



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 29, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 2763

Mr. Corey Woodson
3534 NE 13th Ave.
Portland, OR 97222

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-2018-147

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$27,200 for allowing unlicensed persons to perform an asbestos abatement project and for openly accumulating friable asbestos-containing waste material at a residence located at 3534 NE 13th Ave. 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>. 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 DEQ Environmental Law Specialist 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, NWR, DEQ
Donald Hendrix, AQ, DEQ

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 COREY WOODSON,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. AQ/AB-NWR-2018-147

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 owns a residence located at 3534 N.E. 13th in Portland, Oregon (the Facility).
13 2. On April 28, 2017, DEQ received a complaint that siding was being removed from the
14 exterior of the Facility that might contain asbestos.
15 3. On April 28, 2017, DEQ performed an inspection of the Facility. During the inspection:
16 a. Respondent's contractor removed siding from the exterior of the Facility with hammers
17 and pry bars,
18 b. Respondent stated that he and others had removed most of the siding from the exterior
19 of the Facility,
20 c. Most of the siding had been removed from the house and contained in 79 plastic bags in
21 the front, side and back yard,
22 d. The bags containing the broken and shattered pieces of cement siding were unsecured
23 and open at the top, and
24 e. Pieces of insulation remained inside the house that had been removed from the furnace
25 by Respondent's contractor. The insulation was torn and was located on the floor and in a
26 pile of removed insulation.

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1 4. On April 28, 2017, DEQ took samples of the siding that had been removed from the exterior
2 of the Facility and of insulation that had been removed from the furnace.

3 5. DEQ's laboratory analyzed the samples and found that the siding was cement asbestos
4 board containing 40% chrsotile asbestos by weight. The furnace insulation contained 69% chrysotile
5 asbestos by weight.

6 6. Respondent's subcontractor was not licensed by DEQ to conduct asbestos abatement
7 projects.

8 7. Prior to performing the demolition activity on the Facility, Respondent did not have an
9 accredited inspector thoroughly survey the affected facility, or part of the facility where the demolition
10 occurred, for the presence of asbestos-containing material.

11 III. CONCLUSIONS

12 1. Respondent has violated ORS 468A.715(1) and OAR 340-248-0110(2) by allowing a person
13 not licensed as an asbestos abatement contractor by DEQ to perform an asbestos abatement project, as
14 described in Section II above. Specifically, Respondent allowed a contractor and others not licensed to
15 conduct asbestos abatement projects to remove cement asbestos board siding from the exterior of
16 Respondent's Facility. Respondent also allowed his subcontractor to remove asbestos-containing
17 thermal insulation from the furnace in the Facility. The cement asbestos board siding and thermal
18 insulation constituted "asbestos-containing materials" as defined by OAR 340-248-0010(8), because
19 they contained more than 1% asbestos by weight. The renovation and demolition of the Facility was an
20 "asbestos abatement project" as defined by OAR 340-248-0010(6), because it involved the "repair,
21 enclosure, encapsulation, removal, salvage, handling, or disposal of any asbestos-containing material
22 with the potential of releasing asbestos fibers from asbestos-containing material into the air." This is a
23 Class I violation pursuant to OAR 340-012-0054(1)(p). DEQ hereby assesses an \$13,600 civil penalty
24 for this violation.

25 2. Respondent has violated OAR 340-248-0205(1) by openly accumulating asbestos-
26 containing waste material, as described in Section II above. Specifically, Respondent openly
27 accumulated asbestos-containing waste material when he failed to securely store, package and label the

1 broken pieces of cement asbestos board and the torn pieces of furnace insulation as required by OAR
2 340-248-0280. The material generated by Respondent's repair of the Facility was "asbestos-containing
3 waste material" as defined by OAR 340-248-0010(12), because it was waste from an asbestos
4 abatement project. This is a Class I violation pursuant to OAR 340-012-0054(1)(m). DEQ hereby
5 assesses a \$13,600 civil penalty for this violation.

