



## Permit Issues in Demolition and Renovation: Asbestos Filings

### *Can a contractor or sub-contractor violate an asbestos regulation where there is no asbestos?*

It seems an easy question. If you assume that asbestos regulations are designed to ensure that asbestos-containing materials are properly managed during construction projects, you might reasonably think that the answer is “no.” And, if you were shown a form entitled “Notification of Intention to Demolish or Renovate Structure(s) or Equipment Having Asbestos-Containing Material,” or an Alabama Department of Environmental Management form entitled “Notice of Demolition and/or Asbestos Removal,” you might conclude that such a form only was required if the “structure” being demolished or renovated had asbestos in it.

You would be wrong. Not only would you be wrong, but your failure to file the correct form could result in a significant fine. To make matters worse, you might not be the only one fined; a similar fine might also be imposed on the building owner. Needless to say, the impact of the fine on your relationship with the owner could have even more serious implications than your payment of the fine.

### *So what do you need to know to avoid such an issue?*

**First**, if you are doing any demolition work on an “institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site” (40 CFR 61.141), you must submit a notification form before the demolition work begins. This is true even if there is no asbestos.

**Second**, if you are doing renovation work, the rule is different and more complicated. Accordingly, before beginning any renovation work, you should make sure that you know and comply with the applicable rules. In particular, make sure that you correctly identify the agency with authority over the construction and submit the proper documentation to that agency.

**Third**, rules like this exist throughout the United States.

Finally, if you receive a Notice of Violation for a failure to comply with these rules, you should move swiftly and proactively to address the situation and to resolve the matter with the agency that issued it. There is some flexibility in fine amounts, and a cooperative posture and quick settlement can result in reduced fines.

*continued on page 2*

August 2010

#### AUTHORS



**David Roth**  
205.521.8428  
droth@babbc.com



**T. Michael Brown**  
205.521.8462  
mbrown@babbc.com

#### RELATED ATTORNEYS

**Rob Dodson**  
615.252.2395  
rdodson@babbc.com

**Joel M. Kuehnert**  
205.521.8083  
jkuehnert@babbc.com

**Andrew J. Murray**  
615.252.2366  
amurray@babbc.com

**Chloe Truslow Shafer**  
615.252.2399  
cshafer@babbc.com

**Sid J. Trant**  
205.521.8479  
strant@babbc.com

**ABOUT THE AUTHORS:**

*Mike Brown* is the head of the Real Estate Litigation Team and is a member of the firm's Environmental & Toxic Tort Practice Group. Mike's emphasis in both practice groups is on real property disputes, land use matters and toxic tort claims. Mike has handled asbestos cases for over twenty years and is recognized in both *Best Lawyers* (Mass Torts) and *Alabama Super Lawyers* (Land Use Planning).

*David Roth* is a partner in the firm's Environmental & Toxic Tort Practice Group, and is a frequent speaker and author on environmental legal issues. He represents clients throughout the United States in all aspects of state and federal environmental law, with an emphasis on transactional and regulatory matters. David has been recognized in both *Best Lawyers* (Environmental) and *Alabama Super Lawyers* (Environmental, Criminal Defense - White Collar). He is Chair-emeritus of the Environmental Law Section of the Alabama State Bar and the current Vice-Chair of the Environmental, Energy and Natural Resources Law Committee of the ABA Business Law Section.

**ABOUT THE ENVIRONMENTAL AND TOXIC TORT PRACTICE GROUP:**

The Environmental and Toxic Tort Practice Group represents clients on a broad range of issues, from permitting, transactional, and regulatory matters to compliance, risk avoidance, and litigation. With an experienced team of attorneys, we provide counsel on tough, complex environmental challenges, such as chemicals handling and storage, OSHA, wastewater treatment, water and air permitting and compliance, enforcement, and solid waste disposal.

**BRADLEY ARANT BOULT CUMMINGS LLP****OFFICE LOCATIONS:****ALABAMA**

One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203-2119  
205.521.8000

200 Clinton Avenue West, Suite 900  
Huntsville, AL 35801-4900  
256.517.5100

Alabama Center for Commerce  
401 Adams Avenue, Suite 780  
Montgomery, AL 36104  
334.956.7700

**MISSISSIPPI**

188 E. Capitol Street, Suite 400  
Jackson, MS 39201  
601.948.8000

**NORTH CAROLINA**

100 North Tryon Street, Suite 2690  
Charlotte, NC 28202  
704.332.8842

**TENNESSEE**

1600 Division Street, Suite 700  
Nashville, TN 37203  
615.244.2582

**WASHINGTON, DC**

1133 Connecticut Avenue NW, 12th Floor  
Washington, DC 20036  
202.393.7150

To subscribe to this newsletter, or to unsubscribe from this newsletter, email Jerry Young [jyoung@babbc.com](mailto:jyoung@babbc.com)

This newsletter is a periodic publication of Bradley Arant Boulton Cummings LLP and should not be construed as legal advice or legal opinions on any specific facts or circumstances. The contents are intended for general information only, and you are urged to consult your own lawyer or other tax advisor concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our practice group.

The Alabama State Bar requires the following disclosure: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

©2010 Bradley Arant Boulton Cummings LLP

ALABAMA | DISTRICT OF COLUMBIA | MISSISSIPPI | NORTH CAROLINA | TENNESSEE

