



## **OSHA Assesses Significant Penalties for Alleged Asbestos Mismanagement at Missouri Nursing Facility**

OSHA's Kansas City Area Office recently cited three employers for allegedly exposing workers and residents to asbestos hazards and failing to ensure safe removal of the known carcinogen during a flooring replacement project at a Monett, Missouri, nursing facility. Proposed penalties for the three employers totaled approximately \$240,000.

OSHA's enforcement stemmed from a January 2021 OSHA inspection at the nursing facility, triggered by a referral from the Missouri Department of Natural Resources (MDNR). In connection with the inspection, MDNR took the extraordinary measure of evacuating the facility's residents, approximately one month after the flooring work began. OSHA and environmental agencies often work cooperatively and investigation by one may result in referral to the other.

OSHA alleged the three employers (including the nursing facility operator and the asbestos removal contractor) failed to test for the presence of asbestos, did not erect protective barriers to contain residue, and failed to use respiratory and personal protective equipment to prevent exposure, among other allegations. OSHA alleged that workers for the three employers removed approximately 10,000 square feet of floor tiles containing asbestos and that none of the employers completed an asbestos assessment to determine its presence.

OSHA cited the three employers for not implementing a respiratory protection program, exposing workers to asbestos hazards, and failing to inform employees of the potential presence of asbestos, among other violations. The lead contractor faced proposed penalties of \$105,127 for 11 violations classified as Serious. The remaining two employers faced proposed penalties of \$95,570 for 10 Serious

violations, and \$38,228 for four Serious violations, respectively. OSHA's full citation package is available [here](#).

Following the issuance of the above citations, the employers had the choice to either pay the proposed penalties, try to settle on lesser penalties with OSHA via informal conference, or instead formally contest the citations before the Occupational Safety and Health Review Commission.

Notably, OSHA's enforcement does not preclude additional penalty actions by the Environmental Protection Agency or MDNR if the alleged conduct violated the Clean Air Act's Asbestos National Emissions Standard for Hazardous Air Pollutants (Asbestos NESHAP). The statute of limitations for such violations is five years (whereas OSHA's statute of limitations was only six months).

This blog post was drafted by [Paul Jacobson](#), an attorney in the Kansas City, Missouri office of Spencer Fane. For more information please visit [www.spencerfane.com](http://www.spencerfane.com).