



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

October 7, 2016

CERTIFIED MAIL No. 7014 2870 0001 3378 3518

Service Professionals Incorporated
c/o Michael W. Harley
1765 Ewald Avenue SE
Salem, OR 97302

Re: Notice of Civil Penalty Assessment and Order to Comply
Case No. AQ/AB-WR-2016-133

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a \$5,169 civil penalty for conducting renovation activities without first having an accredited inspector thoroughly survey for asbestos. This violation occurred on or about March 2, 2016 at 1070 SE 1st Street in Lincoln City, OR.

DEQ issued this penalty because the violation 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 building owners and project operators to have an asbestos survey performed prior to conducting renovation or demolition. The failure to identify the presence of asbestos presents a significant risk to public health and the environment.

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. Further detail regarding SEPs may be found on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>.



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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 Rick Grisel at (503) 229-5422. You may call toll-free within Oregon at 1-800-452-4011, extension 5422.

Sincerely,



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

Enclosures

cc: Dottie Boyd, 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 SERVICE PROFESSIONALS) **ASSESSMENT AND ORDER**
5 INCORPORATED, an Oregon corporation)
(abn SERVPRO of Lincoln & Polk Counties)) CASE NO. AQ/AB-WR-2016-133
6 Respondent.)

7
8 I. AUTHORITY

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

13 II. FINDINGS OF FACT

14 1. At all material times, Service Professionals Incorporated (abn SERVPRO of Lincoln &
15 Polk Counties) (Respondent) operated as a residential and commercial property cleanup and restoration
16 business with a principal place of business at 4305 22nd Avenue NE, Salem, OR.

17 2. Respondent was hired as a restoration contractor for Rodeway Inn & Suites at 1070 SE
18 1st Street, Lincoln City, OR (Facility).

19 3. On or around March 2, 2016, Respondent or Respondent's agent collected one sample of
20 the Facility for asbestos testing.

21 4. At all material times, neither Respondent nor Respondent's agent had completed
22 training, received asbestos abatement accreditation, or received asbestos certification under 40 CFR
23 Part 763 Subpart E, Appendix C, Section B, Subsection 3.

24 5. In or around March, 2016, Respondent altered or removed ceiling, drywall, insulation,
25 flooring, and other components from the Facility.

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1 III. CONCLUSIONS

2 Respondent has violated OAR 340-248-0270(1) by failing to have an accredited inspector
3 thoroughly survey the Facility for the presence of asbestos-containing material prior to performing
4 renovation activity. The Facility is a private building or structure, and is thereby a "facility."
5 OAR 340-248-0010(24). Because "renovation" means altering one or more facility components in any
6 way, Respondent engaged in a renovation of the Facility by removing ceilings, drywall, insulation,
7 flooring, and other facility components. OAR 340-248-0010(36). Per the facts described in paragraphs
8 1-5 above, Respondent therefore qualifies as an "owner or operator" of the Facility within the meaning
9 of OAR 340-248-0010(33) because Respondent operated, controlled, and/or supervised renovation
10 activities. Respondent's sample of the Facility does not qualify as an asbestos survey because a
11 "survey" requires an accredited inspector to conduct a detailed inspection for the presence of asbestos-
12 containing material. OAR 340-248-0010(39).

13 Accordingly, Respondent has violated OAR 340-248-0270(1) because Respondent was an
14 owner or operator of a facility who failed to use an accredited inspector to thoroughly survey the
15 Facility for the presence of asbestos prior to renovation. This is a Class I violation, according to OAR
16 340-012-0054(1)(I). DEQ hereby assesses a \$5,169 civil penalty for this violation.

17 IV. ORDER TO PAY CIVIL PENALTY

18 Based upon the foregoing FINDINGS OF FACTS and CONCLUSIONS, Respondent is hereby
19 ORDERED TO:

20 Pay a total civil penalty of \$5,169. The determination of the civil penalty is attached as Exhibit
21 1 and is incorporated as part of this Notice.

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

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

2 You have a right to a contested case hearing on this Notice, if you request one in writing. You
3 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
4 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
5 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters
6 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
7 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the
8 request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth**
9 **Avenue, Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed
10 by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183,
11 OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented
12 by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
13 association.

14 Active duty service-members have a right to stay proceedings under the federal Service
15 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
16 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
17 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
18 <http://legalassistance.law.af.mil/content/locator.php>.

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

25
26 October 7, 2016

27 Date

Sarah G. Wheeler

Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement
Oregon Department of Environmental Quality

EXHIBIT 1

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

VIOLATION: Failure of an owner or operator of a facility to have an accredited inspector thoroughly survey the affected facility for the presence of asbestos-containing material prior to performing a demolition or renovation, in violation of OAR 340-248-0270(1).

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

MAGNITUDE: The magnitude of the violation is minor pursuant to 340-012-0135(1)(h)(C) because there was less than 40 linear feet or 80 square feet of asbestos-containing material or asbestos-containing waste material.

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).

"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's failure to conduct the required asbestos survey using an accredited inspector occurred on one day, March 2, 2016. Therefore, there was at least one occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0030(15) and 340-012-0145(5)(c). Respondent is an experienced commercial property cleanup and restoration business, and has been operating as a registered Oregon business under its current name since 2009. Asbestos is commonly present in commercial facilities from the 1980s, and Respondent demonstrated awareness of this by taking one sample from the Facility and submitting it to a lab for asbestos testing. In addition, Respondent has hired licensed asbestos survey and removal professionals on at least 50-100 of their projects. Respondent carries an active Construction Contractor Board license in the State of Oregon.

(license number 125033), for which education and testing regarding asbestos regulations and work practices is an annual requirement. Given Respondent's experience, licensing, and knowledge, Respondent acted or failed to act 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 cannot 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 \$1,569. This is the amount Respondent gained by avoiding the conservatively-estimated \$2,500 cost to conduct an asbestos survey of the facility using an accredited inspector. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 8 + 0)] + \$1,569 \\ &= \$2,000 + [\$200 \times 8] + \$1,569 \\ &= \$2,000 + \$1,600 + \$1,569 \\ &= \$5,169 \end{aligned}$$