



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
FAX (503) 229-5100

October 10, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 3043

Cho Surftides Family, LLC
c/o Robert W. Palmer, Registered Agent
1300 SW Fifth Avenue #3400
Portland, Oregon 97201

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-WR-2018-116

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$7,363 for failing to have an accredited inspector survey your Lincoln City four-plex for asbestos before you had it demolished in May of this year. In the attached Notice, you have also been cited, without penalty, for failing to remove asbestos-containing materials prior to demolition, allowing a person without a license issued by DEQ to perform an asbestos abatement project, and for openly accumulating asbestos-containing waste material.

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 has implemented survey, licensing, work practice, packaging, disposal, and other important requirements. The failure to conduct an asbestos survey and follow these other requirements posed a significant risk to public health and the environment.

DEQ appreciates your efforts to promptly respond to the violations, and considered these efforts when determining the amount of the 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 – 503-229-5100

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 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/administrative-rules.aspx> or by calling the number below.

If you have any questions, please contact Sarah Wheeler at 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,



 Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dottie Boyd, Salem Office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	CHO SURFTIDES FAMILY, LLC,)	ASSESSMENT AND ORDER
)	
5	Respondent.)	CASE NO. AQ/AB-WR-2018-116

6 I. AUTHORITY

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

11 II. FINDINGS OF FACT

12 1. Respondent, formerly known as Cho Surftides Family Limited Partnership, is the property
13 owner of 1434 Northwest 31st Place in Lincoln City, Oregon (the Property).

14 2. On or about May 30 and 31, 2018, Respondent hired a general contractor to demolish a
15 four-plex residential building (the Facility) at the Property.

16 3. During the demolition of the Facility, a boiler and pipes with white/grey insulation (the
17 Materials) that were inside the Facility were dislodged, run over, and crushed.

18 4. The pipe insulation contained 90% chrysotile asbestos by weight.

19 5. The boiler insulation contained 80% chrysotile asbestos and 10% amosite asbestos by
20 weight.

21 6. From approximately May 30 through June 6, 2018, Respondent stored the Materials outside
22 the Property, without wetting them or enclosing them with leak-tight packaging.

23 7. Respondent did not have an accredited inspector thoroughly survey the Facility for the
24 presence of asbestos-containing material before demolishing the Facility.

25 8. Neither Respondent, nor Respondent's contractors who supervised and performed the
26 demolition, are licensed by DEQ as an asbestos abatement contractor.

27 ///

1 III. CONCLUSIONS

2 1. Respondent 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 demolition. As
4 defined in OAR 340-248-0010(1), an accredited inspector is a person that has completed training and
5 received accreditation under 40 CFR Part 763 Subpart E, Appendix C, Section B, Subsection 3.
6 Respondent is an “owner or operator” as defined in OAR 340-248-0010(33) because Respondent owns the
7 property and Facility that was demolished. This is a Class I violation according to OAR 340-012-
8 0054(1)(l). DEQ hereby assesses a \$7,363 civil penalty for this violation.

9 2. Respondent violated OAR 340-248-0110(2) by allowing unlicensed persons to perform an
10 asbestos abatement project. Specifically, Respondent hired contractors that did not have asbestos
11 abatement licenses from DEQ to demolish the Facility. The demolished boiler and pipe insulation was
12 “asbestos-containing material,” as defined by OAR 340-248-0010(8) because it contained more than
13 1% asbestos by weight. In addition, the boiler and pipe insulation was “friable asbestos material,” as
14 defined by OAR 340-248-0010(25) because it was capable of crumbling or being pulverized under
15 hand pressure. The demolition of the four-plex constituted an “asbestos abatement project,” as defined
16 by OAR 340-248-0010(6), because it was the demolition of a private facility that involved the handling
17 of asbestos-containing material with the potential of releasing asbestos fibers into the air. This is a
18 Class I violation according to OAR 340-012-0054(1)(p). DEQ has not assessed a civil penalty for this
19 violation.

20 3. Respondent violated OAR 340-248-0205(1) by openly accumulating friable asbestos-
21 containing material. The demolished boiler and pipe insulation was “friable asbestos material,” as
22 defined by OAR 340-248-0010(25) because it was capable of crumbling or being pulverized under
23 hand pressure. Respondent openly accumulated the demolished boiler and pipe insulation, as defined by
24 OAR 340-248-0010(32), when Respondent accumulated and stored the material outside on the ground
25 without proper leak tight packaging. This is a Class I violation according to OAR 340-012-0054(1)(m).
26 DEQ has not assessed a civil penalty for this violation.

