



# 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  
TTY 711

November 24, 2021

CERTIFIED MAIL: 7018 1830 0001 5906 3053

Kimberley M. Mosier  
Baker County Counsel  
1995 3rd Street  
Baker City, Oregon 97814

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/AB-ER-2021-126

***DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.***

This letter is to inform you that DEQ has issued you a civil penalty of \$7,400 for failing to perform an asbestos survey, conducting an unlicensed asbestos abatement project, and illegally disposing of demolition waste. The violations occurred in December 2020, when you demolished a mobile home located at 267 West Church Street in Halfway, Oregon. The mobile home included wallboard material which contained 60% chrysotile asbestos, along with fiberglass insulation and painted and treated wood. After demolishing the mobile home, you disposed of the waste at an open pit on a property located outside of Halfway, Oregon, where it was later burned. These demolition materials are prohibited from being burned at any time in Oregon. The demolition waste remained in the open pit until May 2021, when you properly packaged and disposed of the material as 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 requires training and licensing for those who handle asbestos-containing material. In addition, an asbestos survey is required prior to a demolition to help identify and properly abate asbestos-containing materials. Furthermore, it is against the law to dispose of solid waste, including asbestos-containing waste, anywhere except at a properly permitted disposal facility such as a landfill or transfer station. Illegal dumps diminish livability and can threaten human

health and the environment by creating habitat for disease carrying insects and rodents and polluting ground and surface waters.

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 – 503-229-6762

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 via check, money order, or e-check (ACH) by following the instructions on the attached invoice and logging in to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>. Payments sent by mail must be sent to the address on the invoice.

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/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Tom Hack, Pendleton Office, ER, DEQ  
Mark Bailey, Bend Office, ER, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
 4 BAKER COUNTY, ) ASSESSMENT AND ORDER  
 5 Respondent ) CASE NO. AQ/AB-ER-2021-126

6 I. AUTHORITY

7 DEQ issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon  
 8 Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapters 183, 468A and 465, and  
 9 Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 093, 248 and 264.

10 II. FINDINGS OF FACT

11 1. In December 2020, Respondent became the owner of a 1970's-build double-wide mobile  
 12 home (the Mobile Home) and several sheds, located at 267 West Church Street, in Halfway Oregon.  
 13 Mobile homes typically contain fiberglass insulation, electrical wiring, plumbing, painted or treated  
 14 wall panels, roofing and flooring materials.

15 2. In December 2020, Respondent demolished the Mobile Home and sheds using heavy  
 16 equipment to break the structures into sections (the Demolition).

17 3. Respondent did not conduct an asbestos survey of the Mobile Home prior to the Demolition.

18 4. At the time of the Demolition, Respondent had not obtained an asbestos abatement  
 19 contractor license from DEQ, pursuant to OAR 340-248-0120.

20 5. In December 2020, Respondent transported the waste generated from the Demolition (the  
 21 Demolition Waste) to a property located on Orr Road outside of Halfway, Oregon (the Property) where  
 22 it was disposed of and burned in an open pit.

23 6. The Demolition Waste included, but was not limited to fiberglass insulation, painted and  
 24 treated wood paneling, and wall board.

25 7. The Property was not a DEQ-permitted solid waste disposal site.

26 8. On April 19, 2021, an accredited inspector collected samples of the material that remained  
 27 in the open pit at the Property after the Demolition Waste was burned. An analysis of a sample taken  
 from the burned Demolition Waste of a three-foot by three-foot section of fire insulation wall board

1 contained 60% chrysotile asbestos by weight.

2 9. On May 5, 2021, a licensed asbestos abatement contractor removed approximately ten cubic  
3 yards of waste material remaining in the open pit at the Property, and disposed of those materials as  
4 asbestos-containing waste material (ACWM).

5 III. CONCLUSIONS

6 1. The Mobile Home was a “facility,” as defined in OAR 340-248-0010(20) because it was a  
7 building or structure.

8 2. The Demolition of the Mobile Home was a “demolition” as defined in OAR 340-248-  
9 0010(18) because the activity wrecked the structure, breaking it into sections and removing load-  
10 supporting structural members.

11 3. The fire insulation wall board was “asbestos-containing materials” (ACM), as defined in  
12 OAR 340-248-0010(8) because it contained more than one-percent asbestos by weight.

