



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

December 6, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3985

Chris McGaughy, Superintendent  
Coos Bay School District  
1255 Hemlock Ave.  
Coos Bay, OR 97420

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ-AB-WR-2021-542

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Coos Bay School District a civil penalty of \$56,676 for asbestos and open burning violations at 417 Madison Street in Coos Bay. On October 2, 2021, the School District allowed the Coos Bay Fire Department to conduct a burn to learn exercise to demolish a building owned by the 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 School District failed to take the steps required under DEQ's asbestos rules, which would have prevented the violations. These steps include conducting a thorough asbestos survey of the entire building and having any asbestos-containing materials removed by a DEQ-licensed asbestos abatement contractor prior to the demolition. The School District is responsible as a property owner for ensuring that these steps occur.

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.

\$16,026 of the civil penalty represents the economic benefit that the School District gained by failing to hire a DEQ-licensed asbestos contractor to properly abate and remove the asbestos-containing waste material prior to burning the building. DEQ appreciates the School District's efforts to hire a DEQ-licensed asbestos abatement contractor to clean up and properly dispose of the fire debris on October 13, 2021. DEQ considered these efforts when determining the amount of civil penalty.

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](mailto: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](mailto:becka.puskas@deq.oregon.gov).

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Rick Roberts, Coos Bay School District, 1255 Hemlock Ave., Coos Bay, OR 97420  
Martin Abts, DEQ  
Mike West, DEQ  
Accounting, DEQ



1 5, 2021, the City of Coos Bay issued a “commercial demolition building permit” for the demolition of  
2 the Church.

3 5. On or before September 24, 2021, Respondent hired an accredited inspector (the same  
4 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 Respondent  
12 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 the  
22 City, because it had been included with the City demolition permit.

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



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 Respondent or the Fire Department 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 Respondent was the owner of the Church and the Burned Materials. In

1 addition, Respondent caused or allowed the open burning to be initiated and maintained. This is a Class  
2 I violation according to OAR 340-012-0054(1)(w). DEQ hereby assesses a \$2,250 civil penalty for this  
3 violation.

4 2. On October 2, 2021, Respondent violated 468A.715(1) and OAR 340-248-0110(2) by  
5 allowing a person not licensed by DEQ to perform an asbestos abatement project, as described in  
6 Section II, paragraphs 1-14, above. Respondent allowed the Fire Department to burn the entire Church,  
7 which contained the types and amounts of Burned Materials described in Section II, Paragraphs 8 and  
8 14, above. The Burned Materials are "asbestos-containing material" as defined by OAR 340-248-  
9 0010(8) because they contained more than 1% asbestos by weight. The burning of the Church is an  
10 "asbestos abatement project" as defined by OAR 340-248-0010(6) because it was a demolition that  
11 involved the handling and disposal of asbestos-containing material with the potential to release asbestos  
12 fibers into the air. The intentional burning of a facility is a "demolition" according to OAR 340-248-  
13 0010(18). This is a Class I violation according to OAR 340-012-0054(1)(v). DEQ hereby assesses a  
14 \$28,026 civil penalty for this violation.

15 3. From October 2, 2021 to October 13, 2021, Respondent violated OAR 340-248-0205(1) by  
16 openly accumulating asbestos-containing waste material as described in Section II, paragraphs 8 and 10-  
17 14, above. Specifically, Respondent stored the Fire Debris at the Property from the date of the fire on  
18 October 2, 2021, until a licensed asbestos abatement contractor cleaned up and properly disposed of the  
19 Fire Debris on October 13, 2021. The Fire Debris at the Property was not labeled, and was not packaged in  
20 leak tight containers as required according to OAR 340-248-0280(2)(b), making it "open accumulation" as  
21 defined in OAR 340-248-0010(34). The Fire Debris was "asbestos-containing waste material" as defined  
22 in OAR 340-248-0010(9) because it contained and was contaminated by asbestos-containing material. The  
23 entire Church was burned on October 2, 2021, including the Burned Materials, which contained more than  
24 one percent asbestos by weight. This is a Class I violation according to OAR 340-012-0054(s). DEQ  
25 hereby assesses a \$14,400 civil penalty for this violation.