27 ///

1 4. Respondent violated OAR 340-248-0270(4)(a) by failing to remove all asbestos-containing
2 materials before demolishing the Facility. This is a Class I violation according to OAR 340-012-
3 0054(1)(l). DEQ has not assessed a civil penalty for this violation.

4 IV. ORDER TO PAY CIVIL PENALTY

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

7 Pay a total civil penalty of \$7,363. The determination of the civil penalty is attached as Exhibit 1
8 and is incorporated as part of this Notice.

9 If you do not file a request for hearing as set forth in Section V below, your check or money order
10 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
11 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty, the
12 Findings of Fact, Conclusions and Order become final.

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



14 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
15 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
16 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
17 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
18 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
19 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
20 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
21 it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
22 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
23 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
24 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
25 you may represent yourself. If you are a corporation, partnership, limited liability company,
26 unincorporated association, trust or government body, you must be represented by an attorney or a duly
27 authorized representative, as set forth in OAR 137-003-0555.

1 Active duty service-members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
5 <http://legalassistance.law.af.mil/content/locator.php>.

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

12
13
14
15 October 10, 2018

16 Date

15 
16  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: Failing to have an accredited inspector perform an asbestos survey prior to performing a demolition, 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 major pursuant to OAR 340-012-0135(1)(h)(B) and (D) because the violation involved 80 linear feet of asbestos-containing material from the pipe insulation which contained 90% chrysotile asbestos by weight. The violation involved an additional 50 square feet of asbestos-containing material from the boiler insulation, which contained 80% chrysotile and 10% amosite asbestos. The violation involved a total of 56 cubic yards of asbestos-containing waste material (including the boiler and pipe insulation, and contaminated sand, soil, and debris).
- 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). This asbestos violation is not classified under any other penalty matrix.
- "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 should have had an accredited asbestos inspector perform an asbestos survey on or before demolition began in late May 2018.
- "M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent reasonably should have known of the requirement to survey an older residential building for asbestos prior to demolishing it. As a property owner of the Facility as well as a hotel, and as a property owner arranging for demolition, Respondent

reasonably should be aware of the risk of asbestos in a 1920-era structure, as well as the highly-regulated nature of asbestos.

"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. Respondent ensured that the demolished Facility debris was surveyed by an accredited inspector on June 5, 2018, promptly after DEQ's investigation, and ensured that the asbestos-containing waste material was properly abated by June 6, 2018.

"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 \$163. This is the amount Respondent gained by avoiding spending an additional \$250 to have an accredited inspector perform an asbestos survey prior to demolition. The \$250 estimate represents the difference between the cost of the survey prior to demolition and the amount Respondent paid for a survey of the Facility after demolition. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 2 - 3)] + \$163 \\ &= \$8,000 + (\$800 \times (-1)) + \$163 \\ &= \$8,000 + (-\$800) + \$163 \\ &= \$7,363 \end{aligned}$$



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
FAX (503) 229-5100

October 10, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 2985

Dan Kauffman Excavating, Inc.
c/o Dan Kauffman, Registered Agent
2830 SE 23rd
Lincoln City, Oregon 97367

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-WR-2018-115

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$30,400 for performing an asbestos abatement project without a license issued by DEQ and for openly accumulating asbestos-containing waste material at a four-plex you demolished in Lincoln City. In the attached Notice, you have also been cited, without penalty, for failing to have the building surveyed for asbestos containing-materials and failing to remove asbestos-containing materials prior to the demolition.

DEQ issued this penalty because the violations described in the attached Notice could have released asbestos fibers into the air and exposed workers, tenants, 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 failure to follow these requirements presents a significant risk to public health and the environment.

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 – 503-229-5100

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 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/administrative-rules.aspx> or by calling the number below.

If you have any questions, please contact Sarah Wheeler at 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,



jo Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dottie Boyd, Salem Office, DEQ
Stephen A. Lovejoy, 3132 NE Loop Drive, Otis, Oregon 97368

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	DAN KAUFFMAN EXCAVATING, INC.,)	ASSESSMENT AND ORDER
)	
5	Respondent.)	CASE NO. AQ/AB-WR-2018-115