6 3. Respondent has violated OAR 340-248-0270(1) by failing to have an accredited inspector
7 perform an asbestos survey prior to performing renovation or demolition activity on a facility. OAR
8 340-248-0270(1) states, "[e]xcept as OAR 340-248-0250 provides, prior to performing a demolition or
9 renovation activity on a facility or an installation, the owner or operator of a facility must have an
10 accredited inspector thoroughly survey the affected facility, or part of the facility where the demolition
11 or renovation operation will occur, for the presence of asbestos-containing material, including
12 nonfriable asbestos material." According to OAR 340-248-0010(19), "demolition means the wrecking
13 or removal of any load-supporting structural member of a facility together with any related handling
14 operations or the intentional burning of the facility." "Facility" is defined in OAR 340-248-0010(24) as
15 "all or part of any public or private building," which includes a single family dwelling. The walls
16 removed by Respondent or his subcontractor were load-supporting structural members of the Facility,
17 so the removal of the walls constituted a demolition of the Facility. None of the exceptions listed in
18 OAR 340-248-0250 are applicable to the demolition activity conducted by Respondent. According to
19 OAR 340-012-0054(1)(l), this is a Class I violation. DEQ is not assessing a civil penalty for this
20 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 \$27,200. The determination of the civil penalties are attached as
25 Exhibits 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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6 11/29/18

7 Date

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9 Kieran O'Donnell, Manager
10 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 persons not licensed by DEQ to perform an asbestos abatement project without being licensed by DEQ, in violation of 340-248-0110(2) and ORS 468A.715(1).

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)(D) because the asbestos abatement project involved more than 260 linear feet or 160 square feet of asbestos-containing material. Approximately 1,000 square feet of cement asbestos board was removed from the exterior of the Facility, and approximately 25 linear feet of asbestos-containing thermal insulation 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 \$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 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 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. The violation occurred on at least two days, April 27 and 28, 2017. DEQ received a complaint on April 28, 2017 from a concerned citizen who observed the unlawful abatement occurring on April 27, 2017. DEQ observed the violation on April 28, 2017.

"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. Prior to the removal of the siding, Respondent obtained a laboratory analysis of the cement asbestos board indicating it contained 30% chrysotile asbestos, yet he did not hire a licensed asbestos contractor to remove the cement asbestos board siding. Respondent consciously disregarded a substantial and unjustifiable risk that the contractor he hired would remove asbestos-containing materials without the appropriate license.

"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 by having the openly accumulated asbestos-containing waste materials properly removed by a licensed asbestos abatement contractor on May 4, 2017.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 2 + 8 - 3)] + \$0 \\ &= \$8,000 + (\$800 \times 7) + \$0 \\ &= \$8,000 + \$5,600 + \$0 \\ &= \$13,600 \end{aligned}$$

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 major pursuant to OAR 340-012-0135(1)(h)(A) because more than 260 linear feet or more than 160 square feet of asbestos-containing waste material was openly accumulated. Approximately 1,000 square feet of cement asbestos board siding was openly accumulated, and approximately 25 linear feet of asbestos-containing thermal insulation 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 \$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 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 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. The violation occurred on at least two days, April 27 and 28, 2017. DEQ received a complaint on April 28, 2017 from a concerned citizen who observed the unlawful abatement occurring on April 27, 2017. DEQ observed the violation on April 28, 2017.

"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. Prior to the removal of the siding, Respondent had the cement asbestos board siding tested by a laboratory before having the siding removed by persons not licensed to do so and knew the siding contained asbestos. Respondent consciously disregarded a substantial and unjustifiable risk that his contractor

and acquaintances would remove asbestos-containing materials without the appropriate license.

"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 by having the openly accumulated asbestos-containing waste materials properly removed by a licensed asbestos abatement contractor on May 4, 2017.

"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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 2 + 8 - 3)] + \$0
= \$8,000 + (\$800 x 7) + \$0
= \$8,000 + \$5,600 + \$0
= \$13,600

