



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

811 SW 6th Ave

Portland, OR 97204-1390

(503) 229-5696

FAX (503) 229-6124

TTY: 711

September 14, 2016

Immix Law Group PC
c/o Nick Drum
121 SW Salmon St., Suite 1000
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order
In the Matter of:
PDX Renovations LLC
Case No. AQ/AB-NWR-16-031

Dear Mr. Drum:

DEQ has received full payment in the amount of \$4,000 for violations cited in the Notice of Civil Penalty Assessment and Order, No. AQ/AB-NWR-16-031. Please find a copy of the fully executed Mutual Agreement and Final Order attached. The case is now closed.

Thank you for your cooperation.

Sincerely,

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

Enclosure

cc: Killian Condon, NWR, DEQ



1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3)
4 IN THE MATTER OF)
PDX RENOVATIONS, LLC)

MUTUAL AGREEMENT
AND FINAL ORDER
CASE NO. AQ/AB-NWR-16-031

5)
6 Respondent.)

7 WHEREAS:

8 1. On April 11, 2016, the Department of Environmental Quality (DEQ) issued Notice
9 of Civil Penalty Assessment and Order No. Case No. AQ/AB-NWR-16-031 (Notice) to Respondent.
10 DEQ assessed a 5,000 civil penalty against Respondent for violations alleged in the Notice.

11 2. On April 21, 2016, Respondent filed a timely request for hearing.

12 I. AGREEMENT

13 Respondent and DEQ hereby agree that:

14 1. Based upon new information submitted by Respondent, DEQ agrees to amend
15 Exhibit No. 1 by reducing the value of "M" factor from 4 to 2 and reducing the value of "C" factor
16 from a value of 0 to -1. This results in a change in the civil penalty for Violation No. 1 from \$2,800
17 to \$2,200. In addition, DEQ agrees to amend Exhibit No. 2 by reducing the "M" factor from 4 to 2.
18 This results in a change in civil penalty for Violation No. 2 from \$2,200 to \$1,800. The amended
19 findings and determination of the civil penalty is attached and incorporated as Amended Exhibit
20 Nos. 1 and 2.

21 2. DEQ and Respondent agree that the total civil penalty is reduced from \$5,000 to
22 \$4,000.

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

26 ////

27 ////

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 II. FINAL ORDER

11 The Environmental Quality Commission hereby enters a final order:

12 1. Imposing upon Respondent a total civil penalty of \$4,000 for the violations alleged
13 in the Notice and as amended by this MAO, \$4,000 of which is due upon execution of this MAO.

14
15 PDX RENOVATIONS, LLC

16
17
18 9/11/2014
Date

19 
Signature
20 Scott Taylor
Name (print)
21 as manager
Title (print)

22 DEPARTMENT OF ENVIRONMENTAL QUALITY and
23 ENVIRONMENTAL QUALITY COMMISSION

24
25 9/13/16
Date

26 
Leah K. Feldon, Manager
Office of Compliance and Enforcement
27 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 a person other than a certified employee or licensed asbestos abatement contractor perform an asbestos abatement project, in violation of 468A.715(1) 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 minor pursuant to OAR 340-012-0135(1)(h)(C) because the violation consisted of less than 80 square feet of asbestos containing material. Respondent allowed the removal of approximately 50 square feet of material from the deck and sliding door installation.

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 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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).
- "M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent had constructive knowledge (reasonably should have known) of the requirement.
- "C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e), because Respondent made reasonable efforts to ensure the violation would not be repeated. Respondent severed a business relationship with the unlicensed person it allowed to perform an asbestos abatement project.

"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 Respondent did not gain a benefit due to eventually hiring a licensed abatement contractor to complete the abatement and mitigate the violation.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 2 + -1)] + \$0 \\ &= \$2,000 + [\$200 \times 1] + \$0 \\ &= \$2,000 + \$200 + \$0 \\ &= \$2,200 \end{aligned}$$

AMENDED EXHIBIT NO. 2

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

VIOLATION NO.2: Openly accumulating friable 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)(m).

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 Respondent accumulated approximately 50 square feet of material from fragments of the deck and sliding door installation

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 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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

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

"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 hired a licensed abatement contractor who completed the abatement and properly disposed of the asbestos-containing waste material. Therefore, Respondent made reasonable efforts to correct the violation and minimize the effects of the openly accumulating friable asbestos 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 \$0 because Respondent did not gain a benefit due to eventually hiring a licensed abatement contractor to complete the abatement and mitigate the violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$2,000 + [(0.1 x \$2,000) x (0 + 0 + 0 + 2 + -3)] + \$0
= \$2,000 + [\$200 x -1] + \$0
= \$2,000 - \$200 + \$0
= \$1,800