



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
FAX (503) 229-5787
TTY 711

November 27, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 2749

New Look Development LLC
c/o John Gliebe, Registered Agent
3614 SE Trellis Place
Hillsboro, OR 97123

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-WR-2018-151

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued New Look Development LLC a civil penalty of \$5,600 for conducting an asbestos abatement project without the appropriate license, and for openly accumulating asbestos-containing waste materials at a facility it renovated located at 11945 SW Belvidere Place in Portland, Oregon.

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, certification, notification, work practice, packaging, disposal and other important requirements. The failure to follow these 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 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 – 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232

Via fax – 503-229-5100

Via email – DEQappeals@deq.state.or.us

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor 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>.

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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 Jane Hickman at 503-229-5692 or toll free in Oregon at 800-452-4011, extension 5692.

Sincerely,

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

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jeremy Fleming, DEQ, Northwest Region

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 NEW LOOK DEVELOPMENT LLC,) ASSESSMENT AND ORDER
5 An Oregon limited liability company,)
6 Respondent.) CASE NO. AQ/AB-NWR-2018-151

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, ORS 468.126 through 468.140,
10 ORS 468A, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
11 and 248.

12 II. FINDINGS OF FACT

13 1. Respondent is a residential general contractor licensed by the Oregon Construction
14 Contractors Board.

15 2. On or about July 15, 2017, Respondent removed vinyl flooring from an accessory dwelling
16 unit located at 11945 SW Belvidere Place in Portland, Oregon (the Facility), as part of a renovation
17 project.

18 3. On August 28, 2017, DEQ inspected the Facility and took samples of materials suspected to
19 contain asbestos.

20 4. DEQ's laboratory analyzed a sample of the vinyl flooring removed by Respondent and
21 found the flooring contained 60% chrysotile asbestos by weight.

22 5. Respondent is not licensed by DEQ as an asbestos abatement contractor.

23 6. After removing the asbestos-containing flooring, Respondent placed the asbestos-containing
24 waste material in black contractor plastic bags without wetting them.

25 7. The asbestos-containing waste material remained at the Facility until on or about September
26 12, 2017.

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1 III. CONCLUSIONS

2 1. Respondent has violated ORS 468A.710(1) and OAR 340-248-0120(1) by performing an
3 asbestos abatement project without a license issued by DEQ, as described in Section II above.
4 Specifically, Respondent performed an asbestos abatement project without the required license when its
5 employee removed vinyl flooring containing more than 1% asbestos by weight at the Facility. The
6 flooring constituted "asbestos-containing materials" as defined by OAR 340-248-0010(8), because it
7 contained more than 1% asbestos by weight. The renovation activity at the Facility was an "asbestos
8 abatement project" as defined by OAR 340-248-0010(6), because it involved the "repair, enclosure,
9 encapsulation, removal, salvage, handling, or disposal of any asbestos-containing material with the
10 potential of releasing asbestos fibers from asbestos-containing material into the air." This is a Class I
11 violation pursuant to OAR 340-012-0054(1)(n). DEQ hereby assesses a \$2,400 civil penalty for this
12 violation.

13 2. Respondent has violated OAR 340-248-0205(1) by "openly accumulating" asbestos-
14 containing waste material, as defined in OAR 340-248-0010(32) and described in Section II above.
15 Specifically, Respondent openly accumulated asbestos-containing waste material when it performed an
16 asbestos abatement project and failed to securely enclose and store asbestos-containing waste material
17 as required by OAR 340-248-0280. The material generated by Respondent's renovation of the Facility
18 was "asbestos-containing waste material" as defined by OAR 340-248-0010(12), because it was waste
19 from an asbestos abatement project. This is a Class I violation pursuant to OAR 340-012-0054(1)(m).
20 DEQ hereby assesses a \$3,200 civil penalty for this violation.

21 IV. ORDER TO PAY CIVIL PENALTY

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

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

26 If you do not file a request for hearing as set forth in Section V below, your check or money order
27 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**

1 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you pay the penalty, the
2 Findings of Fact, Conclusions and Order become final.

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

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

18 Active duty service-members have a right to stay proceedings under the federal Service
19 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
20 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
21 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
22 <http://legalassistance.law.af.mil/content/locator.php>.

23 If you fail to file a timely request for hearing, the Notice will become a final order by default
24 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
25 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
26 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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11/27/18
Date



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT No. 1

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

VIOLATION No.1: Performing an asbestos abatement project without being licensed by DEQ, in violation of 340-248-0120(1), and ORS 468A.710(1).

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 less than 40 linear feet or 80 square feet of asbestos-containing material was removed.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(B).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

"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 contractor licensed by the Construction Contractors Board, Respondent is responsible for being familiar with asbestos management requirements. Before conducting the renovation activities, Respondent knew the facility contained some asbestos materials, yet Respondent did not have an asbestos survey performed to confirm whether there were other asbestos-containing materials in the facility. Respondent therefore failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to minimize the effects of the violation. Approximately six weeks after conducting the asbestos abatement project, Respondent sealed off the facility and hired an asbestos

abatement contractor to properly dispose of the asbestos-containing waste material and decontaminate 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 there is insufficient information on which to make a determination pursuant to OAR 340-012-0150.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 4 - 2)] + \$0 \\ &= \$2,000 + (\$200 \times 2) + \$0 \\ &= \$2,000 + \$400 + \$0 \\ &= \$2,400 \end{aligned}$$

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 minor pursuant to OAR 340-012-0135(1)(h)(C) because less than 80 square feet of asbestos-containing waste material was openly accumulated.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(B).
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) (a) (A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of a violation with a duration of more than one day is a separate occurrence. The asbestos-containing waste material was openly accumulated from approximately July 15, 2017 until September 12, 2017.
- "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 contractor licensed by the Construction Contractors Board, Respondent is responsible for being familiar with asbestos management requirements. Before conducting the renovation activities, Respondent knew the facility contained some asbestos materials, yet Respondent did not have an asbestos survey performed to confirm whether there were other asbestos-containing materials in the facility. Respondent therefore failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in the violation.
- "C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts

to minimize the effects of the violation. Approximately six weeks after conducting the asbestos abatement project, Respondent sealed off the facility and hired an asbestos abatement contractor to properly dispose of the asbestos-containing waste material and decontaminate 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 there is insufficient information on which to make a determination pursuant to OAR 340-012-0150.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 4 + 4 - 2)] + \$0 \\ &= \$2,000 + (\$200 \times 6) + \$0 \\ &= \$2,000 + \$1,200 + \$0 \\ &= \$3,200 \end{aligned}$$