



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

September 14, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 9416

Greenleaf Painting & Construction, Inc.
c/o Lorena Brambila, Registered Agent
1617 NE 140th Ave
Portland, OR 97230

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-2021-501

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$28,200 for performing a friable asbestos abatement project without being licensed by DEQ, failing to have an asbestos survey performed prior to a renovation, and openly accumulating asbestos-containing waste material at the Holiday Inn Portland South located at 25425 SW 95th Avenue, Wilsonville, Oregon 97070. This Notice also cites you, without penalty, for failing to submit an asbestos abatement project notification to DEQ before 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 open accumulation of asbestos-containing waste material presents a significant risk to public health and the environment. Asbestos surveys are required prior to a renovation or demolition project to help identify and properly abate asbestos-containing materials.

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

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.state.or.us

Via fax – 503-229-6762

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 via check, money order, or e-check (ACH) by following the instructions on the attached invoice and logging in to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review 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 instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Daniel Miranda, Greenleaf Painting & Construction, Inc., 1617 NE 140th Ave, Portland, OR 97230
Zeb Bates, DEQ
Audrey O'Brien, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
GREENLEAF PAINTING AND) NOTICE OF CIVIL PENALTY
CONSTRUCTION, INC.) ASSESSMENT AND ORDER
an Oregon corporation,)
Respondent.) CASE NO. AQ/AB-NWR-2021-501

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapter 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 248.

II. FINDINGS OF FACT

1. Respondent is a residential general contractor registered to conduct business in Oregon and licensed by the Oregon Construction Contractor's Board (CCB #206499).

2. On February 14, 2019, Respondent was hired by the Holiday Inn Portland South (the Hotel) to remove the existing popcorn ceiling texture and apply new texture in multiple units at the hotel, located at 25425 SW 95th Avenue, Wilsonville, Oregon 97070 (the Facility).

3. In February 2018, the Hotel had a sample of the popcorn ceiling texture collected from one of the units at the Facility. The sample contained 15% Chrysotile asbestos by weight.

4. The Hotel provided the asbestos sample information described in Section II, Paragraph 3, above, to Respondent.

5. On February 20, 2019 and February 21, 2019, Respondent removed, handled and placed in asbestos bags approximately 230 square feet of popcorn ceiling texture from each of six units (rooms 510, 523, 525, 529, 531 and 536) on the fifth floor of the Facility's "Guest Tower." The total amount of popcorn ceiling material removed was approximately 1,380 square feet.

6. The popcorn ceiling texture described in Section II, Paragraph 5, above, contained 2-15% Chrysotile asbestos by weight.

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7. The removal and handling of the popcorn ceiling texture described in Section II, Paragraph 5, above, had the potential to release asbestos fibers into the air.

8. On March 6, 2019, DEQ inspected the Facility.

9. On March 6, 2019, popcorn ceiling texture had been removed from six units in the Facility’s “Guest Tower” (rooms 510, 523, 525, 529, 531 and 536) and replaced with new ceiling texture. Impacted popcorn ceiling texture was located on horizontal surfaces within those units including windowsills and air conditioning units.

10. Between March 7, 2019 and March 15, 2019, a DEQ-licensed asbestos abatement contractor abated and removed the remaining popcorn ceiling texture from the six units described in Section II, Paragraph 9, above, and decontaminated the units.

11. Neither Respondent nor the Hotel had an accredited inspector complete an asbestos survey prior to removing the popcorn ceiling texture in the six rooms, as described in Section II, Paragraph 5, above.

12. Respondent did not submit an asbestos abatement project notification to DEQ before removing popcorn ceiling texture from six units at the Facility on or before March 5, 2019.

