



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

CERTIFIED MAIL: 7014 2870 0001 3373 6187

Michael Eugene Do, dba Phileo Construction
13155 SW Worchester Pl.
Tigard, OR 97223

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-2016-111

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$21,000 for performing an asbestos abatement project without a license and for openly accumulating asbestos containing waste material. In addition, DEQ cited you, without penalty, for failing to have an accredited inspector perform an asbestos survey prior to the demolition of a residential building and for failing to provide DEQ with a notification of the asbestos abatement project at least ten days prior to commencing the project.

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 prohibits open accumulation of asbestos-containing waste material. The failure to obtain the proper training and the open accumulation of asbestos-containing waste material presents a significant risk to public health and the environment.

DEQ appreciates your efforts to correct and minimize the impacts of the violations by hiring a licensed asbestos abatement contractor to properly abate the openly accumulated asbestos containing waste material. 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.



Michael Eugene Do, dba Phileo Construction

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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,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: Zeb Bates, DEQ, NWR
Cindy Troupe, DEQ, HQ
Phileo Construction, c/o Michael Eugene Do, 14830 SE Misty Dr. #401, Happy Valley, OR
97086

1 8. The surfacing and sheetrock material contained approximately 3% Chrysotile asbestos by
2 weight.

3 9. The thermal system insulation material contained approximately 80% Chrysotile asbestos by
4 weight.

5 10. The floor tile and mastic material contained approximately 7% Chrysotile asbestos by
6 weight.

7 11. Respondent did not submit to DEQ an asbestos abatement notification at least ten days
8 before commencing the Project.

9 III. CONCLUSIONS

10 1. Respondent has violated ORS 468A.710(1) and OAR 340-248-0110(3) by performing an
11 asbestos abatement project without a DEQ asbestos abatement license, as described in Section II above.
12 The Project was an “asbestos abatement project,” as defined by OAR 340-248-0010(6), because it
13 involved the removal and handling of asbestos-containing material with the potential of releasing
14 asbestos fibers into the air. As alleged in Section II, paragraphs 6-10, the multi-layered flooring, the
15 surface and sheetrock, thermal system insulation, and floor tile and mastic materials were all “asbestos
16 containing material,” as defined by OAR 340-248-0010(8), because they contained more than 1%
17 asbestos by weight. This is a Class I violation according to OAR 340-012-0054(1)(n). DEQ hereby
18 assesses an \$8,800 civil penalty for this violation.

19 2. Respondent has violated OAR 340-248-0205(1) by openly accumulating asbestos-containing
20 waste material, as described in Section II above. The dry and unenclosed piles of demolition debris
21 materials were “asbestos-containing waste material,” as defined by OAR 340-248-0010(12) because they
22 were wastes generated from an asbestos abatement project. This is a Class I violation according to OAR
23 340-012-0054(1)(m). DEQ hereby assesses a \$12,200 civil penalty for this violation.

24 3. Respondent has violated OAR 340-248-0270(1) by failing to have an accredited inspector
25 thoroughly survey the Facility for the presence of asbestos-containing material prior to the commencement
26 of a residential demolition, as described in Section II above. The Project was a “demolition,” as defined in
27 OAR 340-248-0010(19), because it involved the wrecking or removal of any load-supporting structural

1 member of a facility. This is a Class I violation according to OAR 340-012-0054(1)(l). DEQ has not
2 assessed a civil penalty for this violation.

3 4. Respondent has violated OAR 340-248-0260(1) by failing to submit to DEQ an asbestos
4 abatement notification at least ten days before beginning an asbestos abatement project, as described in
5 Section II above. The Project was an "asbestos abatement project," as defined by OAR 340-248-
6 0010(6), because it involved the removal and handling of asbestos-containing material with the
7 potential of releasing asbestos fibers into the air. As alleged in Section II, paragraphs 6-10, the multi-
8 layered flooring, the surface and sheetrock, thermal system insulation, and floor tile and mastic
9 materials were all "asbestos containing material," as defined by OAR 340-248-0010(8), because they
10 contained more than 1% asbestos by weight. This is a Class II violation according to OAR 340-012-
11 0054(2)(l). DEQ has not assessed a civil penalty for this violation.