6 I. AUTHORITY

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

11 II. FINDINGS OF FACT

- 12 1. On or about May 30 and 31, 2018, Respondent demolished a four-plex residential building
13 at 1434 Northwest 31st Place in Lincoln City, Oregon (the Facility).
- 14 2. During the demolition of the Facility, Respondent dislodged, ran over, and crushed a boiler
15 and pipes with white/grey insulation (the Materials) that were inside the Facility.
- 16 3. The pipe insulation contained 90% chrysotile asbestos by weight.
- 17 4. The boiler insulation contained 80% chrysotile asbestos and 10% amosite asbestos by
18 weight.
- 19 5. From approximately May 30 through June 6, 2018, Respondent stored the Materials outside
20 the Property, without wetting them or enclosing them with leak-tight packaging.
- 21 6. Respondent did not have an accredited inspector thoroughly survey the Facility for the
22 presence of asbestos-containing material before demolishing the Facility.
- 23 7. Respondent is not licensed by DEQ as an asbestos abatement contractor.

24 III. CONCLUSIONS

- 25 1. Respondent has violated OAR 340-248-0110(3) by performing an asbestos abatement
26 project without a license issued by DEQ. Respondent is an "owner or operator" as defined in OAR 340-
27 248-0010(33) because Respondent controlled and conducted the demolition of

1 the Facility. The demolished boiler and pipe insulation was “asbestos-containing material,” as defined
2 by OAR 340-248-0010(8) because it contained more than 1% asbestos by weight. In addition, the
3 boiler and pipe insulation was “friable asbestos material,” as defined by OAR 340-248-0010(25)
4 because it was capable of crumbling or being pulverized under hand pressure. The demolition of the
5 four-plex constituted an “asbestos abatement project,” as defined by OAR 340-248-0010(6), because it
6 was the demolition of a private facility that involved the handling of asbestos-containing material with
7 the potential of releasing asbestos fibers into the air. Finally, Respondent was a contractor as defined by
8 OAR 340-248-0010(16) because Respondent was hired by a general contractor to demolish the four-
9 plex in exchange for compensation, and Respondent was not licensed by DEQ as an asbestos abatement
10 contractor. This is a Class I violation according to OAR 340-012-0054(1)(n). DEQ hereby assesses a
11 \$14,400 civil penalty for this violation.

12 2. Respondent has violated OAR 340-248-0205(1) by openly accumulating friable asbestos-
13 containing material, as described in Section II above. The demolished boiler and pipe insulation was
14 “friable asbestos material,” as defined by OAR 340-248-0010(25) because it was capable of crumbling
15 or being pulverized under hand pressure. Respondent openly accumulated the demolished boiler and pipe
16 insulation, as defined by OAR 340-248-0010(32), when Respondent accumulated and stored the material
17 outside on the ground without proper leak tight packaging. This is a Class I violation according to OAR
18 340-012-0054(1)(m). DEQ hereby assesses a \$16,000 civil penalty for this violation.

19 3. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector
20 thoroughly survey the Facility for the presence of asbestos-containing material prior to demolition. As
21 defined in OAR 340-248-0010(1), an accredited inspector is a person that has completed training and
22 received accreditation under 40 CFR Part 763 Subpart E, Appendix C, Section B, Subsection 3.
23 Respondent is an “owner or operator” as defined in OAR 340-248-0010(33) because Respondent
24 controlled and conducted the demolition of the Facility. This is a Class I violation according to OAR 340-
25 012-0054(1)(l). DEQ has not assessed a civil penalty for this violation.

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1 4. Respondent violated OAR 340-248-0270(4)(a) by failing to remove all asbestos-containing
2 materials before demolishing the Facility. This is a Class I violation according to OAR 340-012-
3 0054(1)(l). DEQ has not assessed a civil penalty for this violation.

4 IV. ORDER TO PAY CIVIL PENALTY

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

7 Pay a total civil penalty of \$30,400. The determination of the civil penalty is attached as Exhibits 1
8 and 2 and is incorporated as part of this Notice.

9 If you do not file a request for hearing as set forth in Section V below, your check or money order
10 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
11 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty, the
12 Findings of Fact, Conclusions and Order become final.

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

14 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
15 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
16 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
17 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
18 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
19 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
20 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
21 it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
22 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
23 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
24 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
25 you may represent yourself. If you are a corporation, partnership, limited liability company,
26 unincorporated association, trust or government body, you must be represented by an attorney or a duly
27 authorized representative, as set forth in OAR 137-003-0555.

1 Active duty service-members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
5 <http://legalassistance.law.af.mil/content/locator.php>.