26 4. Respondent violated OAR 340-248-0270(1) by failing to have an accredited inspector  
27 complete an asbestos survey according to OAR 340-248-0270(3) before performing a demolition, as

described in Section II, paragraphs 1-13, above. The intentional burning of a facility is a “demolition” according to OAR 340-248-0010(18). According to OAR 340-248-0270(3), the asbestos survey must include a survey report that includes a copy of the laboratory report for all the samples taken (OAR 340-248-0270(3)(d)(J)), a table listing the materials sampled and identified as asbestos containing materials (OAR 340-248-0270(3)(d)(H)), and detailed description of the limitations on the thoroughness of the survey (OAR 340-248-0270(3)(d)(G)). The Second Survey, which included all of these elements, was not completed or provided to Respondent until October 11, 2021, and yet Respondent allowed the demolition to proceed on October 2, 2021. This is a Class I violation according to OAR 340-012-0054(1)(r). DEQ hereby assesses a \$12,000 civil penalty for this violation.

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

#### IV. ORDER TO PAY CIVIL PENALTY

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

1. Pay a total civil penalty of \$56,676. The determination of the civil penalties are attached as Exhibits 1-4 and are incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, please pay the 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.

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

#### 4 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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


19 Active duty Service members have a right to stay proceedings under the federal Service  
20 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
21 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
22 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
23 Department does not have a toll free telephone number.

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



1 the relevant portions of its files, including information submitted by you, as the record for purposes of  
2 proving a prima facie case.  
3  
4  
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6 12 / 6 / 2022  
7 Date

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9 Kieran O'Donnell, Manager  
10 Office of Compliance and Enforcement  
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## 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 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Respondent knew that a complete asbestos survey was required to evaluate the whole Church building for the presence of asbestos, prior to conducting the demolition. Respondent hired an accredited asbestos inspector to complete the full survey, but did not receive a copy of the complete survey report or otherwise confirm the survey's results prior to allowing the Fire

Department to burn the Church. Respondent owns and operates a number of school buildings and has overseen other asbestos abatement projects in its buildings, including hiring accredited inspectors to conduct asbestos surveys, and, when asbestos is found, hiring licensed asbestos abatement contractors to properly abate and remove the asbestos-containing material. By failing to confirm the survey results, and failing to have the asbestos-containing material removed by a licensed asbestos contractor prior to the demolition of the Church, Respondent consciously disregarded a substantial and unjustifiable risk of causing or allowing the open burning of asbestos. Due to the known public health risk of asbestos, disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"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. Respondent hired a licensed asbestos abatement contractor cleaned up and properly disposed of the Fire Debris on October 13, 2021.

"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 gained as a result of this violation is accounted for in Exhibit 2.

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 + 8 + -3)] + \$0  
= \$1,500 + (\$150 x 5) + \$0  
= \$1,500 + \$750 + \$0  
= \$2,250

## 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(2).

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 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Respondent knew that a complete asbestos survey was required to evaluate the whole Church building for the presence of asbestos, prior to conducting the demolition. Respondent hired an accredited asbestos inspector to complete the full survey, but did not receive a copy of the complete survey report or otherwise confirm the survey's results prior to allowing the Fire Department to burn the Church. Respondent owns and operates a number of school buildings and has overseen other asbestos abatement projects in its buildings, including



hiring accredited inspectors to conduct asbestos surveys, and, when asbestos is found, hiring licensed asbestos abatement contractors to properly abate and remove the asbestos-containing material. By failing to confirm the survey results, and failing to have the asbestos-containing material removed by a licensed asbestos contractor prior to the demolition of the Church, Respondent consciously disregarded a substantial and unjustifiable risk of allowing an unlicensed asbestos abatement project. Due to the known public health risk of asbestos, disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"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. Respondent hired a licensed asbestos abatement contractor cleaned up and properly disposed of the Fire Debris on October 13, 2021.