12 IV. ORDER TO PAY CIVIL PENALTY

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

15 Pay a total civil penalty of \$21,000. The determination of the civil penalties is attached as Exhibit
16 Nos. 1 and 2 and are incorporated as part of this Notice.

17 If you do not file a request for hearing as set forth in Section V below, your check or money order
18 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
19 **811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of Fact,
20 Conclusions and Order become final.

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

22 You have a right to a contested case hearing on this Notice, if you request one in writing. You
23 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
24 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
25 this Notice or attached exhibits, you must include them in your request for hearing, as factual matters
26 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
27 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request

1 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
2 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the
3 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
4 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
5 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
6 association.

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

12 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
13 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
14 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
15 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
16 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
17 information submitted by you, as the record for purposes of proving a prima facie case.
18
19
20

21 September 14, 2016

22 Date

21 Sarah Wheeler

22 Sarah G. Wheeler, Acting Manager
23 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 No. 1: Performing an asbestos abatement project without a DEQ asbestos abatement license, in violation of ORS 468A.710(1) and OAR 340-248-0110(3).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(A) because there were more than 160 square feet of material involved in the violation. There were approximately 1,200 square feet of asbestos containing material involved in the violation.

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 at least one occurrence of the violation and insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). Each day of violation constitutes a separate occurrence. The violation occurred on at least one day, April 7, 2016, the day of DEQ's inspection. The Respondent ceased demolition on the day of DEQ's inspection. Therefore, there was at least one occurrence of the violation.

"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. Respondent has been licensed by the Oregon Construction Contractors Board (CCB) as a residential general contractor since 2008. The CCB tests its licensees annually on the ability to identify asbestos containing material and DEQ's asbestos abatement licensing requirement. Therefore, Respondent's removal of asbestos containing material without a DEQ license demonstrates a failure to take reasonable care to avoid a foreseeable risk that its conduct would result in a violation.

"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 took reasonable affirmative efforts to minimize the effects of the violation. On the same day as the DEQ inspection Respondent halted the demolition project and contracted for the proper asbestos abatement.

"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 the Respondent did not receive an economic benefit from the violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 0 + 4 + -3)] + \$0
= \$8,000 + [\$800 x 1] + \$0
= \$8,000 + \$800 + \$0
= \$8,800

EXHIBIT No. 2

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

VIOLATION No. 2: Open accumulation of 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 major pursuant to OAR 340-012-0135(1)(h)(A) because there were more than 160 square feet of material involved in the violation. There were approximately 1,200 square feet of asbestos containing waste material involved in the violation.

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 3 according to OAR 340-012-0145(4)(c), because there were between seven and 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. The violation began at the latest on April 7, 2016, the day of DEQ's inspection, and continued until at least April 22, the day that the licensed asbestos abatement contractor began abatement work. Therefore there were approximately 16 occurrences of the violation.

"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. Respondent has been licensed by the Oregon Construction Contractors Board (CCB) as a residential general contractor since 2008. The CCB tests its licensees annually on the ability to identify asbestos containing material and DEQ's asbestos abatement licensing requirement. Therefore, Respondent's accumulation of asbestos-containing materials without proper enclosure and packaging demonstrates a failure to take reasonable care to avoid a foreseeable risk that its conduct would result in a violation.

"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 took reasonable affirmative efforts to minimize the effects of the violation. On the same day as the DEQ inspection Respondent halted the demolition project and contracted for the proper asbestos abatement.

"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 the Respondent did not receive an economic benefit from the violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 3 + 4 + -3)] + \$0
= \$8,000 + [\$800 x 4] + \$0
= \$8,000 + \$3,200 + \$0
= \$12,200