



# 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

November 15, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 2862

Brian Aho  
32705 E. Historic Columbia River Highway  
Corbett, OR 97019

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/AB-NWR-2018-148

This letter is to inform you that DEQ has issued you a civil penalty of \$14,375 for conducting a friable asbestos abatement project without a license, the openly accumulating asbestos-containing waste material, and burning prohibited material at your property in Corbett. In January 2018, you demolished a commercial building without first conducting a survey to determine if any of the building materials contained asbestos. DEQ's analysis of debris samples from your property show that insulation debris contained 70% chrysotile asbestos and two separate roofing materials also contained lesser amounts of chrysotile asbestos. Additionally, you burned lumber, masonry, insulated wire, vinyl flooring and other debris. Oregon law prohibits any person from burning materials that normally emit dense smoke or noxious odors such as insulated wire and plastics.

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.

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](mailto: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 details DEQ's reasons for issuing the penalty and provides instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

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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 instead of paying a penalty. Further information is available 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 Susan Elworth at 503-229-5152 or toll free at 800-452-4011, ex 5152.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

cc: Zeb Bates, NWR, DEQ



1 III. CONCLUSIONS

2 1. Respondent violated OAR 340-248-0110 by performing an asbestos abatement project  
3 without a license or a certification issued by DEQ. Specifically, Respondent performed an asbestos  
4 abatement project by handling and removing ACM with the potential to release asbestos fibers when he  
5 used a backhoe on the building. The commercial building is a facility, as defined by OAR 340-248-  
6 0010(24) as it was a private building or structure. The use of the backhoe to remove the walls and roof of  
7 the building was a demolition, as defined by OAR 340-248-0010(19). This is a Class I violation according  
8 to OAR 340-012-0054(1)(n). DEQ assesses a \$2,200 civil penalty for this violation.

9 2. Respondent violated OAR 340-248-0205(1) by allowing the open accumulation of  
10 ACWM. Specifically, Respondent openly accumulated ACWM when he maintained the demolition  
11 debris in open and unpackaged piles at the property. The insulation, roofing material, and silver roofing  
12 paint were ACM, as defined by OAR 340-248-0010(8) because they contained more than one percent  
13 asbestos by weight. The demolition debris was ACWM as defined by OAR 340-248-0010(12) because  
14 it contained ACM (including insulation, roofing material, and silver roofing paint) that was generated  
15 during an asbestos abatement project. Respondent openly accumulated the ACWM, as defined by OAR  
16 340-248-0010(32), by failing to properly package it pursuant to OAR 340, Division 248. This is a Class  
17 I violation according to OAR 340-012-0054(1)(m). DEQ assesses a \$11,200 civil penalty for this  
18 violation.

19 3. Respondent violated OAR 340-264-0060(3) by allowing the open burning of wire  
20 insulation, vinyl flooring and other materials that normally emit dense smoke or noxious odors.  
21 Respondent is strictly liable for the open burning pursuant to OAR 340-264-0060(1). This is a Class I  
22 violation according to OAR 340-012-0054(1)(q). DEQ assesses a \$975 civil penalty for this violation.

23 4. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector  
24 thoroughly survey the building for the presence of ACM prior to the demolition. This is a Class I violation  
25 according to OAR 340-012-0054(1)(l). DEQ did not assess a civil penalty for this violation.

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1 V. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
3 hereby ORDERED TO pay a total civil penalty of \$14,375. The determinations of the civil penalty are  
4 attached as Exhibits 1 through 3, and are incorporated as part of this Notice. If you do not file a request for  
5 hearing as set forth in Section V below, your check or money order must be made payable to "**State**  
6 **Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street,**  
7 **Suite 600, Portland, Oregon 97232.** Once you pay the penalty, the Notice becomes final.

8 VI. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

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

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

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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 or a certification from DEQ, in violation of OAR 340-248-0110.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(n).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(h)(C) because the violation involved at least one square foot of asbestos containing material but it is unknown how much asbestos containing material was in the Facility prior to the demolition.
- 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)(A). 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 is insufficient information on which to base a finding under OAR 340-012-0145(4)(b) through (4)(d). Each day of violation constitutes a separate occurrence. The violation occurred on at least one day, on or before January 22, 2018.
- "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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent is the principle of a construction company licensed by the Oregon Construction Contractors Board (CCB). The CCB provides annual required training and periodic information on asbestos surveying, licensing, certification, handling, and disposal. Thus Respondent reasonably should have known that asbestos could be present in the Facility, that he could not demolish the building without properly removing any asbestos, and that openly accumulating asbestos containing waste material may result in 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) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Although Respondent conducted a friable asbestos abatement project without a license, after DEQ informed him of the violation, Respondent immediately covered the asbestos-containing waste material and hired a licensed abatement contractor to properly dispose of the material.

"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 any costs delayed or avoided as a result of this violation would result in a de minimis EB.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 4 - 3)] + \$0 \\ &= \$2,000 + [\$200 \times 1] + \$0 \\ &= \$2,000 + \$200 + \$0 \\ &= \$2,200 \end{aligned}$$



EXHIBIT 2

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

- VIOLATION 2: Causing or allowing the open accumulation of 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 the open accumulation involved more than 160 square feet of asbestos-containing waste material. The asbestos project notification form submitted in February 2018 states that approximately 5,000 square feet of asbestos-containing waste material was abated by the licensed abatement contractor.
- 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)(A). 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 3 according to OAR 340-012-0145(4)(c) because there were more than seven but less than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent openly accumulated the asbestos-containing waste material from at least January 22, 2018, until the asbestos abatement was completed on February 10, 2018.
- "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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent is the principle of a construction company licensed by the Oregon Construction Contractors Board (CCB). The CCB provides annual required training and periodic information on asbestos surveying, licensing, certification, handling, and disposal. Thus Respondent reasonably should have known that asbestos could be present in the Facility, that he could not demolish the building without properly removing any

asbestos, and that openly accumulating asbestos containing waste material may result in 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) because Respondent made reasonable efforts to minimize the effects of the violation. After DEQ inspected the Property, Respondents hired a licensed abatement contractor to properly package and dispose of the remaining debris.

"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 any costs delayed or avoided as a result of this violation would result in a de minimis EB.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 3 + 4 - 3)] + \$0 \\ &= \$8,000 + (\$800 \times 4) + \$0 \\ &= \$8,000 + \$3,200 + \$0 \\ &= \$11,200 \end{aligned}$$

EXHIBIT 3

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

- VIOLATION 3: Causing or allowing the open burning of wire insulation, vinyl flooring and other materials that normally emit dense smoke or noxious odors, in violation of OAR 340-264-0060(3).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(n).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(i)(C) because Respondent initiated or allowed the initiation of less than 2 cubic yards of prohibited materials.
- 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 \$750 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(A), as the violation is not listed 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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). Each day of violation constitutes a separate occurrence. The violation occurred on at least one day, on or before January 22, 2018.
- "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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent is the principle of a construction company licensed by the Oregon Construction Contractors Board (CCB). The CCB contractor's reference manual states that the open burning of plastics, wire insulation and materials which normally emit noxious odors are prohibited by DEQ regulations, thus Respondent reasonably should have known that he could not burn materials such as vinyl flooring and wire insulation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. Respondent had the remaining debris removed at the time of the asbestos abatement.

"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 is unable to make an estimate of any costs delayed or avoided as a result of this violation.

PENALTY CALCULATION:  $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$   
= \$750 + [(0.1 x \$750) x (0 + 0 + 0 + 4 - 1)] + \$0  
= \$750 + (\$75 x 3) + \$0  
= \$750 + \$225 + \$0  
= \$975