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

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October 10, 2018
Date

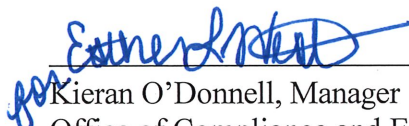

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION 1: Performing an asbestos abatement project without a license issued by DEQ, in violation of OAR 340-248-0110(3).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(B) and (D) because the violation involved 80 linear feet of asbestos-containing material from the pipe insulation which contained 90% chrysotile asbestos by weight. The violation involved an additional 50 square feet of asbestos-containing material from the boiler insulation, which contained 80% chrysotile and 10% amosite asbestos. The violation involved a total of 56 cubic yards of asbestos-containing waste material (including the boiler and pipe insulation, and contaminated sand, soil, and debris).

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). This asbestos violation is not classified under any other penalty matrix.

"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) and (d)(B)(ii), because Respondent does not have any prior significant actions in the same media as the violations that are the subject of the current enforcement action.

"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 are no prior significant actions in the same media.

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) DEQ has insufficient information on which to base a finding that the unlicensed asbestos abatement project occurred on more than one day.

"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 consciously disregarded the substantial and unjustifiable risk that demolishing this four-plex, without an asbestos abatement license and without first ensuring it was free of asbestos-containing

material, would result in a violation of asbestos regulations. Respondent has been licensed as a contractor with the Oregon Construction Contractor's Board (CCB) since 1996, and therefore trained and tested on the CCB manual, which contains information regarding the prohibition against openly accumulating friable asbestos-containing material. Additionally, DEQ previously cited Respondent for illegally disposing of solid waste from Respondent's demolition of residences in 2009. At that time, DEQ staff informed Mr. Kauffman, verbally and in writing, of the regulations on handling asbestos materials. Given Respondent's professional experience and prior knowledge of the risk of encountering asbestos-containing materials in residential demolition, Respondent's disregard of this risk constituted a gross deviation from the standard of care a reasonable person would observe in this situation.

"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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 on which to make an estimate of Respondent's economic benefit, if any, resulting from 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 2: Openly accumulating friable asbestos material or 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)(m).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(B) and (D) because the violation involved 80 linear feet of asbestos-containing material from the pipe insulation which contained 90% chrysotile asbestos by weight. The violation involved an additional 50 square feet of asbestos-containing material from the boiler insulation, which contained 80% chrysotile and 10% amosite asbestos. The violation involved a total of 56 cubic yards of asbestos-containing waste material (including the boiler and pipe insulation, and contaminated sand, soil, and debris).

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). This asbestos violation is not classified under any other penalty matrix.

"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) and (d)(B)(ii), because Respondent does not have any prior significant actions in the same media as the violations that are the subject of the current enforcement action.

"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 are no prior significant actions in the same media.

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because the violation was ongoing from approximately May 30 through June 6, 2018. Because each day of violation constitutes a separate occurrence, there were at least six 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. Respondent consciously disregarded the substantial and unjustifiable risk that demolishing this four-plex, without an

asbestos abatement license and without first ensuring it was free of asbestos-containing material, would result in a violation of asbestos regulations. Respondent has been licensed as a contractor with the Oregon Construction Contractor's Board (CCB) since 1996, and therefore trained and tested on the CCB manual, which contains information regarding the prohibition against openly accumulating friable asbestos-containing material. Additionally, DEQ previously cited Respondent for illegally disposing of solid waste from Respondent's demolition of residences in 2009. At that time, DEQ staff informed Mr. Kauffman, verbally and in writing, of the regulations on handling asbestos materials. Given Respondent's professional experience and prior knowledge of the risk of encountering asbestos-containing materials in residential demolition, Respondent's disregard of this risk constituted a gross deviation from the standard of care a reasonable person would observe in this situation.

"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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 on which to make an estimate of Respondent's economic benefit, if any, resulting from 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 + 2 + 8 + 0)] + \0
 $= \$8,000 + (\$800 \times 10) + \$0$
 $= \$8,000 + \$8,000 + \$0$
 $= \$16,000$



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
FAX (503) 229-5100

October 10, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 3050

Evergreen NW, Inc.
c/o Chris Lee, Registered Agent
477 NE 62nd Ave
Hillsboro, OR 97124

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-WR-2018-114

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Evergreen NW, Inc. a civil penalty of \$19,200 for violating numerous asbestos requirements as the general contractor for the demolition of a four-plex in Lincoln City. Evergreen NW, Inc. has been cited and penalized for allowing a subcontractor who was not a licensed asbestos abatement contractor to demolish the building, and for openly accumulating asbestos-containing material. In the attached Notice, Evergreen NW, Inc. has also been cited, without penalty, for failing to have the building surveyed for asbestos containing-materials and failing to remove asbestos-containing materials prior to the demolition.

