



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
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(503) 229-5696
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TTY 711

December 6, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3961

Joe Benetti, Mayor
City of Coos Bay
500 Central Avenue
Coos Bay, OR 97420

CERTIFIED BAIL: 7018 1830 0001 5906 3978

Mark Andersen, Fire Chief
City of Coos Bay, Fire Department
450 Elrod Avenue
Coos Bay, OR 97420

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ-AB-WR-2022-601

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the City of Coos Bay Fire Department a civil penalty of \$38,100 for asbestos and open burning violations at 417 Madison Street in Coos Bay. On October 2, 2021, the Coos Bay Fire Department conducted a burn to learn exercise to demolish a building owned by the Coos Bay School District, that contained significant amounts of asbestos-containing materials. Under DEQ's asbestos rules, asbestos-containing materials must be removed prior to demolition, including demolition by burning. Burning of asbestos is prohibited, as is the open accumulation of the asbestos-containing fire debris. The Fire Department failed to take the steps required under DEQ's asbestos rules, which would have prevented the violations. These steps include ensuring that a thorough asbestos survey of the entire building has been conducted and having any asbestos-containing materials removed by a DEQ-licensed asbestos abatement contractor prior to the demolition. As an operator that controlled and supervised the demolition of the building, the Fire Department is responsible for ensuring that these steps occur prior to conducting a burn to learn exercise.

DEQ issued this penalty because the violations described in the attached Notice of Civil Penalty Assessment and Order (Notice) could have released asbestos fibers into the air and exposed 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 that a complete asbestos survey be conducted, and that if asbestos-containing materials are identified, that they be removed by a DEQ-licensed contractor prior to a demolition. Burning asbestos-containing materials may release asbestos fibers into the air. In addition, the open accumulation of the asbestos-containing fire debris is prohibited because it presents a significant risk to public health and the environment.

These risks were mitigated by the fact that the fire debris was cleaned up and properly disposed of by a DEQ-licensed asbestos abatement contractor on October 13, 2021.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

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.oregon.gov

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.

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 Becka Puskas at 503-229-5058 or becka.puskas@deq.oregon.gov.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Martin Abts, DEQ
Mike West, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
CITY OF COOS BAY,

Respondent.

NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER
CASE NO. AQ-AB-WR-2022-601

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 468A.700 through 468A.760, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 248 and 264.

II. FINDINGS OF FACT

1. On July 9, 2021, the Coos Bay School District (the School District) purchased a property at 417 Madison Street, Coos Bay, Oregon, 97420 (the Property). The Property included a building formerly used as a church (the Church).

2. The Church had previously been damaged by a fire, and in March 2020, the previous owners of the Church had hired an accredited inspector to complete an asbestos survey to evaluate the fire-damaged portion of the Church, which included the front entrance hallway and roof of the Church (the First Survey). The First Survey states, on page 1:

The building is a one-story church with rolled asphalt and shingle roof, wood framed with sheet rock & texture and carpet and sheet vinyl on concrete flooring. The sampling was conducted to allow the contractor to demolish and repair the fire damaged area in the front entrance hallway and roof of the church. No other areas were inspected or sampled.

3. The First Survey found that, among the materials sampled and inspected, there were no building materials with greater than one percent asbestos by weight.

4. On July 14, 2021, the School District submitted an application to Respondent's building permits office for a permit to demolish the Church as a "burn to learn" exercise with Respondent's Fire Department (the Fire Department). The School District submitted a copy of the First Survey with the

1 permit application. On August 5, 2021, Respondent's building permits office issued a "commercial
2 demolition building permit" for the demolition of the Church.

3 5. On or before September 24, 2021, the School District hired an accredited inspector (the
4 same inspector who conducted the First Survey), to complete an asbestos survey of the entire Church in
5 preparation for the burn to learn demolition.

6 6. On September 24, 2021, the accredited inspector inspected the Church and took samples of
7 the building materials throughout the Church. The samples were sent to a laboratory for analysis, and
8 were received by the laboratory on September 27, 2021.

9 7. On September 29, 2021, the accredited inspector received the laboratory results, which
10 showed that there were building materials with greater than one percent asbestos by weight in multiple
11 locations throughout the Church. On September 29, 2021, the accredited inspector called a School
12 District representative and left a voicemail regarding the laboratory results.

