



## U.S. Environmental Protection Agency Applicability Determination Index

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**Control Number: C53**

**Category:** Asbestos  
**EPA Office:** Region 7  
**Date:** 09/12/1988  
**Title:** Measurement of Percentage "by Weight"  
**Recipient:**  
**Author:** Rompage, Henry

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**Subparts:** Part 61, M, Asbestos

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**References:** 61.141

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**Abstract:**

The asbestos samples in an enforcement case were analyzed using a "percentage by area" technique rather than "percentage by weight" prescribed by the regulation. This was a significant factor in the lack of success in prosecuting the case.

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**Letter:**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 68101

September 12, 1988

**SUBJECT:** Update on NESHAP for Asbestos Demolition and Renovation Regulation Issues

**FROM:** Henry F. Rompage, Office of Regional Counsel, Region VII

**TO:** Addressees:

There are several issues in the subject area that may be of interest to you.

The "by weight" issue: at 40 C.F.R. 61.141 the current regulations define in part, friable asbestos material as any material containing more than 1% asbestos by weight. A defendant in a local enforcement action in Washington raised this issue as the percent analysis of samples in that case was done by area. This was a significant factor in the lack of success in prosecuting that case. The Department of Justice became aware of this issue and has returned two cases to Region VIII for this reason.

There is a method of analysis "by weight," but it is very expensive. Environmental Protection Agency Office of Research and Development is aware of and is addressing this issue by trying to determine if it is possible to show a comparison and equivalency between the percentage by weight and percentage by area analysis of bulk insulation samples.

Also, there are plans to publish, in December 1988, a partial proposal of the revised regulations, which will not change the level of the standard, but will, hopefully, clarify the meaning of the regulations for enforcement purposes. One part of the partial proposal will change the definition of friable asbestos material to the same as in the draft proposed revisions, which is 1% by area determined by PCM. The other parts of the partial proposal address the waste tracking system which will require the completion of a form (which has already been approved by OMB), and provides clarifying language to enhance our enforcement position.

In Region VII the attorneys who handle NESHAP asbestos cases also handle TSCA asbestos cases. The program people for TSCA and Clean Air Act cases are in separate sections, but the same Division. For approximately two years the attorneys and program personnel have been meeting weekly to discuss current and upcoming events, cases, and changes in the law. Also, each program discusses upcoming inspections to assure coordination and to avoid back-to-back inspections. Often a demolition or renovation project will affect both programs, most obviously when a school has been or is being demolished or renovated. Often information gained by one program will be beneficial to the other program. This kind of coordinating activity has proved very beneficial to all concerned in this Region. If your Region is not already engaged in similar coordinating activity, you are encouraged to institute such a program. I think it will be worth the effort.

Finally, there have been recent indictments in Regions IX, V and II for criminal violations of the asbestos NESHAPS, indicating criminal enforcement actions are increasing.