13. Respondent is not, and has never been, licensed by DEQ as an asbestos abatement contractor.

III. CONCLUSIONS

1. On February 20, 2019 and February 21, 2019, Respondent violated ORS 468A.710(1) and OAR 340-248-0110(4) by performing a friable asbestos abatement project without being licensed by DEQ, as described in Section II, Paragraphs 1-7 and 13 above. Specifically, Respondent removed and handled popcorn ceiling texture from six units at the Facility. Respondent is a “contractor” according to OAR 340-248-0010(16) because it was hired by the Hotel to remove popcorn texture ceiling from multiple units at the Facility. Respondent’s work at the Residence was an “asbestos abatement project,” as defined by OAR 340-248-0010(6) because it was a renovation that involved the removal and handling of asbestos-containing material with the potential to release asbestos fibers into the air. The popcorn ceiling texture is “asbestos-containing material” as defined by OAR 340-248-0010(8) because

1 it is a material containing more than 1% asbestos by weight. This is a Class I violation, according to
2 OAR 340-012-0054(1)(t). DEQ hereby assesses a \$12,800 civil penalty for this violation.

3 2. From late February, 2019 to March 15, 2019, Respondent violated OAR 340-248-0205(1)
4 by openly accumulating asbestos-containing waste material as described in Section II, Paragraphs 5-10
5 above. Specifically, Respondent left bits of asbestos-containing popcorn ceiling texture in six units at
6 the Facility, which remained there until the units were decontaminated by a DEQ licensed abatement
7 contractor. The pieces of popcorn ceiling texture stored in the units were not packaged in leak tight
8 packaging as required under OAR Chapter 240, Division 248. This is a Class I violation, according to
9 OAR 340-012-0054(1)(s). DEQ hereby assesses a \$4,200 civil penalty for this violation.

10 3. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector
11 complete an asbestos survey before performing a renovation, as described in Section II, Paragraphs 1-7
12 and 11 above. The removal of popcorn ceiling texture is a renovation as defined by OAR 340-258-
13 0010(39) because it involves the alteration of one or more facility components. This is a Class I violation
14 according to OAR 340-012-0054(1)(r). DEQ hereby assesses an \$11,200 civil penalty for this violation.

15 4. Respondent violated OAR 340-248-0260(1) and (2) by failing to submit a notification to
16 DEQ at least 10 days before conducting a friable asbestos abatement project, as described in Section II,
17 Paragraphs 1-7 and 12 above. This is a Class II violation, according to OAR 340-012-0054(2)(m). DEQ
18 has not assessed a civil penalty for this violation.

19 IV. ORDER TO PAY CIVIL PENALTY

20 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
21 hereby ORDERED TO: Pay a total civil penalty of \$28,200. The determination of the civil penalties are
22 attached as Exhibits 1-3 and are incorporated as part of this Notice.

23 If you do not file a request for hearing as set forth in Section V below, please pay the penalty
24 via check, money order, or e-check (ACH) by following the instructions on the attached invoice and
25 logging in to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>

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

2 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
3 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
4 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
5 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
6 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
7 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
8 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
9 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge
10 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
11 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
12 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
13 you may represent yourself. If you are a corporation, partnership, limited liability company,
14 unincorporated association, trust or government body, you must be represented by an attorney or a duly
15 authorized representative, as set forth in OAR 137-003-0555.

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

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1 If you fail to file a timely request for hearing, the Notice will become a final order by default
2 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
3 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
4 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
5 the relevant portions of its files, including information submitted by you, as the record for purposes of
6 proving a prima facie case.