13 8. Among the building materials in the Church sampled by the inspector:

- 14 a. The vinyl floor tile in the "Women's room," the "Classroom" and the "Chapel"
15 contained 2% chrysotile asbestos by weight;
- 16 b. The mastic in the "Women's room" contained 2% chrysotile asbestos by weight;
- 17 c. The mastic in the "Classroom" contained 3% chrysotile asbestos by weight;
- 18 d. The mastic in the "Chapel" contained 4% chrysotile asbestos by weight; and
- 19 e. The popcorn ceiling texture, located in several rooms in the Church, contained 3%
20 chrysotile asbestos by weight.

21 9. On or before October 2, 2021, the Fire Department received a copy of the First Survey from
22 Respondent's building permits office, because it had been included with the demolition permit issued by
23 that office.

24 10. As of October 2, 2021, the Fire Department did not have a copy of the subsequent asbestos
25 survey described in Section II, paragraphs 5-8 above because the survey report had not yet been completed
26 by the accredited inspector. As of October 2, 2021, no other asbestos surveys of the Church had been
27 completed.

1 11. On October 2, 2021, the Fire Department burned the entire Church building as part of a burn
2 to learn exercise. The burning was an open, outdoor fire.

3 12. The burning described in Section II, paragraph 11, above, had the potential to release
4 asbestos fibers into the air.

5 13. On October 4, 2021, DEQ inspected the Property. The Church building was completely
6 burned to the ground. Remnants of the burned building materials mixed with ashes (the Fire Debris)
7 remained on site at the Property, and had not yet been cleaned up. The Fire Debris covered the entire
8 footprint of the former Church building and it was not covered or contained in any packaging.

9 14. On October 11, 2021 the accredited inspector completed the survey report including a
10 description of the results for the samples collected on September 24, 2021 and described in Section I,
11 Paragraphs 6-8, above (the Second Survey). The Second Survey stated that all of the asbestos-
12 containing building materials described in Section II, paragraph 8, above, were friable, and included a
13 diagram showing the approximate amount of each type of material that had been in the Church prior to
14 the burning described in Section II, paragraph 11, above (the Burned Materials). The Second Survey
15 described the Burned Materials as follows:

- 16 a. 2,776 square feet of vinyl floor tile (2% chrysotile asbestos by weight);
- 17 b. 2,776 square feet of mastic (2-4% chrysotile asbestos by weight); and
- 18 c. 2,116 square feet of popcorn ceiling texture (3% chrysotile asbestos by weight).

19 15. On October 13, 2021, a licensed asbestos abatement contractor cleaned up and properly
20 disposed approximately 2,030 square feet of Fire Debris that remained at the Property.

21 16. Neither the School District nor Respondent submitted an asbestos abatement project
22 notification to DEQ prior to October 2, 2021.

23 III. CONCLUSIONS

24 1. On October 2, 2021, Respondent violated OAR 340-264-0060(3) by causing or allowing to
25 be initiated or maintained the open burning of asbestos, as described in Section II, paragraphs 1-14,
26 above. Respondent is strictly liable for the open burning violation according to OAR 340-264-
27 0060(1)(a), (b) and (c) because at the time of the burn to learn exercise on October 2, 2021,

Respondent's Fire Department controlled the Property where the burn occurred and controlled the Burned Materials. In addition, Respondent's Fire Department caused or allowed the open burning to be initiated and maintained. This is a Class I violation according to OAR 340-012-0054(1)(w). DEQ hereby assesses a \$2,100 civil penalty for this violation.

2. On October 2, 2021, Respondent violated 468A.715(1) and OAR 340-248-0110(3) by allowing a person not licensed by DEQ to perform an asbestos abatement project, as described in Section II, paragraphs 1-14, above. Respondent's Fire Department is an "operator of a demolition or renovation activity" according to OAR 340-248-0010(35) because during the burn to learn, Respondent's Fire Department supervised and controlled the Church undergoing demolition, and supervised and controlled the demolition operation. Respondent's Fire Department allowed its own personnel to burn the entire Church, which contained the types and amounts of Burned Materials described in Section II, Paragraphs 8 and 14, above. The Burned Materials are "asbestos-containing material" as defined by OAR 340-248-0010(8) because they contained more than 1% asbestos by weight. The burning of the Church is an "asbestos abatement project" as defined by OAR 340-248-0010(6) because it was a demolition that involved the handling and disposal of asbestos-containing material with the potential to release asbestos fibers into the air. The intentional burning of a facility is a "demolition" according to OAR 340-248-0010(18). This is a Class I violation according to OAR 340-012-0054(1)(v). DEQ hereby assesses an \$11,200 civil penalty for this violation.