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 has implemented survey, licensing, work practice, packaging, disposal, and other important requirements. The failure to follow these requirements posed a significant risk to public health and the environment.

DEQ appreciates your efforts to cooperate with the investigation, and that you promptly responded to the violations by covering the asbestos-containing waste material with a tarp and arranging for a licensed abatement contractor to properly clean up the remaining asbestos-containing waste material. DEQ considered these efforts when determining the amount of the 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 – 503-229-5100

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 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/administrative-rules.aspx> or by calling the number below.

If you have any questions, please contact Sarah Wheeler at 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,



for Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dottie Boyd, Salem Office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 EVERGREEN NW, INC.,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. AQ/AB-WR-2018-114

6 I. AUTHORITY

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

11 II. FINDINGS OF FACT

12 1. Respondent was hired by the property owner of 1434 Northwest 31st Place in Lincoln City,
13 Oregon (the Property) to supervise demolition of a four-plex residential building (the Facility) and
14 build a new structure at the Property.

15 2. Respondent hired a sub-contractor, Dan Kauffman Excavating, Inc., to demolish the
16 Facility.

17 3. On or about May 30 and 31, 2018, when Dan Kauffman Excavating, Inc. demolished the
18 Facility, a boiler and pipes with white/grey insulation (the Materials) that were inside the Facility were
19 dislodged, run over, and crushed.

20 4. The pipe insulation contained 90% chrysotile asbestos by weight.

21 5. The boiler insulation contained 80% chrysotile asbestos and 10% amosite asbestos by
22 weight.

23 6. From approximately May 30 through June 6, 2018, Respondent stored the Materials outside
24 the Property, without wetting them or enclosing them with leak-tight packaging.

25 7. Respondent did not have an accredited inspector thoroughly survey the Facility for the
26 presence of asbestos-containing material before demolishing the Facility.

27 ///

1 8. Neither Respondent nor Dan Kauffman Excavating, Inc. are licensed by DEQ as an asbestos
2 abatement contractor.

3 III. CONCLUSIONS

4 1. Respondent violated OAR 340-248-0110(2) by allowing an unlicensed person to perform an
5 asbestos abatement project. Specifically, Respondent hired a contractor to demolish the Facility who
6 did not have an asbestos abatement license from DEQ. Respondent is an “owner or operator” as defined
7 in OAR 340-248-0010(33) because Respondent, as the general contractor, controlled and supervised the
8 Facility during demolition of the Facility. The demolished boiler and pipe insulation was “asbestos-
9 containing material,” as defined by OAR 340-248-0010(8) because it contained more than 1% asbestos
10 by weight. In addition, the boiler and pipe insulation was “friable asbestos material,” as defined by
11 OAR 340-248-0010(25) because it was cable of crumbling or being pulverized under hand pressure.
12 The demolition of the four-plex constituted an “asbestos abatement project,” as defined by OAR 340-
13 248-0010(6), because it was the demolition of a private facility that involved the handling of asbestos-
14 containing material with the potential of releasing asbestos fibers into the air. This is a Class I violation
15 according to OAR 340-012-0054(1)(p). DEQ hereby assesses an \$8,800 civil penalty for this violation.

16 2. Respondent violated OAR 340-248-0205(1) by openly accumulating friable asbestos-
17 containing material. The demolished boiler and pipe insulation was “friable asbestos material,” as
18 defined by OAR 340-248-0010(25) because it was cable of crumbling or being pulverized under hand
19 pressure. Respondent openly accumulated the demolished boiler and pipe insulation, as defined by OAR
20 340-248-0010(32), when Respondent accumulated and stored the material outside on the ground without
21 proper leak tight packaging. This is a Class I violation according to OAR 340-012-0054(1)(m). DEQ
22 hereby assesses a \$10,400 civil penalty for this violation.

23 3. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector
24 thoroughly survey the Facility for the presence of asbestos-containing material prior to demolition. As
25 defined in OAR 340-248-0010(1), an accredited inspector is a person that has completed training and
26 received accreditation under 40 CFR Part 763 Subpart E, Appendix C, Section B, Subsection 3.
27 Respondent is an “owner or operator” as defined in OAR 340-248-0010(33) because Respondent, as the

1 general contractor, controlled and supervised the Facility during demolition of the Facility. This is a Class I
2 violation according to OAR 340-012-0054(1)(l). DEQ has not assessed a civil penalty for this violation.

