



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

December 18, 2015

CERTIFIED MAIL: 7011 2000 0000 5122 8780

UKA Construction LLC
c/o Ilya S. Zagaryuk, Registered Agent
11016 SE Happy Valley Drive
Happy Valley, OR 97086

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-15-189

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$4,800 for conducting an asbestos abatement project without a license and openly accumulating friable asbestos and asbestos-containing waste material. These violations occurred at 1554 NE 74th Avenue 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 them. 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 exposure to asbestos fibers, DEQ has adopted rules governing the proper removal, packaging, and disposal of asbestos.

DEQ appreciates your efforts to minimize the impacts of the violations by procuring the services of a licensed abatement contractor to abate and dispose of the asbestos-containing materials. 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. 6th 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.

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. Further detail regarding SEPs may be found on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>.



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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 Jenny Root, at (503) 229-5874.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Zeb Bates, Northwest Region office, DEQ
Cindy Troupe, Air Quality Program, HQ, DEQ

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 UKA CONSTRUCTION LLC,) ASSESSMENT AND ORDER
an Oregon limited liability company,)
5 Respondent.) CASE NO. AQ/AB-NWR-15-189

6
7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty
9 Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126
10 through 468.140, ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340,
11 Divisions 011, 012 and 248.

12 II. FINDINGS OF FACT

13 1. Respondent is a contractor and holds an active license issued by the Construction
14 Contractors Board.

15 2. On or about September 29, 2015, Respondent was engaged in demolition activity at a
16 residence located at 1554 NE 74th Avenue in Portland, Oregon (the Facility). Respondent disturbed and
17 broke up the materials therein. Respondent did not remove heating ventilation and air conditioning
18 (HVAC) seam tape from the Facility prior to beginning the demolition.

19 3. On or about September 30, 2015, DEQ conducted an inspection of the abatement activities
20 at the Facility. About six square feet of HVAC seam tape was present in an uncovered pile of HVAC
21 debris. A sample of the HVAC seam tape in the pile showed that the tape was composed of 86%
22 chrysotile asbestos.

23 4. Neither Respondent nor any of its employees or agents was licensed to abate asbestos at any
24 material time.

25 5. The Facility was not, at any material time, an authorized asbestos waste facility.

26 III. CONCLUSIONS

27 1. Respondent violated ORS 468A.710(1) and OAR 340-248-0120(1) by conducting an

1 asbestos abatement project without a license from DEQ. The HVAC seam tape was “asbestos-
2 containing material” (ACM), as defined in OAR 340-248-0010(8), because it contained more than one
3 percent asbestos by weight. The demolition of the Facility was an “asbestos abatement project,” as
4 defined in OAR 340-248-0010(6) because the residence was being demolished and involved the
5 removal, handling and disposal of ACM with the potential of releasing asbestos fibers into the air. This
6 is a Class I violation, according to OAR 340-012-0054(1)(n). DEQ hereby assesses a \$2,600 civil
7 penalty for this violation.

8 2. Respondent has violated OAR 340-248-0205(1) by openly accumulating asbestos. Upon
9 demolition of the structure, the HVAC seam tape became “asbestos-containing waste material,” as
10 defined in OAR 340-248-0010(12) because it was waste from an asbestos abatement project. The
11 HVAC seam tape was “friable asbestos material,” as defined in OAR 340-248-0010(25) because it was
12 broken up and hand pressure could crumble, pulverize or reduce it to powder when dry. The HVAC
13 seam tape had not been safely enclosed and stored as required by OAR Chapter 340, Division 248. This
14 is a Class I violation, according to OAR 340-012-0054(1)(m). DEQ hereby assess a \$2,200 civil
15 penalty for this violation.

16 IV. ORDER TO PAY CIVIL PENALTY

17 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
18 hereby ORDERED TO pay a total civil penalty of \$4,800. The determinations of the civil penalties are
19 attached as Exhibits 1 and 2 and are incorporated as part of this Notice.

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

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

25 You have a right to a contested case hearing on this Notice, if you request one in writing. You
26 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
27 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in

1 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters
2 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
3 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
4 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
5 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the
6 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
7 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
8 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
9 association.

10 Active duty service-members have a right to stay proceedings under the federal
11 Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at 1(800)
12 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information can be found
13 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website,
14 <http://legalassistance.law.af.mil/content/locator.php>.

15 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
16 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
17 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing,
18 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
19 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
20 information submitted by you, as the record for purposes of proving a prima facie case.
21
22
23

24 _____
25 Date

12/18/15

24 _____
25 Leah K. Feldon, Manager
26 Office of Compliance and Enforcement
27

EXHIBIT 1

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

VIOLATION 1: Conducting an asbestos abatement without a license, in violation of ORS 468A.710(1) and OAR 340-248-0120(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 there was less than 80 square feet of asbestos-containing material and asbestos-containing waste material.

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 2 according to OAR 340-012-0145(4)(b), because there was more than one but fewer than seven occurrences of the violation. Each day of a violation with a duration of more than one day is a separate occurrence. Respondent was engaged in unlicensed abatement on September 29 and 30, 2015. Thus, there were two occurrences of the violation.

"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. Respondent holds an active Oregon Construction Contractor's Board (CCB) license. Therefore, Respondent is held to a standard of care appropriate for a CCB licensed contractor. To obtain a CCB license, one must complete training and pass a state test. The test is based on the Oregon Contractor Reference Manual, which includes detailed information about Oregon asbestos abatement laws and rules. As a CCB licensed contractor, Respondent is aware that older homes may contain asbestos and failed to take reasonable care to ensure that any potential asbestos-containing material was abated by a person licensed by DEQ to conduct asbestos abatement to avoid the foreseeable risk of committing the 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. Following the DEQ inspection, Respondent retained the services of a licensed abatement contractor to abate and properly dispose of the asbestos-containing material and waste 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 because any economic benefit realized by Respondent as a result of the violation was de minimus.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 2 + 4 - 3)] + \$0 \\ &= \$2,000 + [\$200 \times 3] + \$0 \\ &= \$2,000 + \$600 + \$0 \\ &= \$2,600 \end{aligned}$$

EXHIBIT 2

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

VIOLATION 2: Openly accumulating friable asbestos or 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 there was less than 80 square feet of asbestos-containing material and asbestos-containing waste material.

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 because Respondent failed to take reasonable care to avoid a foreseeable risk of conduct resulting in the violation when it openly accumulated asbestos. As a CCB licensed contractor, Respondent is expected to be aware that older homes can contain asbestos and that DEQ rules include specific requirements for the disposal of asbestos-containing waste materials.

"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. Following the DEQ inspection, Respondent retained the services of a licensed abatement contractor to abate and properly dispose of the HVAC seam tape.

"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 economic benefit realized by Respondent as a result of the violation was de minimus.

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

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