



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 8969

SW 95 LLC
Pointe West Apartments, LLC
c/o Jonathan Barg, Barg Tom PC, Registered Agent for SW 95 LLC & Pointe West Apartments, LLC
121 SW Morrison Street, Suite 600
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-2020-144

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 \$20,800 for allowing a friable asbestos abatement project to be performed by a contractor not 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.

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.

DEQ appreciates your efforts to minimize the impacts of the violations by hiring a licensed asbestos abatement contractor to decontaminate the hotel and hiring an accredited inspector to conduct an asbestos survey on the units that remained to be renovated. 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 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.govonlineaas.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: Sungmin Park, Holiday Inn Portland South, 25425 SW 95th Avenue, Wilsonville, OR 97070
Sungmin Park, 3090 Fite Circle, Suite 203, Sacramento, CA 95827
Jim Dodson, Holiday Inn Portland South, 25425 SW 95th Avenue, Wilsonville, OR 97070
Zeb Bates, DEQ
Audrey O'Brien, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 SW 95 LLC,) NOTICE OF CIVIL PENALTY
5 an Oregon limited liability corporation, and) ASSESSMENT AND ORDER
6 POINTE WEST APARTMENTS, LLC,)
7 an Oregon limited liability corporation,) CASE NO. AQ/AB-NWR-2020-144
8 Respondents.)

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, ORS 468.126 through 468.140,
10 ORS Chapter 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
11 and 248.

12 II. FINDINGS OF FACT

13 1. Respondents own the Holiday Inn Portland South located at 25425 SW 95th Avenue,
14 Wilsonville, Oregon 97070 (the Facility).

15 2. On February 14, 2019, Respondent hired Greenleaf Painting and Construction Inc. (the
16 Contractor) to remove the existing popcorn ceiling texture and apply new texture in multiple units at
17 the Facility.

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

20 4. Respondent provided the asbestos sample information described in Section II, Paragraph 3,
21 above, to the Contractor.

22 5. On February 20, 2019 and February 21, 2019, the Contractor removed, handled and placed
23 in asbestos bags approximately 230 square feet of popcorn ceiling texture from each of six units (rooms
24 510, 523, 525, 529, 531 and 536) on the fifth floor of the Facility's "Guest Tower." The total amount of
25 popcorn ceiling material removed was approximately 1,380 square feet.

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

2. From February 20, 2019 to March 15, 2019, Respondent violated OAR 340-248-0205(1) by openly accumulating asbestos-containing waste material as described in Section II, Paragraphs 5-10 above. Specifically, Respondent stored bits of asbestos-containing popcorn ceiling texture in six units at the Facility, which remained there until the units were decontaminated by a DEQ licensed contractor. The pieces of popcorn ceiling texture stored in the units were not packaged in leak tight packaging as required under OAR Chapter 240, Division 248. This is a Class I violation, according to OAR 340-012-0054(1)(s). DEQ hereby assesses a \$2,400 civil penalty for this violation.

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

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO: Pay a total civil penalty of \$20,800. The determination of the civil penalties are attached as Exhibits 1-3 and are incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, please 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>

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax

1 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
3 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
4 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
5 you may represent yourself. If you are a corporation, partnership, limited liability company,
6 unincorporated association, trust or government body, you must be represented by an attorney or a duly
7 authorized representative, as set forth in OAR 137-003-0555.

8 Active duty Service members have a right to stay proceedings under the federal Service
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
12 Department does not have a toll free telephone number.

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

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20
21 9/14/2024

22 Date

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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 Allowing a person not licensed or certified by DEQ to perform an asbestos abatement project, in violation of OAR 340-248-0110(2).

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

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 allowed the Contractor to remove2 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 allowed the Contractor to remove 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 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. Respondent had a February 2018 sample indicating that the popcorn ceiling material at the Facility contained asbestos, thus it knew about the presence of asbestos in this material in the Facility. It is widely known that asbestos is a regulated material. Moreover, Respondent's Phase I report stated that asbestos must be removed by licensed professionals. Thus, Respondent reasonably should have known of the requirement that a licensed asbestos abatement contractor must be used for a friable asbestos abatement project.

"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 any economic benefit Respondent gained from the violation was offset by the costs that Respondent incurred to have a licensed asbestos contractor decontaminate the six units following DEQ's inspection.

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 \times \$8,000) \times (0 + 0 + 2 + 2 + 0)] + \0
 $= \$8,000 + (\$800 \times 4) + \$0$
 $= \$8,000 + \$3,200 + \$0$
 $= \$11,200$

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 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. Respondent had a February 2018 sample indicating that the popcorn ceiling material at the Facility contained asbestos, thus it knew about the presence of asbestos in this material in the Facility. It is widely known that asbestos is a regulated material and poses hazards to human health. Thus, Respondent reasonably should have

known that asbestos containing materials are subject to regulatory requirements such as the prohibition on open accumulation.

"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. Following DEQ's instructions and inspection, Respondent hired a licensed asbestos abatement contractor to decontaminate the six units at the Facility.

"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 Respondent gained from the violation was offset by the costs that Respondent incurred to have a licensed asbestos contractor decontaminate the six units following DEQ's inspection.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 3 + 2 + -3)] + \$0 \\ &= \$2,000 + (\$200 \times 2) + \$0 \\ &= \$2,000 + \$400 + \$0 \\ &= \$2,400 \end{aligned}$$

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 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. Respondent had a February 2018 sample indicating that the popcorn ceiling material at the Facility contained asbestos, thus it knew about the presence of asbestos in this material in the Facility. It is widely known that asbestos is a regulated material. Thus, as a commercial property owner, Respondent reasonably should have known of the requirement to have an asbestos survey conducted prior to the renovation.

"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. Following DEQ's instructions and

inspection, Respondent hired an accredited inspector to perform an asbestos survey and produce an asbestos survey report on the remaining units to be renovated at the Facility.

"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 Respondent gained was offset by the cost of hiring an accredited inspector after DEQ's inspection to evaluate the remaining rooms to be renovated at the Facility.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 2 + -3)] + \$0 \\ &= \$8,000 + (\$800 \times -1) + \$0 \\ &= \$8,000 + -\$800 + \$0 \\ &= \$7,200 \end{aligned}$$