

**From:** [SMITH Bryan](#)  
**To:** [CARLOUGH Les](#); [ROOT Jenny](#)  
**Cc:** [SMITH Bryan](#)  
**Subject:** FW: ELSs: Div. 12 assignment  
**Date:** Friday, April 13, 2012 11:43:31 AM  
**Importance:** High

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Asbestos:

There are some violations by licensed asbestos abatement contractors involving either work practice violations or paperwork violations (notification/air clearance sampling results) where the asbestos involved is clearly not mishandled in any way, yet because we know the quantity of asbestos, it's unclear whether we should apply the selected or general magnitudes.

This scenario pops up at least once a year and we often find ourselves re-inventing the wheel, or realizing as we look at past cases that over the years we have been inconsistent with our application of "magnitude" due to this issue. My advice is to possibly change this part of Division 12:

(f) Asbestos violations:

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

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

I suggest it should read (and I'm only repeating the first two lines of the rule) the following way, with new language in italics:

(f) Asbestos violations:

(A) Major -- More than 260 lineal feet or more than 160 square feet of asbestos-containing material, *if the material is either rendered friable or disturbed in such a way that there is a potential for the material to release asbestos fibers*

This new language would follow (B) and (C) above as well, of course. The language also tracks with the definitions in the asbestos regulations (OAR 340-248-0010) so that it's consistent with those rules as well.

This change would clarify that the selected magnitudes only apply when asbestos is **actually mishandled** in some way. So if a project involves over 160 square feet, which is major, but the violation is purely paperwork and no asbestos is actually mishandled, the ELS and inspector can agree that a general magnitude of minor – or even moderate, if there was still the potential for "harm" to the program itself, or some degree of deviancy from the rules, etc., - is possible.

Does this make sense? I hope so. Thanks, Bryan.

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**From:** KOSS Leah

**Sent:** Wednesday, March 28, 2012 3:07 PM

**To:** ELWORTH Susan; BROWN Courtney; WHEELER Sarah; BACHMAN Jeff; SMITH Bryan; ROOT Jenny

**Cc:** CARLOUGH Les; KOSS Leah

**Subject:** ELSS: Div. 12 assignment

**Importance:** High

Hi folks!

As you know we have been gathering ideas for the upcoming Division 12 rulemaking (led by Jenny Root and Les Carlough) in which we will reconsider the penalty amounts in light of the statutory maximum increase to \$25,000 as of Jan. 1, 2011. We are considering whether more extensive/specific changes are warranted to the categories in the matrices, classifications, and magnitudes. Before we engage the programs I'd like to have our group do an initial scoping of needs. **By COB April 13**, please review the programs in which you work (see below) and send Jenny and Les a list of the things that could be improved due to proof, political or equitable (or any other) issues in your cases:

- Do the categorical splits in the matrices still make sense (e.g., should a "person that has a NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day" be in the \$8,000 matrix)?
- If we were to create an additional matrix above the existing \$8,000 matrix for "superbad" violations, what violations in your program would be in it? This might be matrix categories or violations under certain circumstances.
- Do the classifications still mirror our concept of which violations are most important to the program or regulatory system and are they still consistent with how DEQ deploys resources?
- Should the magnitudes be adjusted, that is, do they match what we think of as threatened or actual damages, and do the newer more-complicated ones work?

We are especially interested in hearing about the programs for which you are primary contact, ***but you ideas about other programs are more than welcome too***. Below are the divisions of labor that I came up with based on your work and trying to be equitable. Please seek your peers thoughts on programs with which you are less familiar.

**Air quality permitting – Jenny**

**Asbestos – Bryan**

**Open burning – Jenny**

**Water quality permitting – Jeff**

**Storm water – Courtney**

**Onsite – Bryan**

**Ballast water – Courtney**

**Solid waste and tires – Sarah**

**UST – Susan**

**Hazardous waste – Sarah**

**PCBs – Sarah**

**Used oil – Jeff**

**Clean up – Susan**

**Spills – Susan**

**Dry cleaning – Sarah**

THANK YOU. Your thorough and specific input is absolutely critical to this rulemaking. The first major tasks for Jenny and Les are to determine scope, and therefore, timing, and therefore deadlines and advisory committees. If you can't meet the deadline, let me know. If you have questions, ask your fearless rulemaking leaders!

Thanks!!! Leah

Leah E. Koss

Manager, Office of Compliance and Enforcement

Department of Environmental Quality

ph: 503.229.6408

fax: 503.229.5100

[koss.leah@deq.state.or.us](mailto:koss.leah@deq.state.or.us)