7
8
9 9/14/2021
10 Date

Kieran O'Donnell
Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 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 being a DEQ-licensed asbestos abatement contractor, in violation of 468A.710(1) and OAR 340-248-0110(4).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(t).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(i)(A) because the violation involved more than 160 square feet of asbestos-containing material. Respondent removed approximately 1,380 square feet of popcorn ceiling texture from six units at 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) because Respondent is not a residential owner-occupant.
- "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 were more than one but less than seven occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent removed popcorn ceiling texture from six units at the Facility on February 20, 2019 and February 21, 2019.
- "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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent is a residential contractor licensed by the Oregon Construction Contractors Board ("CCB") since 2015. CCB contractors receive training on identifying suspect asbestos-containing materials and the requirement that asbestos must be removed by a DEQ licensed contractor. The Hotel provided Respondent with information from a February 2018 sample indicating that the

popcorn ceiling material at the Facility contained asbestos. Therefore, Respondent should have known that it could not remove the popcorn ceiling texture without being licensed by DEQ. Thus, by removing the popcorn ceiling texture, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"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 DEQ has insufficient information to calculate an economic benefit for this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \EB
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 2 + 4 + 0)] + \$0
= \$8,000 + (\$800 x 6) + \$0
= \$8,000 + \$4,800 + \$0
= \$12,800

EXHIBIT 2

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

- VIOLATION NO. 2 Openly accumulating 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)(s).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(i)(C) because the violation involved less than 80 square feet asbestos-containing waste material. Respondent openly accumulated many small pieces of asbestos-containing popcorn ceiling texture on the horizontal surfaces of six units at 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 \$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) because Respondent is not a residential owner-occupant.
- "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 from seven to 28 occurrences of the violation. Each day counts as a separate occurrence of the violation. Respondent openly accumulated asbestos-containing waste material at the Residence from February 20, 2019 to March 15, 2019 when a DEQ-licensed asbestos abatement contractor completed the removal of the material and decontamination of the six units at the Facility. Therefore, there were at least 24 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. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Respondent is a residential contractor licensed by the Oregon Construction Contractors Board ("CCB") since

2015. CCB contractors receive training on identifying suspect asbestos-containing materials and the fact that asbestos-containing materials are subject to specific regulatory requirements due to the public health hazards associated with asbestos. The Hotel provided Respondent with information from a February 2018 sample indicating that the popcorn ceiling material at the Site contained asbestos. Respondent packaged the popcorn ceiling material that it removed from the six units at the Site in plastic bags and labeled the material as asbestos-containing material. Therefore, Respondent knew that the material was hazardous and must be handled using certain precautions. Nevertheless, Respondent left bits of popcorn ceiling material throughout the six units at the Site, contaminating the units and creating a public health hazard. Thus, Respondent consciously disregarded a substantial and unjustifiable risk of openly accumulating asbestos containing material. Due to the health hazards associated with asbestos, that risk was of such a nature and degree that disregarding that risk constituted 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 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 any economic benefit that Respondent gained as a result of the violation is de minimis.

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 \times \$2,000) \times (0 + 0 + 3 + 8 + 0)] + \0
 $= \$2,000 + (\$200 \times 11) + \$0$
 $= \$2,000 + \$2,200 + \$0$
 $= \$4,200$

EXHIBIT 3

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

- VIOLATION NO. 3 Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector complete an asbestos survey before performing a renovation.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(r).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(i)(A) because the violation involved more than 160 square feet of asbestos-containing material. The renovation involved at least 1,380 square feet of popcorn ceiling texture from six units at 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) because Respondent is not a residential owner-occupant.
- "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 only 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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent is a residential contractor licensed by the Oregon Construction Contractors Board ("CCB") since 2015. CCB contractors receive training on identifying suspect asbestos-containing materials and the fact that asbestos-containing materials are subject to specific regulatory requirements. The Hotel provided Respondent with information from a February 2018 sample indicating that the popcorn ceiling material at the Facility contained asbestos. Therefore, Respondent should have known specific regulatory requirements such as a survey may apply. Thus, by removing the popcorn ceiling texture without first having a

survey performed, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 DEQ has insufficient information to calculate an economic benefit for this 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 \times \$8,000) \times (0 + 0 + 0 + 4 + 0)] + \0
 $= \$8,000 + (\$800 \times 4) + \$0$
 $= \$8,000 + \$3,200 + \$0$
 $= \$11,200$