



# 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 19, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 3488

John K. Reilly & Jennifer Doherty-Reilly  
3231 NE US Grant Pl.  
Portland, OR 97212

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/AB-NWR-2016-119

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$21,600 for allowing an unlicensed contractor to perform an asbestos abatement project and openly accumulating asbestos-containing waste material at a residential building you own in Portland, Oregon. In addition, DEQ has cited you, without civil penalty, for failing to submit to DEQ an asbestos abatement project notification at least ten days before commencing the project.

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 requires training and licensing for those who handle asbestos-containing material and prohibits open accumulation of asbestos-containing waste material. The failure to hire a licensed asbestos abatement contractor and the open accumulation of asbestos-containing waste material presents a significant risk to public health and the environment.

DEQ appreciates your efforts to mitigate the effects of the violations by hiring an asbestos abatement contractor to properly abate the openly accumulated asbestos-containing waste material after DEQ's inspection. 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. 6<sup>th</sup> 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.



John K. Reilly & Jennifer Doherty-Reilly

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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: Zeb Bates, DEQ, NWR

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

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 JOHN K. REILLY & JENNIFER ) ASSESSMENT AND ORDER  
5 DOHERTY-REILLY )  
6 Respondent. ) CASE NO. AQ/AB-NWR-2016-119

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. Respondents own a residential building located at 3316 NE 44<sup>th</sup> Avenue, in Portland,  
14 Oregon (the Facility).
- 15 2. Respondents hired Reilly Signature Homes, LLC (RSH) to perform a renovation project at  
16 the Facility (the Project).
- 17 3. RSH is not licensed by DEQ as an asbestos abatement contractor.
- 18 4. During the project, RSH removed and handled green floor tile, gray thermal system  
19 insulation (TSI), and concrete board siding.
- 20 5. On April 20, 2016, DEQ performed an inspection of the Facility. At the time of the  
21 inspection, there were fragmented pieces of cement board siding scattered around the perimeter of the  
22 Facility, a pile of impacted gray thermal system insulation (TSI) in the basement of the Facility, and  
23 broken pieces of green floor tile in the basement of the Facility. None of the material had been wetted  
24 or encapsulated.
- 25 6. The fragmented pieces of cement board siding contained approximately 12% chrysotile  
26 asbestos by weight.
- 27 7. The gray TSI material contained approximately 90% chrysotile asbestos by weight.

1 8. The broken pieces of green floor tile contained approximately 20% chrysotile asbestos by  
2 weight.

3 9. Respondents did not submit to DEQ an asbestos abatement project notification at least ten  
4 days before commencing the Project.

### 5 III. CONCLUSIONS

6 1. Respondents have violated ORS 468A.715 and OAR 340-248-0110(2) by allowing an  
7 unlicensed contractor to perform an asbestos abatement project, as described in Section II above.  
8 Specifically, Respondents allowed RSH to remove and handle cement board siding, TSI, and green  
9 floor tile from the Facility. The cement board siding, TSI, and green floor tile were “asbestos-  
10 containing materials,” as defined by OAR 340-248-0010(8) because they contained more than one  
11 percent asbestos by weight. The removal and handling of these materials was an “asbestos abatement  
12 project,” as defined by OAR 340-248-0010(6) be it was a renovation that involved the removal and  
13 handling of asbestos containing material with the potential to release asbestos fibers into the air. This is  
14 a Class I violation according to OAR 340-012-0054(1)(p). DEQ hereby assesses an \$11,200 civil penalty  
15 for this violation.

16 2. Respondents have violated OAR 340-248-0205(1) by openly accumulating asbestos containing  
17 waste material, as described in Section II above. Specifically, Respondents collected dry and un-  
18 encapsulated fragmented pieces of cement board siding, TSI, and green floor tile throughout the facility.  
19 These materials are “asbestos-containing waste material,” as defined by OAR 340-248-0010(12) because it  
20 is waste generated from an asbestos abatement project. This is a Class I violation according to OAR 340-  
21 248-0054(1)(m). DEQ hereby assesses a \$10,400 civil penalty for this violation.

