

**State of New Mexico**

Environment Department  
Occupational Health and Safety Bureau  
525 Camino de los Marquez, Suite 3  
Santa Fe NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734



## Citation and Notification of Penalty

To:  
City of Albuquerque  
AND ITS SUCCESSORS  
1 Civic Plaza NW  
Albuquerque, NM 87102

**Inspection Number:** 1656175  
**Inspection Date(s):** 03/09/2023-03/09/2023  
**Issuance Date:** 09/01/2023

**Inspection Site:**  
5400 Gibson Blvd SE  
Albuquerque, NM 87108

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the Environment Department, Occupational Health and Safety Bureau at the address shown above. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

**Posting-**The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference-** An informal conference is not required. However, at the request of an employer, affected employee, or representative of employees, the Bureau Chief or the Bureau Chiefs designee may hold an informal conference. At this conference any issues raised by an inspection, citation, proposed penalty, proposed petition for modification of abatement date or proposed petition for variance may be discussed. If you intend to request an informal conference, take care to schedule it early enough to allow time to contest after the informal conference discussion, should you decide to do so.

When the conference is requested by an employer, an affected employee or representative shall be afforded an opportunity to participate, at the discretion of the Bureau Chief or Bureau Chiefs designee. When the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Bureau Chief or Bureau Chiefs designee.

The request for an informal conference and the informal conference meeting shall not extend or modify in any manner:

- 1) an abatement date established in the citation;
- 2) the deadline for an employer to file a notice of contest;
- 3) any other filing deadline related to the citation; or
- 4) any matter pending before the bureau.

Once an employer files a notice of contest, a petition for modification of the abatement date, a request for a commission hearing, a petition for variance, or other filing with the Occupational Health and Safety Review Commission or the Environment Department, the opportunity for an informal conference is no longer available.

**Right to Contest-** You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Bureau Chief in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency. It is recommended that the Notice of Contest be filed via "Certified Mail".

**Penalty Payment-** Penalties are due within 15 working days of receipt of this notification unless contested. Make your check or money order payable to the Environment Department, Occupational Health and Safety Bureau. Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action -** For violations which you do not contest, you should notify the Occupational Health and Safety Bureau (OHSB) that each cited violation has been abated. To certify abatement, you should complete the "Description of Corrective Action Taken" box which follows each citation and sign the statement on the last citation page. You are not required to certify abatement if the compliance officer observed that abatement has occurred during the on-site inspection. The citation may indicate that you should submit additional documentation such as photographs, purchase orders, copies of written programs, etc. Failure to return all completed forms and documents to the Program Manager no later than 10 days after the abatement date may result in additional penalties.

You are also required to inform your employees about abatement activities by posting a copy of each document submitted to OHSB or a summary of the document near the place where the violation occurred. Documents must remain posted for 3 working days after submission to OHSB.

**Employer Discrimination Unlawful-** The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the Environment Department, Occupational Health and Safety Bureau at the address shown above.

**Notice to Employees -** The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Environment Department, Occupational Health and Safety Bureau at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Please note that your facility will appear on the Department's Enforcement Watch as a result of this Citation and Notification of Penalty (see: <https://www.env.nm.gov/enforcement-watch/>). Further, the Department will issue a press release to local media highlighting your facility as appearing on this webpage. Your facility will remain on the Enforcement Watch website as an active matter until this matter is fully resolved, including the payment of the assessed civil penalty.

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**Inspection #:** 1656175  
**Inspection Date(s):** 03/09/2023-03/09/2023  
**Issuance Date:** 09/01/2023

**Citation and Notification of Penalty**

**Company Name:** City of Albuquerque  
**Inspection Site:** 5400 Gibson Blvd SE Albuquerque, NM 87108

Citation 1 Item 1      Type of Violation: **Willful-Serious**

11.5.3.9 NMAC

29 CFR 1926.1101(e)(1): All Class I, II and III asbestos work shall be conducted within regulated areas. All other operations covered by this standard shall be conducted within a regulated area where airborne concentrations of asbestos exceed, or there is a reasonable possibility they may exceed a PEL. Regulated areas shall comply with the requirements of paragraphs (2), (3), (4) and (5) of this section.

