



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
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TTY 711

September 14, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8952

Statewide Restoration, Inc.
c/o Corporation Service Company, Registered Agent
1127 Broadway Street NE Suite 310
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-2020-145

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 \$28,800 for performing a friable asbestos abatement project without being licensed by DEQ and openly accumulating asbestos-containing waste material at a residential property located at 10220 SE 222nd Drive, Damascus, Oregon 97089. 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.

DEQ appreciates your efforts to minimize the impacts of the violation by hiring a DEQ-licensed asbestos abatement contractor to properly remove the asbestos-containing waste material and to decontaminate the residence, following DEQ's request. 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.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: Zeb Bates, DEQ
Audrey O'Brien, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)	
STATEWIDE RESTORATION, INC.,)	NOTICE OF CIVIL PENALTY
an Oregon corporation,)	ASSESSMENT AND ORDER
)	
Respondent.)	CASE NO. AQ/AB-NWR-2020-145

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 #202904).

2. On or before July 24, 2018, Respondent was hired by an insurance company to renovate a residential property located at 10220 SE 222nd Drive, Damascus, Oregon 97089 (the Residence) following a partial house fire at the Residence.

3. On July 25, 2018, Respondent had an accredited asbestos inspector inspect the Residence and collect samples of suspect asbestos-containing material. The asbestos survey report prepared by the accredited inspector, and provided to Respondent on or about July 27, 2018 identified approximately 210 square feet of viewable brown/gold sheet vinyl flooring located under a faux wood flooring, in the living room of the Residence. The asbestos survey report stated that the vinyl flooring in the living room was an asbestos-containing material that contained greater than 1% asbestos by weight. The asbestos survey report also stated that there was drywall/joint compound located in various rooms throughout the Residence that contained less than 1% asbestos by weight.

4. On October 28, 2018, Respondent provided three asbestos abatement bids to the insurance company for work on the Residence. At least one of the bids included the cost of asbestos abatement for a DEQ-licensed contractor to remove drywall/joint-compound from the Residence.

5. On April 26, 2019, Respondent removed at least 210 square feet of brown/gold sheet vinyl flooring and particle board underlayment from the living room at the Residence and placed it in a pile on the back patio outside the Residence where it was covered with a blue tarp.

6. The sheet vinyl flooring described in Section II, Paragraph 5, above, contained 15-20% Chrysotile asbestos by weight.

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

8. On April 29, 2019, DEQ inspected the Residence.

9. On April 29, 2019, the living room flooring in the Residence had been removed down the sub-floor and there were pieces of brown/gold vinyl flooring on the front patio, walkway, front yard, driveway and back patio of the Residence.

10. Between May 2, 2019 and May 9, 2019, a DEQ-licensed asbestos abatement contractor abated and removed the pile of material described in Section II, Paragraph 5, above, and decontaminated the interior and exterior of the Residence.

11. Respondent did not submit an asbestos abatement project notification to DEQ before removing the sheet vinyl flooring from the living room of the Residence on April 26, 2019.

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

III. CONCLUSIONS

1. On April 26, 2019, Respondent violated ORS 468A.710(1) and OAR 340-248-0110(4) by performing an asbestos abatement project without being licensed by DEQ, as described in Section II, Paragraphs 1-9 above. Specifically, Respondent removed and handled sheet vinyl flooring from the living room of the Residence. Respondent is a “contractor” according to OAR 340-248-0010(16) because it undertook for compensation an asbestos abatement project by completing the vinyl flooring removal work in order to receive payment from the insurance company. 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

1 release asbestos fibers into the air. The vinyl sheet flooring is “asbestos-containing material” as defined
2 by OAR 340-248-0010(8) because it is a material containing more than 1% asbestos by weight. This is
3 a Class I violation, according to OAR 340-012-0054(1)(t). DEQ hereby assesses a \$14,400 civil penalty
4 for this violation.