3. From October 2, 2021 to October 13, 2021, Respondent violated OAR 340-248-0205(1) by openly accumulating asbestos-containing waste material as described in Section II, paragraphs 8 and 10-14, above. Specifically, Respondent stored the Fire Debris at the Property from the date of the fire on October 2, 2021, until a licensed asbestos abatement contractor cleaned up and properly disposed of the Fire Debris on October 13, 2021. The Fire Debris at the Property was not labeled, and was not packaged in leak tight containers as required according to OAR 340-248-0280(2)(b), making it "open accumulation" as defined in OAR 340-248-0010(34). The Fire Debris was "asbestos-containing waste material" as defined in OAR 340-248-0010(9) because it contained and was contaminated by asbestos-containing material. The entire Church was burned on October 2, 2021, including the Burned Materials, which contained more than

1 one percent asbestos by weight. This is a Class I violation according to OAR 340-012-0054(s). DEQ
2 hereby assesses a \$13,600 civil penalty for this violation.

3 4. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector
4 complete an asbestos survey according to OAR 340-248-0270(3) before performing a demolition, as
5 described in Section II, paragraphs 1-13, above. The intentional burning of a facility is a “demolition”
6 according to OAR 340-248-0010(18). Respondent’s Fire Department is an “operator of a demolition or
7 renovation activity” according to OAR 340-248-0010(35). According to OAR 340-248-0270(1), either
8 the owner or operator of a demolition or renovation activity must ensure that the survey is completed prior
9 to the demolition. In this case, neither the owner nor the operator had completed a full asbestos survey
10 prior to the burning of the Church. According to OAR 340-248-0270(3), the asbestos survey must include
11 a survey report that includes a copy of the laboratory report for all the samples taken (OAR 340-248-
12 0270(3)(d)(J)), a table listing the materials sampled and identified as asbestos containing materials (OAR
13 340-248-0270(3)(d)(H)), and detailed description of the limitations on the thoroughness of the survey
14 (OAR 340-248-0270(3)(d)(G)). As of October 2, 2021 when the demolition by burning was conducted by
15 the Respondent’s Fire Department, the Fire Department did not have a survey which contained all of these
16 elements. This is a Class I violation according to OAR 340-012-0054(1)(r). DEQ hereby assesses a
17 \$11,200 civil penalty for this violation.

18 5. Respondent violated OAR 340-248-0260 by failing to submit a written notification to DEQ at
19 least 10 days prior to commencing a friable asbestos abatement project, as described in Section II,
20 paragraph 7, 11 and 16, above. This is a Class II violation according to OAR 340-012-0054(2)(m). DEQ
21 has not assessed a civil penalty for this violation.

22 IV. ORDER TO PAY CIVIL PENALTY

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

25 1. Pay a total civil penalty of \$38,100. The determination of the civil penalties are attached as
26 Exhibits 1-4 and are incorporated as part of this Notice.
27

1 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as
2 follows:

3 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:
4 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
5 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US
6 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
7 charges.

8 Pay by check or money order: Make checks payable to "Department of Environmental
9 Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment
10 slip with your check or money order.

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

12 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
13 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
14 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
15 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
16 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
17 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
18 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
19 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
20 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
21 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
22 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
23 you may represent yourself. If you are a corporation, partnership, limited liability company,
24 unincorporated association, trust or government body, you must be represented by an attorney or a duly
25 authorized representative, as set forth in OAR 137-003-0555.

26 Active duty Service members have a right to stay proceedings under the federal Service
27 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-

452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

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

12 / 6 / 2022
Date



Kieran O'Donnell, 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 NO. 1 Causing or allowing to be initiated or maintained the open burning of asbestos, in violation of OAR 340-264-0060(3).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(w).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(1)(j)(B) because the Burned Materials comprised 2 or more but less than 5 cubic yards of asbestos-containing material. The Burned Materials comprised approximately 3 cubic yards 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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(B) because Respondent violated an air quality rule and the violation is not listed under another penalty matrix.
- "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 was only one occurrence of the violation. The Church was burned on one day, on October 2, 2021.
- "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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent's Fire Department had a copy of the First Survey prior to conducting the demolition by burning on October 2, 2021, but failed to review the First Survey's limitations, namely, that the First Survey did not cover the entire Church building. By failing to ensure that a complete asbestos survey had been conducted prior to the burn to learn exercise, and failing to have the asbestos-containing material removed by a licensed asbestos contractor prior to the

demolition of the Church, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in the open burning of asbestos.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 associated with this violation is de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,500 + [(0.1 x \$1,500) x (0 + 0 + 0 + 4 + 0)] + \$0
= \$1,500 + (\$150 x 4) + \$0
= \$1,500 + \$600 + \$0
= \$2,100

EXHIBIT 2

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

VIOLATION NO. 2 Allowing a person not licensed by DEQ to perform an asbestos abatement project, in violation of 468A.715(1) and OAR 340-248-0110(3).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(i)(A) because the asbestos-abatement project 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) because 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 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 was only one occurrence of the violation. The Church was burned on one day, on October 2, 2021.

