



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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October 3, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 6422

Abatement Services Incorporated
c/o Tara A. Sayre, Registered Agent
24515 S. Beaver Creek Rd.
Beavercreek, OR 97004

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-WR-2016-125

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$3,000 for failing to submit to DEQ a notification form and fee for two emergency asbestos abatement projects, one occurring in Carlton and one occurring in Lebanon.

As a licensed asbestos abatement contractor you are responsible for ensuring that you submit a complete and accurate notification form and fee to DEQ within three days of commencing an approved emergency asbestos abatement project. DEQ is particularly concerned about these violations because you have submitted an untimely notification to DEQ in the past, and despite the Warning Letter DEQ sent at that time, you have now twice repeated the violation. Without proper notifications DEQ cannot effectively provide oversight of asbestos abatement projects to reduce the risk of exposure to asbestos caused by improperly performed projects.

DEQ appreciates your efforts to correct the violation by submitting the correct notification form for both projects. 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 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.

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 Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



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

Enclosures

cc: Dottie Boyd, DEQ, Salem Office
Cindy Troupe, DEQ, HQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:
4 ABATEMENT SERVICES
5 INCORPORATED

6 Respondent.

) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

) CASE NO. AQ/AB-WR-2016-125
)

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 and 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. Respondent is a licensed asbestos abatement contractor.

14 2. On or about June 15, 2016, to June 17, 2016, Respondent removed approximately 1,000
15 square feet of vinyl floor tile from a residential building located at 8900 NE Jernstedt Road in Carlton,
16 Oregon (Jernstedt Project).

17 3. The vinyl floor tile that Respondent removed during the Jernstedt Project contained
18 approximately 4% asbestos by weight.

19 4. On July 15, 2016, Respondent submitted to DEQ an Emergency ASN 1 Project Notification
20 Form for the Jernstedt Project with the appropriate fee amount.

21 5. On or about June 16, 2016, to June 20, 2016, Respondent removed approximately 1,000
22 square feet of vinyl floor tile from a residential building located at 1050 Hiatt Street in Lebanon,
23 Oregon (Hiatt Project).

24 6. The vinyl floor tile that Respondent removed during the Hiatt Project contained
25 approximately 10% asbestos by weight.

26 7. On or about July 15, 2016, Respondent submitted to DEQ an Emergency ASN 1 Project
27 Notification Form for the Hiatt Project with the appropriate fee amount.

1 III. CONCLUSIONS

2 1. Respondent has violated OAR 340-248-0260(1)(e) by failing to submit to DEQ an ASN1
3 Project Notification Form and appropriate fee within three days of commencing an emergency asbestos
4 abatement project, as described in Section II above. The Jernstedt Project and the Hiatt Project were
5 "asbestos abatement projects," as defined by OAR 340-248-0010(6), because they were renovation or
6 repair activities that involved the removal or handling of asbestos containing materials with the
7 potential of releasing asbestos abatement fibers from asbestos-containing material into the air.
8 Respondent submitted the proper notification and fee for the Jernstedt Project on July 15, 2016,
9 approximately 30 days after commencing the project. Respondent submitted the proper notification and
10 fee for the Hiatt Project on July 15, 2016, approximately 29 days after commencing the project. These
11 are Class II violations according to OAR 340-012-0054(2)(l). DEQ hereby assesses a \$3,000 civil
12 penalty for these violations.

13 IV. ORDER TO PAY CIVIL PENALTY

14 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
15 hereby ORDERED TO:

16 Pay a total civil penalty of \$3,000. The determination of the civil penalty is attached as Exhibit No.
17 1 and is incorporated as part of this Notice.

18 If you do not file a request for hearing as set forth in Section V below, your check or money order
19 must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office,**
20 **811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of Fact,
21 Conclusions and Order become final.

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

23 You have a right to a contested case hearing on this Notice, if you request one in writing. You
24 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
25 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
26 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters
27 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.

1 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
2 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
3 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the
4 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
5 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
6 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
7 association.

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

13 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
14 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
15 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
16 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
17 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
18 information submitted by you, as the record for purposes of proving a prima facie case.
19
20
21

22 October 3, 2016

23 Date

22 Sarah Wheeler

23 Sarah G. Wheeler, Acting Manager
24 Office of Compliance and Enforcement
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26
27

EXHIBIT No.1

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

VIOLATION No.1: Failing to submit to DEQ an ASN1 Project Notification Form and appropriate fee 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)(l).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 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 untimely asbestos abatement project notification form and fee presented no adverse impact and posed no risk on human health or the environment.

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).

"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)(e), when DEQ assesses a civil penalty for each occurrence of the violation, the 0 factor will be 0. According to ORS 468.140(2) each day of violation constitutes a separate offense. For the Jernstedt Project, the violation occurred on June 19, 2016, the fourth day after commencing the project. For the Hiatt Project, the violation occurred on June 23, 2016, the fourth day after commencing the project.

"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. Respondent is a licensed asbestos

abatement contractor. As such, Respondent is trained on at least a yearly basis on the asbestos abatement requirements, including the proper emergency asbestos abatement project notifications. In addition, on August 26, 2015, DEQ issued Respondent a warning letter for the same emergency notification violation. Therefore, by failing to submit timely notification form and fee for the Jernstedt Project and the Hiatt Project, Respondent consciously disregarded a substantial and unjustifiable risk that its conduct would result in a violation. This disregard constituted a gross deviation from the standard of care a reasonable person would observe in the 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 correct the violation. On July 15, 2016, Respondent submitted the correct notification form and fee for both the Jernstedt Project and the Hiatt Project.

"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 the delayed cost of submitting the appropriate notification fee for two projects is de minimis.

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

$$\begin{aligned} &= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 0 + 8 + -3)] + \$0 \\ &= \$1,000 + [\$100 \times 5] + \$0 \\ &= \$1,000 + \$500 + \$0 \\ &= \$1,500 \end{aligned}$$

There were two occurrences of the violation. DEQ assesses a civil penalty for each occurrence of the violation. Therefore, the total civil penalty for the violations is \$3,000

$$\$1,500 \times 2 = \$3,000$$