



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

811 SW 6th Ave

Portland, OR 97204-1390

(503) 229-5696

FAX (503) 229-6124

TTY: 711

September 21, 2016

CERTIFIED MAIL No. 70142870000133783532

BBG Investments, LLC
c/o Donna Kreitzberg, Registered Agent
11020 SW Byrom Terrace
Tualatin, OR 97062

Re: Notice of Civil Penalty Assessment and Order
No. AQ/AB-WR-2016-129

This letter is to inform you that DEQ has issued you a total civil penalty of \$29,600 for failing to hire a licensed contractor to perform an asbestos abatement project, and openly accumulating friable asbestos-containing material and waste material. The violations occurred between November 2015 and April 2016 when you disturbed and removed asbestos-containing flooring materials at a commercial building that you were renovating in McMinnville (the Facility). You were also cited, without penalty, for failing to have an accredited inspector thoroughly survey the Facility for the presence of asbestos prior to performing renovation activity.

DEQ issued this penalty because as owner and operator of the Facility, you are responsible for ensuring that asbestos is properly managed. The abatement project did not comply with applicable asbestos regulations, and likely caused the release of asbestos fibers into the atmosphere, creating the potential for public exposure. 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.

DEQ appreciates your efforts to mitigate the effects of the violations by hiring a licensed asbestos abatement contractor to perform an abatement and cleanup. DEQ considered these efforts when calculating your civil penalties.

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.



BBG Investments, LLC
No. AQ/AB-WR-2016-129
Page 2

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 Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: William Gee, BBG Investments, LLC, 18200 SE Walnut Hill Road, Amity, OR 97101
Dottie Boyd, Salem Office, Western Region, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 BBG INVESTMENTS, LLC,) ASSESSMENT AND ORDER
 an Oregon limited liability company,)
5) NO. AQ/AB-WR-2016-129
 Respondent.)

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7 I. AUTHORITY

8 This Notice of Civil Penalty Assessment and Order is issued pursuant to Oregon Revised
9 Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A, and Oregon
10 Administrative Rules (OAR) Chapter 340, Divisions 011, 012 and 248.

11 II. FINDINGS OF FACT

12 1. At all material times, Respondent owned and was the “operator,” as defined in
13 OAR 340-248-0010(33), of the vacant commercial building located at 435 NE Evans Street in
14 McMinnville, Yamhill County, Oregon (the Facility).

15 2. At all material times, William R. Gee was the owner of BBG Investments, LLC.

16 3. At all material times, William R. Gee was the president of WRG Fire Training
17 Simulation Systems, Inc. (WRG).

18 4. On or before November 23, 2015, Respondent began “renovation” activity, as
19 defined in OAR 340-248-0010(36) at the Facility.

20 5. Respondent did not have an accredited inspector thoroughly survey the Facility
21 for the presence of asbestos-containing material prior to the renovation activity.

22 6. Between November 23, 2015 and February 1, 2016, Mr. Gee and Ernesto Diaz, an
23 employee of WRG, handled and removed approximately 2,000 square feet of red sheet vinyl
24 flooring from the basement at the Facility, including approximately 1,350 square feet of gray
25 fibrous backing.

26 7. The backing on the sheet vinyl flooring at the Facility contained approximately
27 75% chrysotile “asbestos,” as defined in OAR 340-248-0010(5).

1 **5100.** An administrative law judge employed by the Office of Administrative Hearings will
2 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR
3 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
4 may represent yourself unless you are a corporation, agency or association.

5 Active duty service-members have a right to stay proceedings under the federal Service
6 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
7 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be
8 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
9 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

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

16
17 September 21, 2016
18 Date

17 Sarah G. Wheeler
18 Sarah G. Wheeler, Acting Manager
19 Office of Compliance and Enforcement
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EXHIBIT NO. 1

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

VIOLATION 1: Failing to hire a licensed asbestos abatement contractor to perform an asbestos abatement project on a facility Respondent owns or operates in violation of ORS 468A.715(1) and OAR 340-248-0110(2).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(A), because the violation involved more than 160 square feet of asbestos-containing material (ACM). Respondent removed approximately 1,350 square feet of asbestos-containing sheet vinyl backing and an unknown amount of asbestos-containing vinyl floor tile and mastic.

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 or not the violation was repeated or ongoing and receives a value 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. Respondent performed the unlicensed asbestos abatement project on approximately 22 days between November 23, 2015 and February 1, 2016 (on weekends and a few Mondays).

"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. Asbestos sampling had been conducted at the Facility, so Respondent knew that the red sheet vinyl flooring, 9" floor tile (VAT), and other materials contained asbestos. Mr. Gee was previously employed as an environmental specialist, so he had general knowledge about asbestos, and was aware that

persons handling ACM are required to follow DEQ rules in order to prevent exposing people to asbestos fibers. When Respondent disturbed and removed ACM at the Facility rather than hiring a licensed asbestos-abatement contractor, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate asbestos requirements. Because the unlicensed project had the potential to expose workers and the public to asbestos fibers, 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 made reasonable efforts to minimize the effects of the violation. After an accredited inspector performed an asbestos survey on March 21, 2016, Respondent hired a licensed asbestos abatement contractor to conduct a cleanup and abate the remaining ACM. The project began on or about April 28, 2016.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 evidence on which to base a finding that Respondent received an economic benefit from the violation. The cost of the cleanup and abatement was greater than the estimated cost of the abatement if it had been done initially.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 3 + 8 + (-3))] + \$0 \\ &= \$8,000 + [(\$800) \times (8)] + \$0 \\ &= \$8,000 + \$6,400 + \$0 \\ &= \$14,400 \end{aligned}$$

EXHIBIT NO. 2

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

VIOLATION 2: Openly accumulating friable asbestos-containing material (ACM) and asbestos-containing waste material (ACWM), in violation of OAR 340-248-0205(1).

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 involved more than 160 square feet of ACM and ACWM. Respondent openly accumulated approximately 650 square feet of friable asbestos-containing sheet vinyl backing and an unknown amount of friable asbestos-containing vinyl floor tile and mastic waste.

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 or not the violation was repeated or ongoing and receives a value 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Respondent openly accumulated ACM and ACWM from approximately November 23, 2015 until April 28, 2016, which is more than 28 days.

"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. Asbestos sampling had been conducted at the Facility, so Respondent knew that the red sheet vinyl flooring, 9" floor tile (VAT), and other materials contained asbestos. Mr. Gee was previously employed as an environmental specialist, so he had general knowledge about asbestos, and was aware that persons handling asbestos are required to follow DEQ rules in order to prevent exposing

people to asbestos fibers. When Respondent left asbestos-containing sheet vinyl backing and VAT and mastic from the unlicensed abatement project in the Facility, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate asbestos requirements. Because the open accumulation of ACM and ACWM had the potential to expose workers and the public to asbestos fibers, 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 made reasonable efforts to minimize the effects of the violation. After an accredited inspector performed an asbestos survey on March 21, 2016, Respondent hired a licensed asbestos abatement contractor to conduct a cleanup and abate the remaining ACM. The project began on or about April 28, 2016.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 4 + 8 + (-3))] + \$0 \\ &= \$8,000 + [(\$800) \times (9)] + \$0 \\ &= \$8,000 + \$7,200 + \$0 \\ &= \$15,200 \end{aligned}$$