5 2. From April 26, 2019 to May 9, 2019, Respondent violated OAR 340-248-0205(1) by openly
6 accumulating asbestos-containing waste material as described in Section II, Paragraphs 5-6 and 9-10
7 above. Specifically, Respondent stored the asbestos-containing sheet vinyl flooring along with other
8 construction debris in a pile on the back Patio of the Residence and left pieces of the flooring in various
9 places throughout the interior and exterior of the residence. The pile was covered by a blue tarp but was
10 not packaged in leak tight packaging as required under OAR Chapter 240, Division 248. This is a Class
11 I violation, according to OAR 340-012-0054(1)(s). DEQ hereby assesses a \$14,400 civil penalty for this
12 violation.

13 3. Respondent violated OAR 340-248-0260(1) and (2) by failing to submit a notification to
14 DEQ at least 10 days before conducting a friable asbestos abatement project, as described in Section II,
15 Paragraphs 1-7 and 11 above. This is a Class II violation, according to OAR 340-012-0054(2)(m). DEQ
16 has not assessed a civil penalty for this violation.

17 IV. ORDER TO PAY CIVIL PENALTY

18 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
19 hereby ORDERED TO: Pay a total civil penalty of \$28,800. The determination of the civil penalties are
20 attached as Exhibits 1 and 2 and are incorporated as part of this Notice.

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

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

25 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
26 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
27 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 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

9/14/2021

Date



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 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 at least 210 square feet of asbestos-containing sheet vinyl flooring from the living room of the Residence.
- 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. Respondent removed asbestos-containing sheet vinyl flooring on April 26, 2019.
- "M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted intentionally with actual knowledge of the requirement. Respondent is a residential contractor licensed by the Oregon Construction Contractors Board ("CCB") since 2014. Respondent knew that the vinyl flooring in the living room of the Residence was regulated asbestos-containing material because Respondent received a survey report on or about July 27, 2018 stating that the flooring contained >1% asbestos by weight. In addition, Respondent submitted bids to the insurance company to have a licensed contractor remove non-regulated asbestos containing drywall, and therefore must have known that material containing more asbestos (15-20%) would require the services of a licensed contractor. Thus, when Respondent removed the vinyl

flooring from the living room on April 26, 2019, Respondent acted intentionally with actual knowledge of the requirement.

"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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{\$EB}$
 $= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 8 + 0)] + \0
 $= \$8,000 + (\$800 \times 8) + \$0$
 $= \$8,000 + \$6,400 + \$0$
 $= \$14,400$

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 major pursuant to OAR 340-012-0135(1)(i)(A) because the violation involved over 160 square feet of asbestos-containing waste material. Respondent openly accumulated at least 210 square feet of asbestos-containing waste material in a pile on the back patio of the Residence and elsewhere both inside and outside the Residence.
- 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 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 April 26, 2019 to May 9, 2019 when a DEQ-licensed asbestos abatement contractor completed the removal of the material and decontamination of the Residence. Therefore, there were 14 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, reckless means the respondent consciously disregarded a substantial and justifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding the 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 2014. Respondent knew that the vinyl flooring in the living room of the Residence was regulated asbestos-containing material because Respondent received a survey report on or about July 27, 2018 stating that the flooring contained >1% asbestos by weight. In addition, Respondent submitted bids to the insurance company to have a licensed contractor remove non-regulated asbestos containing drywall, and therefore must have known that material containing more asbestos (15-20%) requires a licensed contractor to perform appropriate work practices and to enclose the material in proper packaging to ensure that asbestos fibers are not released into the air. Thus, when Respondent left asbestos-containing sheet vinyl flooring in a pile on the back patio of the Residence and in pieces elsewhere inside and outside the Residence, Respondent consciously disregarded a substantial and justifiable risk that open accumulation of asbestos-containing materials would occur. Because asbestos is a carcinogen, with no known safe level of exposure, that risk was of such a nature and degree that disregarding the 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 -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation by hiring a DEQ-licensed asbestos abatement contractor to properly remove the asbestos-containing waste material and decontaminate the Residence.

"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 was offset by the cost Respondent incurred to hire a DEQ-licensed abatement contractor to properly remove and decontaminate the Residence.

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 + 3 + 8 + -3)] + \0
 $= \$8,000 + (\$800 \times 8) + \$0$
 $= \$8,000 + \$6,400 + \$0$
 $= \$14,400$