

**From:** [ROOT Jenny](#)  
**To:** [ROOT Jenny](#)  
**Subject:** FW: Division 12 - asbestos  
**Date:** Monday, January 13, 2014 10:30:47 AM

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**From:** BOYD Dottie  
**Sent:** Monday, April 08, 2013 6:26 AM  
**To:** WESTBROOK Esther  
**Cc:** BOYD Dottie; DAVIS Claudia  
**Subject:** RE: Division 12 - asbestos

I am fine with it if OCE is. Thanks for checking - Dottie

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**From:** WESTBROOK Esther  
**Sent:** Friday, April 05, 2013 3:46 PM  
**To:** DAVIS Claudia; BOYD Dottie  
**Subject:** RE: Division 12 - asbestos

Claudia, Dottie,

I just checked the underlying rules for this violation and they read the same as the Div. 12 rule is currently written.

OAR 340-248-0205(1): No person may openly accumulate friable asbestos material or asbestos-containing waste material.

340-248-0010(32): "Open accumulation" means any accumulation, including interim storage, of friable asbestos material or asbestos-containing waste material other than material securely enclosed and stored as required by this division.

It looks like the terms "asbestos material" and "asbestos-containing material" are both used in Div. 248. somewhat inconsistently. Do you still want to proceed with adding "**-containing**"? I don't think it's a big issue either way.

*Esther L. Westbrook, J.D.*  
Environmental Law Specialist  
DEQ Office of Compliance and Enforcement  
Tel: 503-229-5374

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**From:** WESTBROOK Esther  
**Sent:** Friday, April 05, 2013 8:55 AM  
**To:** DAVIS Claudia  
**Subject:** RE: Division 12 - asbestos

Thanks, Claudia, I will forward that comment for incorporation. Re. your question, I believe that

would be a decision made by the inspector and ELS in the usual way magnitudes are assessed. There is a question on the referral form about the potential or actual effects of the violation, which should give the ELS the info they need to make the determination.

*Esther L. Westbrook, J.D.*  
Environmental Law Specialist  
DEQ Office of Compliance and Enforcement  
Tel: 503-229-5374

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**From:** DAVIS Claudia  
**Sent:** Thursday, April 04, 2013 6:46 PM  
**To:** WESTBROOK Esther  
**Subject:** RE: Division 12 - asbestos

Esther,

Sorry these comments are late. I've been out of the office due to illness and just came in for a few hours to deal with email. Here are some comments from Dottie Boyd on the proposed rule:

On page 9 (m) Improperly storing or openly accumulating friable asbestos-containing material or asbestos-containing waste material. Add in -containing as underlined above. That way it is conforming to the definition of ACM.

On page 30 (f) Asbestos violations – These selected magnitudes apply unless the violation does not cause the potential for human exposure to asbestos fibers; The underlined portion was added in. My question is who decides the violation did not cause a potential for human exposure to asbestos fibers – the inspector, ELS, or both?

Thanks,  
Claudia

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**From:** WESTBROOK Esther  
**Sent:** Wednesday, March 20, 2013 5:06 PM  
**To:** MONRO David; DAVIS Claudia; BAILEY Mark; BECKER John  
**Subject:** Division 12 - asbestos

Hi all,

As you know, OCE has been working on revising Division 12. Bryan Smith and I have both been in contact over the past several months. He is on a job rotation in AQ now, so I am taking over as the asbestos program's OCE point of contact for this Division 12 project.

Attached is a copy of the latest version for your review. OCE wants to make sure all the managers involved are kept informed and are given the opportunity to comment and consult with staff as we work through the process.

There are two key changes that apply to asbestos violations:

1. Magnitudes – selected vs. general. The changes are intended to allow DEQ to use the general magnitudes for violations that don't have the potential for human exposure, such as paperwork violations, where the amount of asbestos involved is not an important factor of the violation. The previous language did not provide much leeway for applying the general magnitudes instead of the specific magnitudes, and we wanted to give ourselves that ability. Here is the proposed language for OAR 340-012-0135(1)(f).

(f) Asbestos violations--These selected magnitudes apply unless the violation does not cause the potential for human exposure to asbestos fibers:

(A) Major -- More than 260 lineal feet or more than 160 square feet of asbestos-containing material or asbestos-containing waste material;

(B) Moderate -- From 40 lineal feet up to and including 260 lineal feet or from 80 square feet up to and including 160 square feet of asbestos-containing material or asbestos-containing waste material; or

(C) Minor -- Less than 40 lineal feet or 80 square feet of asbestos-containing material or asbestos-containing waste material.

(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

2. Clarification of language in notification violations. There has often been confusion over when to cite the Class II versus the Class III depending on how the notification was defective. The language is intended to clarify this by making all types of (substantial) defects a Class II – late, incomplete or inaccurate notifications. The Class III will only apply to situations where a notification was submitted but then was not revised when needed.

- Class II violation for Failing to provide timely notification changed to “failing to provide timely, complete, or accurate notification” OAR 340-012-0054(2)(I)
- Class III violation for failing to provide proper notification of an asbestos abatement project or failing to revise a notification when necessary changed to “failing to revise a notification when necessary” OAR 340-012-0054(3)(d)

Please get any comments, proposed edits, etc. to me by COB on Wednesday, April 3. The rulemaking advisory committee will be meeting shortly after that and I think the plan is to have all the comments on the revised rules at that time so that final changes can be made in preparation for the public notice phase.

Thank you, and please let me know if you have any questions.

*Esther L. Westbrook, J.D.*

Environmental Law Specialist

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