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PERSPECTIVE

The legal risks for failure to comply with asbestos abatement obligations

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To reduce urban vehicle miles traveled and support California's climate policies, local land use policies encourage renovation and reuse of already-developed buildings, especially those near public transit lines. The renovation of underutilized buildings is incentivized in part by reduced parking space requirements and a fast-tracked permit review and approval process.

However, many older, repurposed buildings have asbestos-containing material (ACM, defined as any material containing 1% or more asbestos) present throughout the facility, i.e., on or within walls, ceilings, pipes, tiles, equipment for plumbing, heating and cooling, or in other areas that could be disturbed during facility renovation work.

Due to a zero-safe-exposure limit, administrative enforcement for asbestos mismanagement during construction can lead to large civil and criminal penalties, and could even result in an order to summarily vacate all occupants and workers from the building for an indeterminate amount of time.

Each day that a violation goes uncorrected is a new violation, and penalties for these violations can be issued without regard to fault (i.e., strict liability). Civil and criminal penalties for individuals can range from \$15,000 per day or imprisonment of not more than nine months, up to \$250,000 per day, or



Workers clean up debris contaminated with asbestos in a burned home in Coffey Park, Calif. | The New York Times

imprisonment of not more than one year, or up to \$1 million per day for corporations.

In a recent case, an interim order required *immediate* evacuation of all people within a 20-plus story building, allowing access only to properly equipped and licensed asbestos abatement workers.

If a tenant of the building left their mobile phone, computer, or other work materials, they could not enter the building to recover those items, so they had to wait until a properly licensed and equipped worker retrieved their items.

Warning signs reading "Asbestos Hazard Unsafe to Enter" had to be

posted. The interim order directed immediate cleaning and control measures be implemented using required methods and qualified contractors, extensive spot-verification testing, submission of an extensive work plan to assure future compliance, and warned that there would be substantial penalties.

With the assistance of legal counsel, the parties negotiated a stipulated abatement order that contained separate injunctive terms that had to be satisfied before the building would be cleared for re-occupancy. Notwithstanding best efforts by the owner and its full cooperation with the District, the

building remained closed for several months.

This example underscores the critical importance that all owners or operators of facilities that are contemplating any asbestos removal, renovation, or demolition projects consult with an expert and know and comply with all applicable legal obligations. Likewise, it is especially important for building owners to ensure that their contractors precisely comply with these obligations throughout the duration of a project.

Asbestos is a naturally occurring mineral that was commonly used in construction materials for its

fire-resistant properties. Because of its fibrous nature, asbestos is particularly harmful when inhaled.

Asbestos can cause life-threatening complexities to the exposed persons. Asbestos does not pose a risk if asbestos-containing products are undamaged and in a good condition. However, due to climatic conditions and accidental damage, asbestos could release non-decomposable microscopic fibers. These fibers are inhaled and travel to the lungs of the exposed persons and being non-decomposable they remain in the lungs and over time cause damage. Life-threatening conditions include mesothelioma and asbestosis.

All building materials, except glass, metal or wood are suspected to contain asbestos. There is no cut-off date where asbestos can no longer be found in building materials.

Although Asbestos has not been mined (or manufactured) in the United States for a long period of

time (banned since the early 1980s), according to a 2017 article titled "Preliminary Information on Manufacturing, Processing, Distribution, Use and Disposal: Asbestos," published by the United States Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, the United States has continuously imported into the country materials containing asbestos. These materials include: asbestos-cement, Crocidolite products, clothing, paper, cords and string, **building materials**, woven or knitted fabrics, etc.

Detecting asbestos fibers is impossible by visual inspection and according to California asbestos regulations licensed professionals are the only ones allowed to sample and submit the suspect materials to an accredited laboratory for analysis. Asbestos inspections are required in all non-residential renovation/demolition projects prior to disturbance and regardless of construction date.

This article is the first in a two part series exploring the risks and liabilities, as well as best practices in dealing with asbestos found in buildings. Part two will be published on Tues., Aug. 22.

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