Beginning in April of 2022 and continuing until March 9, 2023, the City of Albuquerque did not protect employees from hazards associated with the release of asbestos particulates during demolition and renovation work being conducted at the "Gateway Center" Women's Shelter on the second floor of the Gibson Health Hub. The employer did not ensure that a regulated area was established prior to permitting demolition of asbestos containing material to begin.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**September 20, 2023**  
**\$146,368.00**

**State of New Mexico**  
Environment Department  
Occupational Health and Safety Bureau



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**Company Name:** City of Albuquerque  
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Citation 1 Item 2      Type of Violation: **Willful-Serious**

11.5.3.9 NMAC

29 CFR 1926.1101(f)(2)(i): Each employer who has a workplace or work operation covered by this standard shall ensure that a "competent person" conducts an exposure assessment immediately before or at the initiation of the operation to ascertain expected exposures during that operation or workplace. The assessment must be completed in time to comply with requirements which are triggered by exposure data or the lack of a "negative exposure assessment," and to provide information necessary to assure that all control systems planned are appropriate for that operation and will work properly.

Beginning in April of 2022 and continuing until March 9, 2023, the City of Albuquerque did not protect employees from hazards associated with the release of asbestos particulates during demolition and renovation work being conducted at the "Gateway Center" Women's Shelter on the second floor of the Gibson Health Hub. The employer did not ensure that an exposure assessment was conducted at the beginning of the project, before potential exposures could occur.

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Citation 1 Item 3      Type of Violation: **Willful-Serious**

11.5.3.9 NMAC

29 CFR 1926.1101(g)(7)(i): All Class II work shall be supervised by a competent person as defined in paragraph (b) of this section.

Beginning in April of 2022 and continuing until March 9, 2023, the City of Albuquerque did not protect employees from hazards associated with the release of asbestos particulates during demolition and renovation work being conducted at the "Gateway Center" Women's Shelter on the second floor of the Gibson Health Hub. The employer did not ensure that a "competent person" was present to supervise Class II work.

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**Company Name:** City of Albuquerque  
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Citation 1 Item 4      Type of Violation: **Willful-Serious**

11.5.3.9 NMAC

29 CFR 1926.1101(k)(2)(i): Before work subject to this standard is begun, building and facility owners shall determine the presence, location, and quantity of ACM and/or PACM at the work site pursuant to paragraph (k)(1) of this section.

Beginning in April of 2022 and continuing until March 9, 2023, the City of Albuquerque did not protect employees from hazards associated with the release of asbestos particulates during demolition and renovation work being conducted at the "Gateway Center" Women's Shelter on the second floor of the Gibson Health Hub. The employer did not determine the presence, location, and quantity of ACM at the Gateway Women's Shelter prior to work beginning.

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**Company Name:** City of Albuquerque  
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Citation 1 Item 5      Type of Violation: **Willful-Serious**

11.5.3.9 NMAC

29 CFR 1926.1101(1)(2): Waste disposal. Asbestos waste, scrap, debris, bags, containers, equipment, and contaminated clothing consigned for disposal shall be collected and disposed of in sealed, labeled, impermeable bags or other closed, labeled, impermeable containers except in roofing operations where the procedures specified in paragraph (g)(8)(ii) of this section apply.

Beginning in April of 2022 and continuing until March 9, 2023, the City of Albuquerque did not protect employees from hazards associated with the release of asbestos particulates during demolition and renovation work being conducted at the "Gateway Center" Women's Shelter on the second floor of the Gibson Health Hub. The employer did not ensure that all waste material was properly contained and disposed of. Waste material was swept and shoveled into wheelbarrows, carted outside, and dumped into an open-air roll-off bin, potentially releasing hazardous asbestos dust, exposing employees at the Gibson Health Hub and the Cerro Colorado landfill.