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent's Fire Department had a copy of the First Survey prior to conducting the demolition by burning on October 2, 2021, but failed to review the First Survey's limitations, namely, that the First Survey did not cover the entire Church building. By failing to ensure that a complete asbestos survey had been conducted prior to the burn to learn exercise, and failing to have the asbestos-containing material removed by a licensed asbestos contractor prior to the demolition of the Church, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct that resulted in allowing an unlicensed person to conduct an asbestos abatement project.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 associated with this violation is de minimis.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$8,000 + (\$800 \times 4) + \$0 \\ &= \$8,000 + \$3,200 + \$0 \\ &= \$11,200 \end{aligned}$$

EXHIBIT 3

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

VIOLATION NO. 3 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)(s).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(i)(A) because there was more than 160 square feet of asbestos-containing Fire Debris openly accumulated 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 \$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) because 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 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)(c) because there were from seven to 28 occurrences of the violation. Each day is a separate occurrence of the violation. The asbestos-containing Fire Debris resulting from Respondent's burn to learn exercise remained at the Property from the date of the fire on October 2, 2021, until a licensed asbestos abatement contractor cleaned up and properly disposed of the Fire Debris on October 13, 2021. Thus, there were twelve days 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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent's Fire Department had a copy of the First Survey prior to conducting the demolition by burning on October 2, 2021, but failed to review the First Survey's limitations, namely, that the First Survey did not cover the entire Church building. By failing to ensure that a complete asbestos survey had been conducted prior to the burn to learn exercise, and failing to have the asbestos-containing material removed by a licensed asbestos contractor prior to the

demolition of the Church, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in the open accumulation of asbestos-containing waste material.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 associated with this violation is de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 3 + 4 + 0)] + \$0
= \$8,000 + (\$800 x 7) + \$0
= \$8,000 + \$5,600 + \$0
= \$13,600

EXHIBIT 4

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

VIOLATION NO. 4 Failing to have an accredited inspector complete an asbestos survey according to OAR 340-248-0270(3) before performing a demolition, 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 major pursuant to OAR 340-012-0135(1)(i)(A) because the violation 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) because 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 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 was only one occurrence of the violation. Respondent failed to ensure that a complete asbestos survey had been conducted according to OAR 340-248-0270(3) before allowing the demolition to proceed on October 2, 2021.

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent's Fire Department had a copy of the First Survey prior to conducting the demolition by burning on October 2, 2021, but failed to review the First Survey's limitations, namely, that the First Survey did not cover the entire Church building. By failing to ensure that a complete asbestos survey had been conducted prior to the burn to learn exercise, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in an asbestos survey violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 associated with this violation is de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 0 + 4 + 0)] + \$0
= \$8,000 + (\$800 x 4) + \$0
= \$8,000 + \$3,200 + \$0
= \$11,200

Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100



State of Oregon
Department of Environmental Quality

Phone: 503-229-5437
Fax: 503-229-5850

CIVIL PENALTY - ORS 468.135(2)

MARK ANDERSON
CITY OF COOS BAY FIRE DEPARTMENT
450 ELROD AVENUE
COOS BAY, OR 97420

DATE:	December 6, 2022
RESPONSE DATE :	February 14, 2023
TOTAL PENALTY:	\$38,100.00

Account Name:	CITY OF COOS BAY FIRE DEPARTMENT		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300035
SubSystem ID:	92	FIMS Acct. ID:	9688

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 38,100.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 38,100.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



MARK ANDERSON
CITY OF COOS BAY FIRE DEPARTMENT
450 ELROD AVENUE
COOS BAY, OR 97420

☐

Check this box if updated address information has been provided on the back of the form.

REFERENCE NO.	CPGFD2300035		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	February 14, 2023
FIMS ACCT. ID:	9688	TOTAL PENALTY DUE:	\$38100.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244
PO BOX 4244
PORTLAND OR 97208-4244

00401 7400 10040 74001 0500 000000 0095000096885CPGFD230003500038100009



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

Penalty Detail

Transaction Date	Description	Amount
12/5/2022	2022-601 AQ-AB-WR-2022-601	\$38,100.00

SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

Address Changes

Please visit <https://ydo.oregon.gov> to update
your mailing address online or provide the
following information:

Name _____
Address _____
City, State, Zip _____