13 4. The Demolition was an “asbestos abatement project,” as defined in OAR 340-248-0010(6)  
14 because it was a demolition that involved the removal, handling and disposal of ACM with the  
15 potential of releasing asbestos fibers into the air when the walls of the Mobile Home were broken into  
16 sections by heavy equipment and disposed of in an open pit.

17 5. The material described in Section II, paragraphs 3 through 5 was “ACWM,” as defined in  
18 OAR 340-248-0010(9) because it contained or was contaminated by demolition debris which was from  
19 an asbestos abatement project.

20 6. Respondent was the “owner” of the Mobil Home, as defined in OAR 340-248-0010(35), as it  
21 owned the mobile home at the time of its demolition and controlled or supervised the demolition.

22 7. Respondent violated OAR 340-248-0110(2) by performing an asbestos abatement project  
23 without a license from DEQ, as described in Section II above. Specifically, Respondent conducted an  
24 asbestos abatement project when it demolished the Mobile Home. This is a Class I violation according  
25 to OAR 340-012-0054(1)(t). DEQ assesses a \$2,400 civil penalty for this violation.

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1 8. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector survey  
2 the Mobile Home for ACM prior to the demolition, as described in Section II above. Specifically,  
3 Respondent demolished the Mobile Home in December 2020 but did not have a survey completed on  
4 the Mobile Home prior to the Demolition. This is a Class I violation according to OAR 340-012-  
5 0054(1)(r). DEQ assess a \$3,200 civil penalty for this violation.

6 9. Respondent violated OAR 340-093-0040(1) by disposing of or authorizing the disposal of  
7 solid waste at a location other than a solid waste disposal site permitted by DEQ, as described in  
8 Section II above. Specifically, Respondent disposed of the Demolition Waste at an open pit on the  
9 Property. The Demolition Waste was “solid waste,” as that term is defined in OAR 340-093-0030(91),  
10 as it was useless or discarded demolition materials. This is a Class I violation according to OAR 340-  
11 012-0065(1)(c). DEQ hereby assesses a \$1,800 civil penalty for this violation.

#### 12 IV. ORDER TO PAY CIVIL PENALTY

13 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
14 hereby ORDERED TO pay a total civil penalty of \$7,400. The determination of the civil penalties are  
15 attached as Exhibits 1 through 3, and are incorporated as part of this Notice. If you do not file a request for  
16 hearing as set forth in Section V below, please pay the penalty via check, money order, or e-check (ACH)  
17 by following the instructions on the attached invoice and logging in to Your DEQ Online here:  
18 <https://ordeq-edms-public.govonlinesaas.com/pub/login>. Payments sent by mail must be sent to the  
19 address on the invoice.

#### 20 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

21 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
22 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
23 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
24 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
25 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
26 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
27 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232, fax**

1 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
3 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
4 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
5 you may represent yourself. If you are a corporation, partnership, limited liability company,  
6 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
7 authorized representative, as set forth in OAR 137-003-0555.

8 Active duty Service members have a right to stay proceedings under the federal Service  
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
12 Department does not have a toll free telephone number.

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

19  
20  
21 11/24/2021  
22 Date

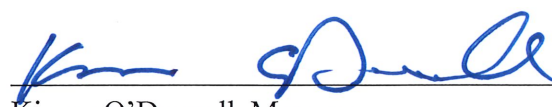
21   
22 Kieran O'Donnell, Manager  
23 Office of Compliance and Enforcement  
24  
25  
26  
27

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 certification from DEQ, in violation of OAR 340-248-0110(3).

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(i)(C) because the asbestos abatement project involved less than 80 square feet of ACM. Although it is unknown how much ACM may have been present in the mobile home prior to the demolition, there was approximately 9 square feet of ACM discovered in the open pit following the burning of the demolition debris. Respondent eventually disposed of approximately 10 cubic yards of waste from the open pit. Therefore, DEQ estimates that there was less than 80 square feet of asbestos involved in the asbestos abatement project.

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)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(B). This asbestos violation is not classified under any other penalty matrix as Respondent is not a residential owner-occupant.

"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 2 according to OAR 340-012-0145(2)(a), because Respondent has one Class I violation in case no. AQ/AB-ER-2020-243.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions. Respondent had a survey completed after the renovations occurred, thus minimizing the effects of the prior violation.

