



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232  
(503) 229-5696  
FAX (503) 229-5787  
TTY 711

September 20, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 2725

Abate Right, Inc.  
c/o SG Corporate Services, LLC  
250 Church Street, Ste. 200  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/AB-WR-2018-127

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Abate Right, Inc. a civil penalty of \$1,300 for failing to submit timely notification of an emergency residential asbestos abatement project to DEQ. DEQ has also cited you for failing to submit an accurate notification but has not assessed a civil penalty for that violation.

DEQ issued this penalty because, as a licensed asbestos contractor, you are responsible for ensuring that you submit a timely, complete and accurate notification to DEQ for every project. DEQ relies on accurate and timely project notifications in order to perform its oversight role, including conducting compliance inspections.

DEQ appreciates your efforts to minimize the effect of the violation by eventually submitting the required notification. DEQ considered this effort 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 – 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232

Via fax – 503-229-5100

Via email – [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us)

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 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>.

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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 Jane Hickman at 503-229-5692 or toll free in Oregon at 800-452-4011, extension 5692.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Dottie Boyd, AQ, Salem DEQ  
Julie Cheney, Accounting, DEQ  
Donald Hendrix, AQ, DEQ

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

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 ABATE RIGHT, INC. ) ASSESSMENT AND ORDER  
5 A domestic business corporation, )  
6 Respondent. ) NO. AQ/AB-WR-2018-127

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty  
8 Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through  
9 468.140, ORS Chapters 183, ORS Chapter 468A, and Oregon Administrative Rules (OAR) Chapter  
10 340, Divisions 011, 012 and 248.

11 II. FINDINGS OF FACT

- 12 1. Respondent is licensed by DEQ as an asbestos abatement contractor.
- 13 2. On June 25, 2018, Respondent requested approval from DEQ for an emergency  
14 asbestos abatement project at a residential property located at 1213 SW 52<sup>nd</sup> Court in Lincoln  
15 City, Oregon. DEQ gave approval for the emergency abatement project that same day.
- 16 3. Respondent commenced the emergency asbestos abatement project on or about June  
17 25, 2018.
- 18 4. On July 30, 2018, Respondent submitted an ASN 1 “DEQ Project Notification Form  
19 for Abatement of Friable Asbestos-Containing Material,” along with payment of the required fee  
20 applicable to emergency residential asbestos abatement projects.
- 21 5. OAR 340-248-0260(1)(e) states, “In any case notification as specified in section (4)  
22 of this rule and the appropriate fee must be submitted to the Department within three days of  
23 commencing emergency or unexpected event asbestos abatement projects.”
- 24 6. OAR 340-248-0260(4)(n) requires that all information requested on the ASN 1 form  
25 be provided.
- 26 7. The ASN 1 form submitted by Respondent states that DEQ gave approval for the  
27 emergency abatement project on June 22, 2018, but DEQ gave approval on June 25, 2018.

1 III. CONCLUSIONS

2 1. Respondent violated OAR 340-248-0260(1)(e) by failing to submit the  
3 appropriate notification and fee to DEQ within three days of commencing an emergency  
4 residential asbestos abatement project, as described in Section II, paragraphs 3 and 4, above. This  
5 is a Class II violation according to OAR 340-012-0054(2)(l), by failing to provide timely,  
6 accurate or complete notification of an asbestos abatement project. DEQ hereby assesses a  
7 \$1,300 civil penalty for this violation.

8 2. Respondent violated OAR 340-248-0260(4)(n) by failing to accurately state the  
9 date it received DEQ approval to conduct an emergency residential asbestos abatement project,  
10 as described in Section II, paragraph 7, above. This is a Class II violation according to OAR 340-  
11 012-0054(2)(l), by failing to provide timely, accurate or complete notification of an asbestos  
12 abatement project. DEQ is not assessing a civil penalty for this violation.

13 IV. ORDER TO PAY CIVIL PENALTY

14 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
15 hereby ORDERED TO pay a total civil penalty of \$1,300. The determination of the civil penalty is  
16 attached as Exhibit No. 1, and 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  
18 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**  
19 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you  
20 pay the penalty, the Findings of Fact, 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.  
23 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
24 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
25 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not  
26 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 send your

1 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
2 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to  
3 **[DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us)**. An administrative law judge employed by the Office of  
4 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
5 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
6 attorney at the hearing, however you are not required to be. If you are an individual, you may  
7 represent yourself. If you are a corporation, partnership, limited liability company,  
8 unincorporated association, trust or government body, you must be represented by an attorney or  
9 a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

21  
22  
23 9/20/18  
24 Date

  
24 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 1: Failure to submit notification and the appropriate fee to DEQ within three days of commencing an emergency asbestos abatement project, in violation of OAR 340-248-0260(1)(e).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(I).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4), as there is no selected magnitude specified in OAR 340-012-135 applicable to this violation and the Department finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. In making this finding, the Department considered the following reasonably available information: The violation involved notification of an asbestos abatement project and did not result in any potential release of asbestos fibers or human exposure to asbestos fibers.

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 \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(B) because Respondent violated an asbestos statute or rule and 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 3 according to OAR 340-012-0145(2)(a)(C) and (D). Respondent has three Class II and four Class III violations from case no. AQ/AB-WR-2017-090, which equal two Class I equivalents, as defined in OAR 340-012-0030(2).

"H" is Respondent's history of correcting prior significant actions, and receives a value of -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions.

"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. Respondent has committed this

same violation in the past, so the risk of conduct resulting in this violation was foreseeable. However, Respondent failed to ensure its notification form and fee were submitted on time to DEQ. It would have been reasonable for Respondent to review all of its requests for emergency abatement projects to confirm that the form and fee was submitted to DEQ within three days of the start of the emergency abatement project.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to minimize the effects of the violation by submitting the notification and appropriate fee to DEQ on July 30, 2018, 35 days after the abatement project commenced.

"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 determine the amount of any economic benefit Respondent gained from these violations.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$1,000 + [(0.1 x \$1,000) x (3 - 2 + 0 + 4 - 2)] + \$0  
= \$1,000 + (\$100 x 3) + \$0  
= \$1,000 + \$300 + \$0  
= \$1,300