3 4. Respondent violated OAR 340-248-0270(4)(a) by failing to remove all asbestos-containing
4 materials before demolishing the Facility. This is a Class I violation according to OAR 340-012-
5 0054(1)(l). DEQ has not assessed a civil penalty for this violation.

6 IV. ORDER TO PAY CIVIL PENALTY

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

9 Pay a total civil penalty of \$19,200. The determination of the civil penalty is attached in Exhibits 1
10 and 2, which are incorporated as part of this Notice.

11 If you do not file a request for hearing as set forth in Section V below, your check or money order
12 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
13 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty, the
14 Findings of Fact, Conclusions and Order become final.

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

16 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
17 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
18 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
19 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
20 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
21 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
22 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
23 it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
24 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
25 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
26 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
27 you may represent yourself. If you are a corporation, partnership, limited liability company,

1 unincorporated association, trust or government body, you must be represented by an attorney or a duly
2 authorized representative, as set forth in OAR 137-003-0555.

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

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

14
15
16
17 October 10, 2018

18 Date

17 

18  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: Allowing a contractor who was not a licensed asbestos abatement contractor to perform an asbestos abatement project, in violation of 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)(B) and (D) because the violation involved 80 linear feet of asbestos-containing material from the pipe insulation which contained 90% chrysotile asbestos by weight. The violation involved an additional 50 square feet of asbestos-containing material from the boiler insulation, which contained 80% chrysotile and 10% amosite asbestos. The violation involved a total of 56 cubic yards of asbestos-containing waste material (including the boiler and pipe insulation, and contaminated sand, soil, and debris).

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). This asbestos violation is not classified under any other penalty matrix.

"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 Respondent does not have any 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 are no 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 DEQ has insufficient information on which to base a finding that the unlicensed asbestos abatement project occurred on more than one day.

"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 been licensed as a contractor with the Oregon Construction Contractor's Board (CCB) since at least 2010, and therefore trained and tested on the CCB manual, which contains information regarding asbestos licensing requirements. As the general contractor for the demolition of the Facility, by failing to hire a licensed asbestos abatement contractor to properly abate the boiler and

pipe insulation, which are commonly known to be asbestos-containing materials, Respondent failed to take reasonable care to avoid the risk of committing a foreseeable violation.

"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 by covering the asbestos-containing waste material with a tarp on or about June 1, and arranging for a licensed asbestos abatement contractor to properly clean up the remaining asbestos-containing waste material on June 5-6, 2018.

"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, as the cost of properly abating the asbestos after demolition was more than the cost of properly abating it prior to demolition.

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 x \$8,000) x (0 + 0 + 0 + 4 - 3)] + \$0
= \$8,000 + (\$800 x 1) + \$0
= \$8,000 + \$800 + \$0
= \$8,800

EXHIBIT 2

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

VIOLATION 2: Openly accumulating friable asbestos material or 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)(m).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(B) and (D) because the violation involved 80 linear feet of asbestos-containing material from the pipe insulation which contained 90% chrysotile asbestos by weight. The violation involved an additional 50 square feet of asbestos-containing material from the boiler insulation, which contained 80% chrysotile and 10% amosite asbestos. The violation involved a total of 56 cubic yards of asbestos-containing waste material (including the boiler and pipe insulation, and contaminated sand, soil, and debris).

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). This asbestos violation is not classified under any other penalty matrix.

"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 Respondent does not have any 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 are no prior significant actions.

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because the violation was ongoing from approximately May 30 through June 6, 2018. Because each day of violation constitutes a separate occurrence, there were at least six occurrences 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. As a licensed contractor with the Oregon Construction Contractor's Board (CCB) since 2010, Respondent has been trained in the CCB manual, which contains information regarding asbestos licensing requirements and the prohibition against open accumulation of friable asbestos-containing material. As the general contractor for the demolition of the Facility, by failing to take steps to ensure friable

asbestos-containing materials were properly abated and not allowed to openly accumulate, Respondent failed to take reasonable care to avoid the risk of committing a violation.

"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) Respondent made reasonable efforts to minimize the effects of the violation by covering the asbestos-containing waste material with a tarp on or about June 1, and arranging for a licensed asbestos abatement contractor to properly clean up the remaining asbestos-containing waste material on June 5-6, 2018.

"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 on which to make an estimate of Respondent's economic benefit, if any, resulting from 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 + 2 + 4 - 3)] + \0
 $= \$8,000 + (\$800 \times 3) + \$0$
 $= \$8,000 + \$2,400 + \$0$
 $= \$10,400$