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## **Citation and Notification of Penalty**

**Company Name:** City of Albuquerque  
**Inspection Site:** 5400 Gibson Blvd SE Albuquerque, NM 87108

Citation 2 Item 1      Type of Violation: **Serious**

### 11.5.3.9 NMAC

29 CFR 1926.1101(k)(1)(i): This section applies to the communication of information concerning asbestos hazards in construction activities to facilitate compliance with this standard. Most asbestos-related construction activities involve previously installed building materials. Building owners often are the only and/or best sources of information concerning them. Therefore, they, along with employers of potentially exposed employees, are assigned specific information conveying and retention duties under this section. Installed Asbestos Containing Building Material. Employers and building owners shall identify TSI and sprayed or troweled on surfacing materials in buildings as asbestos-containing, unless they determine in compliance with paragraph (k)(5) of this section that the material is not asbestos-containing. Asphalt and vinyl flooring material installed no later than 1980 must also be considered as asbestos containing unless the employer, pursuant to paragraph (g)(8)(i)(I) of this section determines that it is not asbestos-containing. If the employer/building owner has actual knowledge, or should have known through the exercise of due diligence, that other materials are asbestos-containing, they too must be treated as such. When communicating information to employees pursuant to this standard, owners and employers shall identify "PACM" as ACM. Additional requirements relating to communication of asbestos work on multi-employer worksites are set out in paragraph (d) of this section.

Beginning in April of 2022 and continuing until March 9, 2023, the City of Albuquerque did not protect employees from hazards associated with the release of asbestos particulates during demolition and renovation work being conducted at the "Gateway Center" Women's Shelter on the second floor of the Gibson Health Hub. The employer did not communicate the hazards associated with exposure to respirable asbestos fibers to employees.



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**PROOF OF ABATEMENT:**

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**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**September 20, 2023**  
**\$14,636.00**

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**Citation and Notification of Penalty**

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Citation 2 Item 2      Type of Violation: **Serious**

11.5.3.9 NMAC

29 CFR 1926.1101(o)(1): General. On all construction worksites covered by this standard, the employer shall designate a competent person, having the qualifications and authorities for ensuring worker safety and health required by Subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32).

Beginning in April of 2022 and continuing until March 9, 2023, the City of Albuquerque did not protect employees from hazards associated with the release of asbestos particulates during demolition and renovation work being conducted at the "Gateway Center" Women's Shelter on the second floor of the Gibson Health Hub. The employer did not designate a competent person with the qualifications and authorities to ensure worker safety.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

**Date By Which Violation Must be Abated:**  
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**\$14,636.00**

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I attest that all corrective actions contained in this document are accurate and affected employees have been informed of the abatement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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Pursuant to the New Mexico Environment Department Delegation Order dated March 24, 2023, the Cabinet Secretary has delegated the authority to issue this Citation and Notification of Penalty to the Occupational Health and Safety Bureau Chief.

DocuSigned by:

*Robert Genoway*

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Robert Genoway, Bureau Chief

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## INVOICE

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**Company Name:** City of Albuquerque

**Inspection Site:** 5400 Gibson Blvd SE Albuquerque, NM 87108

**Issuance Date:** 09/01/2023

**Summary of Penalties for Inspection Number:** 1656175

Citation 1 Item 1, Willful-Serious	\$146,368.00
Citation 1 Item 2, Willful-Serious	\$146,368.00
Citation 1 Item 3, Willful-Serious	\$146,368.00
Citation 1 Item 4, Willful-Serious	\$146,368.00
Citation 1 Item 5, Willful-Serious	\$146,368.00
Citation 2 Item 1, Serious	\$14,636.00
Citation 2 Item 2, Serious	\$14,636.00

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**TOTAL PROPOSED PENALTIES:** **\$761,112.00**

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Please remit payment promptly to this office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: Environment Department, Occupational Health and Safety Bureau. Please indicate OHSB's Inspection Number (indicated above) on the remittance.

OHSB does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

DocuSigned by:

*Robert Genoway*

9/1/2023

RF12F084D0724FB...  
Robert Genoway, Bureau Chief

Date