22 3. Respondents have violated OAR 340-248-0260(1) by failing to submit to DEQ an asbestos  
23 abatement project notification at least ten days before commencing the Project, as described in Section II  
24 above. This is a Class II violation according to OAR 340-012-0054(2)(1). DEQ has not assessed a civil  
25 penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a total civil penalty of \$21,600. The determination of the civil penalties are attached as Exhibit  
5 Nos. 1 and 2 and are incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money order  
7 must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office,**  
8 **811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of Fact,  
9 Conclusions and Order become final.

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

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

23 Active duty service-members have a right to stay proceedings under the federal Service  
24 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
25 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
26 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
27 <http://legalassistance.law.af.mil/content/locator.php>.

1 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
2 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
3 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
4 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
5 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
6 information submitted by you, as the record for purposes of proving a prima facie case.  
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10 October 19, 2016

11 Date

10 Sarah G. Wheeler

11 Sarah G. Wheeler, Acting Manager  
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 No. 1: Allowing an unlicensed contractor to perform an asbestos abatement project, in violation of ORS 468A.715 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 there were more than 160 square feet of asbestos containing material involved in the violation. There were approximately 200 square feet of asbestos containing material involved in the violation.

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 Respondents have 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 Respondents, and receives a value of 0 according to OAR 340-012-0145(2) (a) (A), because there are no prior significant actions.

"H" is Respondents' 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. Each day of violation constitutes a separate occurrence. The violation occurred on at least one day prior to April 20, 2016, the day of the DEQ inspection. Therefore, there was at least one occurrence of the violation.

"M" is the mental state of the Respondents and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondents' conduct was negligent. The Respondents are managers of Reilly Signature Homes, LLC (RSH). RSH has held a construction contractor license, issued by the Oregon Construction Contractors Board (CCB), since 2010. The CCB tests its licensees annually on DEQ's asbestos licensing requirement and how to identify suspect asbestos containing material, including cement board siding, TSI, and floor tile. Therefore, Respondents failed to take reasonable care to avoid a foreseeable risk that its failure to hire an asbestos abatement contractor to remove and handle cement board siding, TSI, and floor tile may result in a violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 because 0 according to OAR 340-012-0145(6)(f), because the violation or the effects of the violation could not 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 \$0 because Respondents did not receive an economic benefit 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 x \$8,000) x (0 + 0 + 0 + 4 + 0)] + \$0  
= \$8,000 + [\$800 x 4] + \$0  
= \$8,000 + \$3,200 + \$0  
= \$11,200

EXHIBIT No. 2

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

VIOLATION No. 2: Openly accumulating 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)(A) because there were more than 160 square feet of asbestos containing material involved in the violation. There were approximately 200 square feet of asbestos containing material involved in the violation.

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 Respondents have 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 Respondents, and receives a value of 0 according to OAR 340-012-0145(2) (a) (A), because there are no prior significant actions.

"H" is Respondents' 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 2 according to OAR 340-012-0145(4)(b), because there were more than one but less than seven occurrences of the violation. Each day of violation constitutes a separate occurrence. The violation began, at the latest, on April 20, 2016, the day of the DEQ inspection. The violation continued until April 22, 2016, the day that Respondents hired a licensed asbestos abatement contractor to properly abate the remaining asbestos-containing waste material from the Facility. Therefore, there were at least three occurrences of the violation.

"M" is the mental state of the Respondents and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondents' conduct was negligent. The Respondents are managers of Reilly Signature Homes, LLC (RSH). RSH has held a construction contractor license, issued by the Oregon Construction Contractors Board (CCB), since 2010. The CCB tests its licensees annually on DEQ's asbestos licensing requirement and how to identify suspect asbestos containing material, including cement board siding, TSI, and floor tile. Therefore, Respondents failed to take reasonable care to avoid a foreseeable risk that its failure to hire

an asbestos abatement contractor to remove and handle cement board siding, TSI, and floor tile may result in a violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 because 0 according to OAR 340-012-0145(6)(c), because Respondents took reasonable efforts to mitigate the effects of the violation. On April 22, 2016, two days after the DEQ inspection, Respondents hired a licensed asbestos abatement contractor to properly abate the remaining openly accumulated asbestos-containing waste material at the Facility.

"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 Respondent did not receive an economic benefit from this violation.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 2 + 4 + -3)] + \$0 \\ &= \$8,000 + [\$800 \times 3] + \$0 \\ &= \$8,000 + \$2,400 + \$0 \\ &= \$10,400 \end{aligned}$$