"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 \$16,026. This is the amount Respondent gained by avoiding spending \$26,840 to hire a licensed asbestos abatement contractor to remove the asbestos containing materials from the Church prior to burning it, minus \$10,882, which is the amount that Respondent paid to have a licensed asbestos abatement contractor complete the cleanup of the Fire Debris after the Church was burned ( $\$26,840 - \$10,882 = \$15,958$  is the input for the EB calculation). The resulting "EB" of \$16,026 was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 8 + -3)] + \$16,026$   
 $= \$8,000 + (\$800 \times 5) + \$16,026$   
 $= \$8,000 + \$4,000 + \$16,026$   
 $= \$28,026$

### 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. 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. Thus, there were twelve days of the violation.

"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. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Respondent knew that a complete asbestos survey was required to evaluate the whole Church building for the presence of asbestos, prior to conducting the demolition. Respondent hired an accredited asbestos inspector to complete the full survey, but did not receive a copy of the complete survey report or otherwise confirm the survey's results prior to allowing the Fire

Department to burn the Church. Respondent owns and operates a number of school buildings and has overseen other asbestos abatement projects in its buildings, including hiring accredited inspectors to conduct asbestos surveys, and, when asbestos is found, hiring licensed asbestos abatement contractors to properly abate and remove the asbestos-containing material. By failing to confirm the survey results, and failing to have the asbestos-containing material removed by a licensed asbestos contractor prior to the demolition of the Church, Respondent consciously disregarded a substantial and unjustifiable risk of open accumulation. Due to the known public health risk of asbestos, disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"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. Respondent hired a licensed asbestos abatement contractor cleaned up and properly disposed of the Fire Debris on October 13, 2021.

"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 that Respondent gained as a result of the noncompliance is accounted for in Exhibit 1.

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 + 8 + -3)] + \$0  
= \$8,000 + (\$800 x 8) + \$0  
= \$8,000 + \$6,400 + \$0  
= \$14,400

## 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 have an accredited inspector complete a survey according to 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 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Respondent knew that a complete asbestos survey was required to evaluate the whole Church building for the presence of asbestos, prior to conducting the demolition. Respondent hired an accredited asbestos inspector to complete the full survey, but did not receive a copy of the complete survey report or otherwise confirm the survey's results prior to allowing the Fire Department to burn the Church. Respondent owns and operates a number of school



buildings and has overseen other asbestos abatement projects in its buildings, including hiring accredited inspectors to conduct asbestos surveys, and, when asbestos is found, hiring licensed asbestos abatement contractors to properly abate and remove the asbestos-containing material. By failing to ensure that it had a copy of the complete asbestos survey report or to otherwise confirm the survey results, prior to allowing the demolition, Respondent consciously disregarded a substantial and unjustifiable risk of a survey violation. Due to the known public health risk of asbestos, disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"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. Respondent hired a licensed asbestos abatement contractor cleaned up and properly disposed of the Fire Debris on October 13, 2021.

"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 that Respondent gained as a result of the noncompliance is accounted for in Exhibit 1.

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 + 8 + -3)] + \$0  
= \$8,000 + (\$800 x 5) + \$0  
= \$8,000 + \$4,000 + \$0  
= \$12,000

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

RICK ROBERTS  
COOS BAY SCHOOL DISTRICT NO 9  
1255 HEMLOCK  
COOS BAY, OR 97420

**CIVIL PENALTY - ORS 468.135(2)**

DATE:	December 6, 2022
RESPONSE DATE :	February 14, 2023
TOTAL PENALTY:	\$56,676.00

Account Name:	COOS BAY SCHOOL DISTRICT NO 9		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300034
SubSystem ID:	22	FIMS Acct. ID:	9687

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 56,676.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 56,676.00

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'



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PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



RICK ROBERTS  
COOS BAY SCHOOL DISTRICT NO 9  
1255 HEMLOCK  
COOS BAY, OR 97420

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

REFERENCE NO.	CPGFD2300034		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	February 14, 2023
FIMS ACCT. ID:	9687	TOTAL PENALTY DUE:	\$56676.00

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 0095000096878CPGFD230003400056676005



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	2021-542 AQ-AB-WR-2021-542	\$56,676.00

### 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 \_\_\_\_\_