



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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Portland, OR 97204-1390
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September 6, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 6057

Joling Enterprises LLC
c/o Jon Paul Joling, Registered Agent
38363 Century Drive NE
Albany OR 97322

Re: Notice of Civil Penalty Assessment and Order
Case No.: AQ/AB-WR-2016-126

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$28,225 for performing an unlicensed asbestos abatement project at the house you own located at 1140 SE Hill St., in Albany, Oregon, and allowing the asbestos-containing waste material (ACWM) that resulted from that project to openly accumulate for six days.

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 licensing and adherence to asbestos abatement disposal procedures. Failing to obtain a license and adhere to the disposal procedures presents a significant risk to public health and the environment.

DEQ appreciates your efforts to correct the violation by hiring a licensed asbestos abatement contractor to clean up the ACWM on July 9, 2016. 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 Courtney Brown, at (503) 229-6839. You may call toll-free within Oregon at 1-800-452-4011, extension 6839.

Sincerely,

Leah K. Feldon for

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dottie Boyd, DEQ, Salem
Cindy Troupe, AQ, HQ

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 JOLING ENTERPRISES LLC,) ASSESSMENT AND ORDER
a limited liability corporation,)
5 Respondent.) CASE NO. AQ/AB-WR-2016-126

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

12 II. FINDINGS OF FACT

13 1. At all material times, Respondent was the “owner” and “operator,” as defined in OAR
14 340-248-0010(33), of a single family home located at 1140 SE Hill Street, in Albany, Oregon 97322
15 (the Facility).

16 2. Respondent is a general contractor licensed by the Oregon Construction Contractors
17 Board.

18 3. On or about June 1, 2016 an asbestos survey of the Facility was performed for
19 Respondent by WL Thomas Environmental. The survey identified vinyl floor tile (VAT) and mastic in
20 the kitchen of the Facility as containing 3-5% asbestos. The survey identified wall and ceiling texture
21 as containing 2-3% chrysotile asbestos.

22 4. On or about June 23, 2016, through on or about June 24, 2016, Respondent’s employees
23 engaged in “renovation” activities, as defined in OAR 340-248-0010(36), at the Facility by altering
24 interior and facility components.

25 5. The renovation activities disturbed or removed approximately 230 square feet of
26 sheetrock containing 2-3% friable chrysotile asbestos from the Facility.

27 ///

1 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
2 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters
3 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
4 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
5 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
6 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the
7 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
8 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
9 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
10 association.

11 Active duty service-members have a right to stay proceedings under the federal Service
12 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
13 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
14 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
15 <http://legalassistance.law.af.mil/content/locator.php>.

16 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
17 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
18 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
19 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
20 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
21 information submitted by you, as the record for purposes of proving a prima facie case.
22
23
24

25 September 6, 2016

26 Date

25 Sarah Wheeler for

26 Leah K. Feldon, Manager
27 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: Performing an asbestos abatement project without an asbestos abatement license issued by DEQ, 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 the violation consisted of more than 160 square feet of asbestos-containing material. Specifically, Respondent removed approximately 590 square feet of wall and ceiling texture and VAT and mastic from the Facility.

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 2 according to OAR 340-012-0145(4)(b), because there was more than one but less than seven occurrences of the violation. Each day of violation constitutes a separate occurrence. The asbestos abatement project, performed by the unlicensed Respondent, occurred on June 23-24, 2016.

"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 is licensed as a construction contractor by the Oregon Construction Contractors Board (CCB). The CCB tests its licensees on how to identify asbestos and DEQ's asbestos abatement licensing requirement. In addition, Respondent had an asbestos survey of the Facility done prior to the renovation, which identified the removed materials as asbestos-containing. By failing to have all the ACMs abated and by failing to communicate to its workers the hazards of the asbestos remaining at the Facility, Respondent consciously disregarded a substantial and

unjustifiable risk that the ACMs at the Facility would be disturbed resulting in a violation of Oregon's asbestos laws.

"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 by hiring a licensed asbestos abatement contractor to perform a clean-up and properly abate the ACM at the Facility on July 9, 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 \$1,025. is the amount Respondent gained by avoiding spending \$1,850 on compliance costs. The estimated cost to have correctly abated the ACM would have been approximately \$3,650. Respondent paid approximately \$1,800 to a licensed asbestos abatement contractor to clean up the ACWM at the Facility. \$1,850 is the difference between actual estimated cost to do a correct abatement less the actual cost they spent to hire clean up of ACWM. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 2 + 8 + -3)] + \$1,025$
= $\$8,000 + [\$800 \times 7] + \$1,025$
= $\$8,000 + \$5,600 + \$1,025$
= $\$14,625$

EXHIBIT No. 2

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

VIOLATION No. 2: Openly accumulating asbestos-containing waste material (ACWM), in violation of OAR 340-248-0205(1). Specifically, ACWM was stored in an unsecured, open trailer at the Facility from on or about June 23rd through on or about June 29, 2016.

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 consisted of more than 160 square feet of asbestos-containing material. Specifically, Respondent openly accumulated approximately 590 square feet of wall and ceiling texture and VAT and mastic from the Facility.

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)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(B).

"P" is whether Respondents have 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 Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondents' 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 2 according to OAR 340-012-0145(4)(b), because there were six occurrences of the violation. Each day of violation constitutes a separate occurrence. The asbestos abatement project occurred on June 23rd and 24th, 2016. The disturbed and friable ACWM was insufficiently covered in a trailer at the Facility and openly accumulated until June 29, 2016. Therefore, there were six occurrences 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 is licensed as a construction contractor by the Oregon Construction Contractors Board (CCB). The CCB tests its licensees on how to identify asbestos and DEQ's asbestos abatement licensing requirement. In addition, Respondent had an asbestos survey of the Facility done which identified the removed materials as asbestos-containing. By failing to have all the ACMs

abated and by failing to communicate to its workers the hazards of the asbestos remaining at the Facility, Respondent consciously disregarded a substantial and unjustifiable risk that the removed ACWMs would be stored unprotected in an open trailer at the Facility resulting in a violation of Oregon's asbestos laws prohibiting open accumulation of ACWM.

"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 by hiring a licensed asbestos abatement contractor to perform a clean-up and abate the ACM at the Facility on July 9, 2016.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' 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's economic benefit is captured in the civil penalty assessed for Violation No.1.

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 + 2 + 8 + -3)] + \$0
= \$8,000 + [\$800 x 7] + \$0
= \$8,000 + \$5,600 + \$0
= \$13,600