



# 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 8636

PDX Property Innovations, LLC  
c/o Bruce Michael Zielsdorf, Registered Agent  
1405 SE Long St.  
Portland, OR 97202

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/AB-NWR-15-184

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$26,400 for violating asbestos abatement rules during and after your May 13, 2015 demolition of a structure located at 3810 SE 69<sup>th</sup> Street in Portland, Oregon, including licensing and asbestos-containing waste storage requirements. In addition, DEQ has cited you, without penalty, for violating rules requiring notification of asbestos abatement projects and removal of asbestos-containing materials before demolition.

DEQ issued this penalty because your violation of asbestos abatement rules may 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 licensing for those who handle asbestos-containing material and imposes strict requirements for the conduct of asbestos abatement projects. Your failure to comply with these rules presents a significant risk to public health and the environment.

DEQ appreciates your efforts to minimize the impacts of the violations by eventually hiring a licensed asbestos abatement contractor to conduct a proper abatement of the asbestos-containing waste material generated by the structure demolition. 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. 6<sup>th</sup> 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. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

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 Jeff Bachman at (503) 229-5950. You may call toll-free within Oregon at 1-800-452-4011, extension 5950.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Killian Condon, Northwest Region, DEQ  
Cindy Troupe, HQ, DEQ  
Audrey O'Brien, Northwest Region, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 PDX PROPERTY INOVATIONS, LLC, ) ASSESSMENT AND ORDER  
an Oregon limited liability company, )  
5 Respondent. ) CASE NO. AQ/AB-NWR-15-184

6  
7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

- 13 1. On or about May 13, 2015, Respondent owned or controlled the real property at 3810  
14 SE 69<sup>th</sup> Avenue, Portland, Oregon (the property).
- 15 2. On or about May 13, 2015, Respondent demolished a structure located on the property.
- 16 3. At the time of the demolition, the structure was sided with approximately 1,000 square  
17 feet of transite siding tile containing 15% asbestos.
- 18 4. The demolition of the structure resulted in the shattering of the asbestos-containing  
19 transite tiles covering the structure.
- 20 5. Following the demolition of the structure, the shattered asbestos-containing tiles were  
21 stored in unwetted and uncovered piles of demolition debris on the property open to the elements.
- 22 6. The shattering and unsecure storage of the asbestos-containing tiles created the potential  
23 for human exposure to asbestos fibers.
- 24 7. On the date of the May 13, 2015 structure demolition, Respondent was not licensed to  
25 conduct asbestos abatement in Oregon.
- 26 8. On May 20, 2015, a licensed asbestos abatement contractor hired by Respondent abated  
27 the asbestos containing waste materials at the property.

1 9. Prior to the May 13, 2015 structure demolition, Respondent did not submit an asbestos  
2 abatement project notification to DEQ.

### 3 III. CONCLUSIONS

4 1. On or about May 13 through May 20, 2015, Respondent violated OAR 340-248-0205(1)  
5 by openly accumulating, as defined in OAR 340-248-0010(32), asbestos-containing waste material.  
6 Specifically, Respondent failed to store the shattered asbestos transite siding described in Section II,  
7 Paragraphs 3 through 5, in a manner consistent with the requirements of OAR 340-248-0280. These  
8 are Class I violations pursuant to OAR 340-012-0054(1)(m). DEQ assesses a \$14,400 civil penalty for  
9 these violations.

10 2. On or about May 13, 2015, Respondent violated OAR 340-248-0110(3) by performing  
11 an asbestos abatement project. Specifically, Respondent conducted the asbestos abatement project  
12 described in Section II, Paragraphs 1 through 4, above, without being licensed by DEQ to conduct  
13 asbestos abatement. This is a Class I violation pursuant to OAR 340-012-0054(1)(n). DEQ assesses an  
14 \$12,000 civil penalty for this violation.

15 3. On or about May 13, 2015, Respondent violated OAR 340-248-0270(3) by failing to  
16 remove all asbestos-containing materials before any activity begins that would break up, dislodge, or  
17 disturb the materials or preclude access to the materials for subsequent removal. Specifically,  
18 Respondent failed to remove the asbestos containing transite siding prior to the structure demolition  
19 that resulted in the shattering of the transite tiles, as described in Section II, Paragraphs 1 through 4.  
20 This is a Class I violation pursuant to OAR 340-012-0054(1)(l). DEQ elects to not assess a civil  
21 penalty for this violation.

22 4. On or before May 13, 2015, Respondent violated OAR 340-248-0260(1) by failing to  
23 provide notice of an asbestos abatement project in accordance with the requirements of OAR 340-248-  
24 0260(4). Specifically, Respondent conducted the asbestos abatement project described in Section II,  
25 Paragraphs 1 through 4, above, without providing notice to DEQ in accordance with the requirements  
26 of OAR 340-248-260. This is a Class II violation pursuant to OAR 340-012-0054(2)(l). DEQ elects to  
27 not assess a penalty for this violation.

///

1 IV. 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 \$26,400. The determination of the civil penalties are  
4 attached as Exhibits 1 and 2 and are incorporated as part of this Notice.

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

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

10 You have a right to a contested case hearing on this Notice, if you request one in writing. You  
11 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you  
12 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in  
13 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters  
14 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
15 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request  
16 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**  
17 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the  
18 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
19 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
20 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
21 association.

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>.

27 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER

1 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
2 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
3 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
4 information submitted by you, as the record for purposes of proving a prima facie case.  
5  
6  
7

8 12/18/15

9 Date

Leah K. Feldon

Leah K. Feldon, 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: 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 Respondent openly accumulated more than 160 square feet of 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 \$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 3 according to OAR 340-012-0145(4)(b), because the violation was ongoing for seven days, from May 13 to May 20, 2015.

"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. Respondent is a licensed construction contractor and as such has had training in DEQ asbestos regulations. Respondent knew that the transite siding contained asbestos prior to conducting the demolition. Under these circumstances, Respondent's actions exhibit a conscious disregard to the substantial and unjustifiable risk that the violation would occur.

"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 properly abating the openly accumulated ACWM after the demolition.

"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. In committing the violation, Respondent incurred a higher cost for abatement than if it had properly abated the transite siding prior to demolishing the structure.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 3 + 8 + (-3))] + \$0 \\ &= \$8,000 + [\$800 \times 8] + \$0 \\ &= \$8,000 + \$6,400 + \$0 \\ &= \$14,400 \end{aligned}$$

## EXHIBIT 2

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

VIOLATION 2: Performing asbestos abatement without a license in violation of OAR 340-248-0110(3).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(h)(A) because that abatement involved more than 160 square feet of asbestos-containing 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 \$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 0 according to OAR 340-012-0145(4)(a), because the violation occurred on one day and was not repeated.

"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. Respondent is a licensed construction contractor and as such has had training in DEQ asbestos regulations. Respondent knew that the transite siding contained asbestos prior to conducting the demolition. Under these circumstances, Respondent's actions exhibit a conscious disregard to the substantial and unjustifiable risk that the violation would occur.

"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 hiring a licensed contractor to abate the ACWM following the demolition.

"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. In committing the violation, Respondent incurred a higher cost for abatement than if it had properly abated the transite siding prior to demolishing the structure.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 8 + (-3))] + \$0$   
 $= \$8,000 + [\$800 \times 5] + \$0$   
 $= \$8,000 + \$4,000 + \$0$   
 $= \$12,000$