



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

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Portland, OR 97204-1390

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TTY: 711

June 28, 2016

CERTIFIED MAIL No. 70142870000133735968

Christopher Rene Gelber
3011 NE Fremont Street
Portland, OR 97212

Re: Notice of Civil Penalty Assessment and Order
No. AQ/AB-NWR-16-086

This letter is to inform you that DEQ has issued you a total civil penalty of \$28,800 for failing to hire a licensed contractor to perform an asbestos abatement project and openly accumulating friable waste material. The violations occurred in February and March 2016 when you disturbed and removed asbestos-containing thermal system insulation associated with the heating ventilation air condition (HVAC) ducting system while managing renovations at a residence in Portland (the Facility).

DEQ issued this penalty because as operator of the Facility, you are responsible for ensuring that asbestos is properly managed. The abatement project did not comply with applicable asbestos regulations, and likely caused the release of asbestos fibers into the atmosphere, creating the potential for public exposure. 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.

DEQ appreciates your efforts to mitigate the effects of the violations by hiring a licensed asbestos abatement contractor to clean up the asbestos-containing waste material. DEQ considered these efforts when calculating your civil penalties.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

Via fax - 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due.

Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.

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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](http://www.deq.state.or.us/regulations/rules.htm), or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Zeb Bates, Northwest Region, DEQ
Audrey O'Brien, Northwest Region, DEQ

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

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

14 Active duty service-members have a right to stay proceedings under the federal Service
15 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
16 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be
17 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
18 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

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

25
26 June 28, 2016
Date

27 Shannon M. Foster
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EXHIBIT NO. 1

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

VIOLATION 1: Failing to hire a licensed asbestos abatement contractor to perform an asbestos abatement project on a facility Respondent operates in violation of ORS 468A.715(1) and OAR 340-248-0110(2).

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

MAGNITUDE: The magnitude of the violation is major. The magnitude is moderate according to OAR 340-012-0135(1)(h)(B), because the violation involved approximately 140 linear feet of asbestos-containing material (ACM). However, since the material was comprised of 55% asbestos, DEQ has increased the magnitude by one level pursuant to OAR 340-012-0135(1)(h)(D).

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 or not the violation was repeated or ongoing and receives a value 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. The unlicensed asbestos abatement project occurred on one day.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent acted intentionally with actual knowledge of the requirement. Asbestos sampling had been conducted at the Facility and Respondent received a copy of the results, so Respondent knew that the thermal system insulation contained asbestos, and that it was friable. Respondent also knew that friable ACM must be abated by DEQ-licensed contractor, since he made efforts to hire an asbestos abatement contractor prior to removing the ACM himself. Despite this knowledge, Respondent acted

intentionally by removing the ACM himself so that the renovation project at the Facility could continue.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to minimize the effects of the violation. Respondent eventually hired a licensed asbestos abatement contractor to clean up the asbestos-containing waste materials at the Facility. The cleanup was conducted on March 17, 2016, about one and a half months after he performed the unlicensed abatement project. Respondent failed to conduct air clearance sampling inside the Facility as requested in DEQ's pre-enforcement notice.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 8 + (-2))] + \$0 \\ &= \$8,000 + [(\$800) \times (6)] + \$0 \\ &= \$8,000 + \$4,800 + \$0 \\ &= \$12,800 \end{aligned}$$

EXHIBIT NO. 2

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

- VIOLATION 2: Openly accumulating friable asbestos-containing waste material (ACWM), 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. The magnitude is moderate according to OAR 340-012-0135(1)(h)(B), because the violation involved approximately 140 linear feet of ACWM. However, since the material was comprised of 55% asbestos, DEQ has increased the magnitude by one level pursuant to OAR 340-012-0135(1)(h)(D).
- 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 or not the violation was repeated or ongoing and receives a value 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Respondent openly accumulated ACWM from early February until March 17, 2016, which is more than 28 days.
- "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. Asbestos sampling had been conducted at the Facility and Respondent had received a copy of the results, so Respondent knew that the thermal system insulation contained asbestos, and that it was friable. Based on his statements, Respondent also knew that persons conducting asbestos abatement are required to follow DEQ rules for handling and disposing of ACWM in order to prevent exposing people to asbestos fibers. When Respondent placed ACWM from the unlicensed abatement project in an uncovered pile outside the Facility, Respondent failed to take

reasonable care to avoid a foreseeable risk that he would violate asbestos requirements and potentially expose workers and the public to asbestos fibers.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to minimize the effects of the violation. Respondent eventually hired a licensed asbestos abatement contractor to clean up the asbestos-containing waste materials at the Facility. The cleanup was conducted on March 17, 2016, about one and a half months after he performed the unlicensed abatement project.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 4 + 8 + (-2))] + \$0 \\ &= \$8,000 + [(\$800) \times (10)] + \$0 \\ &= \$8,000 + \$8,000 + \$0 \\ &= \$16,000 \end{aligned}$$