



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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Portland, OR 97204-1390
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TTY: 711

August 24, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 6163

Schwabe, Williamson & Wyatt
c/o David Bartz, Attorney for Respondent
1211 SW 5th Avenue, Suite 1900
Portland, OR 97204

CERTIFIED MAIL: 7014 2120 0001 8302 8548

Rose City Contracting, Inc.
c/o David Chaff, Registered Agent
29791 SW Kinsman Rd.
Wilsonville, OR 97070

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-2016-110

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Rose City Contracting, Inc., (Rose City) a civil penalty of \$4,800 for failing to install the required viewing window for an asbestos abatement project at a commercial building in Portland, Oregon.

DEQ issued this penalty because this asbestos abatement work practice requirement is essential to DEQ's ability to oversee asbestos abatement projects. Furthermore, Respondent has repeatedly violated this requirement. 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. The failure to employ the required protective asbestos abatement work practices inhibits DEQ's ability to oversee asbestos abatement projects.

DEQ appreciates Rose City's efforts to minimize the impacts of the violation by correcting the work practice violation during DEQ's inspection of the project. 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 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.



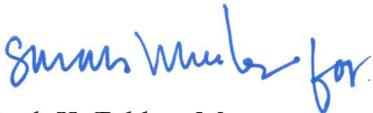
The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.

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: Zeb Bates, DEQ, NWR
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	ROSE CITY CONTRACTING, INC.)	ASSESSMENT AND ORDER
5)	CASE NO. AQ/AB-NWR-2016-110
6	Respondent.)	

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 Chapters 183 and 468A, Oregon Administrative Rules (OAR) Chapters 340, Divisions 011, 012, and
11 248.

12 II. FINDINGS OF FACT

13 1. Respondent is licensed by DEQ as an asbestos abatement contractor.

14 2. On April 7, 2016, Respondent removed approximately 20 square feet of popcorn textured
15 ceiling material (the Project) from a commercial building located at 4265 NE Halsey Street, Portland
16 (the Facility).

17 3. During the Project Respondent failed to install at least one viewing window along the
18 perimeter of the work area.

19 4. The removed pieces of popcorn ceiling texture material crumble when dry.

20 5. The removed pieces of popcorn ceiling texture material contained approximately 4%
21 asbestos by weight.

22 III. CONCLUSION

23 Respondent has violated OAR 340-248-0270(4)(e)(E) by failing to install a minimum of one
24 viewing window in an asbestos abatement project enclosure, as described in Section II above. The
25 popcorn textured ceiling material was “asbestos-containing material,” as defined by OAR 340-248-
26 0010(8) because it contained more than one-percent asbestos by weight. The popcorn ceiling texture
27 material was “friable asbestos material,” as defined by OAR 340-248-0010(25) because it was

1 asbestos-containing material that was capable of crumbling under hand pressure. The Project was an
2 "asbestos abatement project," as defined by OAR 340-248-0010(6) because it was a renovation activity
3 of a facility that involved the removal and handling of asbestos-containing material with the potential
4 of releasing asbestos fibers into the air. Respondent failing to install a viewing window in the plastic
5 barriers erected around the perimeter of the friable asbestos abatement work area at the Facility. This is
6 a Class I violation according to OAR 340-248-0054(1)(l). DEQ hereby assesses a \$4,800 civil penalty
7 for this violation.

8 IV. ORDER TO PAY CIVIL PENALTY

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

11 Pay a total civil penalty of \$4,800. The determination of the civil penalty is attached as Exhibit No.
12 1 and is incorporated as part of this Notice.

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

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

18 You have a right to a contested case hearing on this Notice, if you request one in writing. You
19 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
20 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
21 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters
22 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
23 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
24 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
25 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the
26 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
27 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an

1 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
2 association.

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

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

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16
17 August 24, 2016
18 Date

17 Leah K. Feldon
18 Leah K. Feldon, Manager
19 Office of Compliance and Enforcement
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EXHIBIT No. 1

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

VIOLATION: Failing to install a minimum of one viewing window in a negative pressure enclosure, in violation of OAR 340-248-0270(4)(e)(E).

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(h)(C) because the violation consisted of less than 80 square feet of asbestos-containing material. The project consisted of the removal of approximately 20 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 \$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).

"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 9 according to OAR 340-012-0145(2) (a) (A), because Respondent has three Class I violations and two Class III violations in case no. AQ/AB-WR-07-121, one Class I violation in case no. AQ/AB-WR-12-067, one Class I violation in case no. AQ/AB-WR-15-072, and three Class I violations in case no. AQ/AB-NWR-16-001.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 at least one day, April 7, 2016. Therefore, there was one occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent has been licensed by DEQ as a licensed asbestos abatement contractor for at least 10 years. However, Respondent has a history of noncompliance with DEQ's asbestos rules. Specifically, Respondent was penalized for similar work practice violations in Case Nos. AQ/AB-WR-07-121 and AQ/AB-WR-15-072. In addition, Respondent was cited and penalized within one year for

the exact same violation in Case No. AQ/AB-NWR-16-001. Therefore, Respondent consciously disregarded a substantial and unjustifiable risk that its failure to install a viewing window would result in a violation. In addition, considering Respondent's extensive history of noncompliance, the disregard of the risk represents a gross deviation from the standard of care a reasonable person would observe in that situation.

"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 made reasonable efforts to correct the violation. Respondent installed a viewing window in the enclosure prior to the conclusion of the DEQ inspection on April 7, 2016.

"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 there is insufficient information on which to make an estimate under OAR 340-012-0150.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (9 + 0 + 0 + 8 + -3)] + \$0 \\ &= \$2,000 + [\$200 \times 14] + \$0 \\ &= \$2,000 + \$2,800 + \$0 \\ &= \$4,800 \end{aligned}$$