"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). It is unknown for how many days Respondent conducted the asbestos abatement project.

"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 reasonably should have known that a mobile home constructed in 1970 was likely to contain asbestos. In addition, DEQ previously cited Respondent for asbestos-related violations and therefore knew that a license would be required to abate asbestos. Therefore, Respondent failed to take reasonable care to avoid the risk that its demolition of the mobile home would result in an unlicensed asbestos abatement project.

"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 hired a licensed asbestos abatement contractor to properly package and dispose of the ACWM.

"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 benefit Respondent gained from delaying, from December 2020 until May 2021, hiring an asbestos abatement contractor would be de minimis

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$2,000 + [(0.1 \times \$2,000) \times (2 - 1 + 0 + 4 - 3)] + \$0$   
 $= \$2,000 + (\$200 \times 2) + \$0$   
 $= \$2,000 + \$400 + \$0$   
 $= \$2,400$



EXHIBIT 2

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

VIOLATION NO. 2: Failing to have an accredited inspector complete a survey, in violation of OAR 340-248-0270(1).

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(i)(C) because the asbestos abatement project involved less than 80 square feet of ACM. Although it is unknown how much ACM may have been present in the mobile home prior to the demolition, there was approximately 9 square feet of ACM discovered in the open pit following the burning of the demolition debris. Respondent eventually disposed of approximately 10 cubic yards of waste from the open pit. Therefore, DEQ estimates that there was less than 80 square feet of asbestos present in the mobile home prior to its 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)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(B). This asbestos violation is not classified under any other penalty matrix as Respondent is not a residential owner-occupant.

"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 2 according to OAR 340-012-0145(2)(a), because Respondent has one Class I violation in case no. AQ/AB-ER-2020-243.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violation cited as prior significant action was uncorrectable but Respondent took reasonable efforts to minimize the effects of the violation cited as a prior significant action. Respondent had a survey completed after that renovation occurred, thus minimizing the effects of that prior violation.

"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.

"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. Reckless means Respondent consciously disregarded a substantial and unjustifiable risk that the result would occur.

Respondent reasonably should have known that a mobile home constructed in 1970 was likely to contain asbestos. Additionally, in 2020, Respondent was cited by DEQ for failing to conduct a survey prior to conducting a renovation at another of its facilities. Therefore, Respondent knew that a survey was required prior to conducting a demolition. When it undertook the demolition of the mobile home without first conducting a survey, Respondent's conduct constituted a gross deviation from the standard of care a reasonable person would have observed in the same situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Respondent hired an accredited inspector to complete a survey the ACWM remaining in the pit.

"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 benefit Respondent gained from avoiding, from December 2020 until May 2021, hiring an accredited inspector to complete a survey would be de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$2,000 + [(0.1 \times \$2,000) \times (2 - 1 + 0 + 8 - 3)] + \$0$   
 $= \$2,000 + (\$200 \times 6) + \$0$   
 $= \$2,000 + \$1,200 + \$0$   
 $= \$3,200$

### EXHIBIT 3

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

VIOLATION NO. 3: Disposing of or authorizing the disposal of solid waste at a location other than a solid waste disposal site permitted by DEQ, in violation of OAR 340-093-0040(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(c).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(3)(a)(C) because Respondent disposed of less than 40 cubic yards of solid waste at an unpermitted solid waste disposal site. Although it is unknown how much solid waste was disposed of by Respondent at the Property, Respondent eventually removed 10 cubic yards of solid waste from the Property. Therefore, DEQ reasonably estimates that less than 40 cubic yards were disposed of at the Property.

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(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(I)(ii). Respondent has a population of more than 5,000, but less than 25,000 residents. According to the 2020 census data, Respondent has a population of approximately 16,000 residents.

"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 in the same media as the current violation.

"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). It is unknown on how many days Respondent disposed of solid waste at the Property.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. As a government entity which enforces nuisance and offensive

littering ordinances, Respondent reasonably should have known that it could not dispose of solid waste at a location which was not permitted to accept solid waste.

"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 disposed of the unburned solid waste in May 2021.

"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 Respondent delayed or avoiding spending to dispose of the solid waste was captured in Exhibit 1.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 2 - 3)] + \$0$   
 $= \$2,000 + (\$200 \times -1) + \$0$   
 $= \$2,000 - \$200 + \$0$   
 $= \$1,800$