-ER-16-055
	Respondent.)	

6
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 and 468.126 through 468.140,
10 ORS Chapter 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
11 and 248.

12 II. FINDINGS OF FACT

- 13 1. Respondent owns the real property located at 1510 Cross Road, Klamath Falls, Oregon (the
14 Facility).
- 15 2. On February 4, 2016, DEQ performed an inspection of the Facility.
- 16 3. At the time of the February 4, 2016 DEQ inspection, there were uncovered piles of
17 construction and demolition debris located at the Facility. The piles of debris contained approximately
18 175 cubic yards of popcorn texture material, black and silver roofing material, and sheet vinyl flooring
19 material.
- 20 4. The popcorn texture material contains 5% chrysotile asbestos by weight.
- 21 5. The black and silver roofing material contains 10% chrysotile asbestos by weight.
- 22 6. The sheet vinyl flooring material contains 5% chrysotile asbestos by weight.
- 23 7. As of the date of this Notice the construction and demolition debris remains at the Facility.

24 III. CONCLUSIONS

25 Respondent has violated OAR 340-248-0205(1) by openly accumulating friable asbestos-
26 containing material at the Facility, as described in Section II above. Specifically, Respondent
27 accumulated uncovered piles of construction and demolition debris, including popcorn texture, black

1 and silver roofing, and sheet vinyl flooring materials. The popcorn texture, black and silver roofing
2 material, and sheet vinyl flooring, are “asbestos-containing materials,” pursuant to OAR 340-248-
3 0010(8) because they contained more than one-percent asbestos by weight. Pursuant to OAR 340-248-
4 0010(32), Respondent openly accumulated these asbestos containing materials when she failed to
5 securely enclose them. These are Class I violations according to OAR 340-012-0054(1)(m). DEQ
6 hereby assesses a \$59,896 civil penalty for these violations.

7 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

10 1. Pay a total civil penalty of \$59,896. The determination of the civil penalty is attached as
11 Exhibit No. 1 and is incorporated as part of this Notice.

12 If you do not file a request for hearing as set forth in Section V below, your check or money
13 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business**
14 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of
15 Fact, Conclusions and Order become final.

16 2. By no later than 30 days after this Notice of Civil Penalty Assessment and Order becomes a
17 Final Order, hire a licensed asbestos abatement contractor to properly remove all of the asbestos
18 containing material from the Facility.

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

20 You have a right to a contested case hearing on this Notice, if you request one in writing. You
21 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
22 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
23 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters
24 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
25 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
26 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
27 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the

1 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
2 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
3 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
4 association.

5 Active duty service-members have a right to stay proceedings under the federal Service
6 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
7 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
8 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
9 <http://legalassistance.law.af.mil/content/locator.php>.

10 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
11 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
12 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
13 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
14 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
15 information submitted by you, as the record for purposes of proving a prima facie case.

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20 Date

6/22/16


Leah K. Feldon, 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 No. 1: Openly accumulating asbestos-containing material, in violation of OAR 340-248-0205(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(m).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(A) because the violation consists of more than 160 square feet of asbestos containing material. Respondent accumulated approximately 175 cubic yards of construction and demolition debris that contained more than one percent asbestos by weight.

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. The violation began, at the latest, on February 4, 2016, the day of the DEQ inspection. As of the date of this Notice, the Respondent has not corrected the violation. Therefore, there are more than 28 occurrences 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 reasonably should have known of the requirement. As a property owner, Respondent should know that the collection of construction and demolition debris may pose a human health risk.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to minimize the effects of the violation. Upon discovering the potential for the construction

and demolition debris being asbestos, Respondent hired a consultant to perform an asbestos survey on the material. Once the presence of asbestos was confirmed, Respondent covered the material with plastic tarps to minimize the risk of asbestos fibers escaping from the piles of material.

"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 \$48,696. This is the amount Respondent gained by avoiding spending \$82,000 to hire a licensed asbestos abatement contractor to properly remove the piles of asbestos containing construction and demolition debris. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 4 + 2 + -2)] + \$48,696 \\ &= \$8,000 + [\$800 \times 4] + \$48,696 \\ &= \$8,000 + \$3,200 + \$48,696 \\ &= \$59,896 \end{aligned}$$

SEP FAQs

What is a Supplemental Environmental Project (SEP)?

A SEP is a means through which persons who have been assessed civil penalties may reduce penalties owed to DEQ by agreeing to fund projects that benefit public health and the environment in Oregon. Penalties may be mitigated dollar for dollar up to 80% depending on the cost of the project and type of benefits derived.

Who/what, projects qualify?

- Project must primarily benefit the public health or the environment in Oregon.
- Respondent's contribution to the project is worth at least as much as the penalty reduction;
- Project must not be an activity or result that is already required by law or one that is not set to become a future requirement.
- The portion of the project attributable to penalty reduction is not funded by government contracts, loans or grants.
- The responsibilities of the respondent under the SEP are commensurate with the respondent's expertise and capabilities, if respondent is doing the work.
- Project does not result in DEQ's controlling the funds or implementing the SEP, nor can the SEP fulfill statutory obligations or circumvent statutory prohibitions of DEQ.
- Project does not create a significant market or economic advantage for the violator.
- Project must provide for a final report.
- DEQ prefers that projects relate to the same environmental program and will be implemented in the same geographic area in which the violation occurred.

Are there examples of past successful projects or ideas available? Glad you asked! DEQ is currently maintaining and updating a list of possible project ideas. Give us a call at 503-229-5340 to obtain a copy.

Can a third party conduct the project if I commit the funds? Absolutely. Many successful projects have been conducted through third party nonprofit organizations, such as local communities, cities, watershed councils, etc. There must be a defined project that is approved by DEQ before the penalty can be mitigated.

How do I get started? Call the Office of Compliance and Enforcement at 503-229-5340 to obtain an application. Identify a project, fill out the SEP application as completely as possible and submit it to the department's Office of Compliance and Enforcement at 811 SW 6th Avenue, Portland, Oregon 97204. **Please be sure to include the enforcement case name and number.**