

A Cautionary OSHA Lesson:

The Financial and Operational Dangers Resulting from Missing or Ignoring Citation Deadlines

In early 2011 a very reputable and well-known construction company was proceeding with the rehabilitation of an old building structure in a historical part of downtown Chattanooga. As with any older structure, there are environmental and occupational health and safety issues and risks which must be adequately addressed.

During the initial phases of the contractor's work, the Tennessee Department of Occupational Safety and Health ("TOSHA") made an unannounced inspection and determined that certain environmental and structural hazards had not been addressed consistent with OSHA regulations and standards. TOSHA issued a 35 page Notice of Violation containing over 50 separate violations. The citation also assessed over \$45,000 in fines and contained a notification to the contractor that there was a 20 day period in which to appeal.

The contractor, being overwhelmed at the number of pages contained in the violation, glanced at it and then set it aside, fully intending to go back and review it carefully.

Unfortunately, it was 22 days later (two (2) days past the deadline for appeals) when the contractor finally turned his attention to the contents of the notice and citation. The contractor did contact Miller & Martin at that time to discuss his options; however, his opportunity to take an administrative appeal had expired 48 hours earlier.

Because the contractor had missed the appeal date, as well as the payment due date, his options for relief, for negotiating down the size of the penalties and for avoiding late fees and interest of almost \$5,000 had all passed.

While Miller & Martin is pursuing extraordinary appeals to seek relief for the client, the fact that the deadline was missed precludes some of the normal and simpler opportunities to negotiate down the amount of the citations.

If you do receive a citation or notice of violation from any enforcement agency – or even a simple information request – please read it carefully, pay close attention to the amount of the fines or penalties proposed and pay extremely close attention to your deadlines and opportunities to appeal or contest the agency's action. The attorneys at Miller & Martin are always available to assist you in interpreting the document and confirming your rights and obligations as well as deadlines to respond. Please contact [Mike Mallen](#) or [Brian Humphrey](#) if you have any questions or need assistance with any health, safety or environmental or related regulatory issues.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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