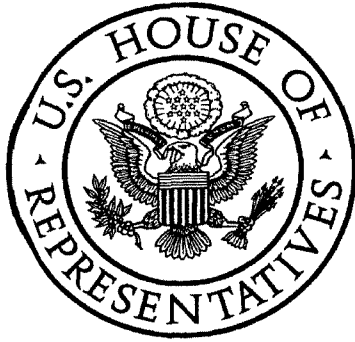




**U.S. HOUSE OF REPRESENTATIVES
CONGRESSMAN DENNIS J. KUCINICH
MARCH 2004**

OVERSIGHT REPORT

**OSHA'S FAILURE TO MONITOR AND ENFORCE
ASBESTOS REGULATIONS IN AUTO REPAIR SHOPS**

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The Office of Congressman Kucinich thanks Dr. Barry Castleman, ScD for his assistance with this report.

EXECUTIVE SUMMARY

This study analyzes violations of asbestos regulations promulgated by the Occupational Safety and Health Administration (OSHA) in auto repair facilities from 1973-2003. Despite long-standing scientific agreement on the serious and potentially fatal hazards of working with asbestos, this study shows that OSHA's enforcement of asbestos regulations in this field has been rare, and rarer still since 2000. The findings show that auto repair workers are unaware of the presence of asbestos in the materials they use, employers do not monitor for the presence of asbestos, yet workers are exposed to high levels of asbestos. Most OSHA violations are the result of complaints, not from routine programs or surprise inspections by OSHA or any other testing agency.

Less than a year ago, OSHA participated in the creation of the report *Asbestos Strategies*¹, which established a set of recommendations based on interviews and focus groups with representatives from industry, government and academia. One of the main recommendations was for enforcement of existing regulations. This study shows that OSHA must make significant improvements to its enforcement and compliance divisions if asbestos-related health and safety regulations are to protect American workers.

ASBESTOS IN AUTO REPAIR

Asbestos in Car Parts and Replacements

Asbestos in friction products, commonly used in car repair, is still extensive. In 2002, the US consumed 288 tons of friction products, such as brake linings and clutch facings that included asbestos.² While the Department of Commerce does not track imports of asbestos containing products, the U.S. continues to import brake pads, linings, and shoes from countries that use large amounts of asbestos.³ U.S. importation of friction material, most from asbestos-mining and manufacturing countries, doubled from 1996-2002 to \$125 million in total value.⁴

Unfortunately, auto repair employees who primarily use these asbestos-containing products mistakenly believe such products are free of asbestos. In a survey of 143 repair shop managers and owners, auto parts salesmen and mechanics across the nation, 96 percent believed that asbestos had been banned many years ago.⁵ Yet the asbestos ban that EPA instituted in 1989 was lifted after only 2 years, and the provisions affecting brake elements never came into effect.

Asbestos in Friction Products Causes Asbestos Contamination

Working with friction products that contain asbestos causes high levels of asbestos contamination. Friction products are subjected to grinding, sending clouds of asbestos and dust into the air where it is breathed in, then settles on workers' clothes and work environments.

¹ Global Environment and Technology Foundation. *Asbestos Strategies* 16 May 2003
<<http://www.getf.org/asbestosstrategies/>>.

² Virta, Robert L. *U.S. Geological Survey Mineral Resources Program*. 2002.
<<http://minerals.usgs.gov/minerals/pubs/commodity/asbestos/asbemyb02.pdf>>.

³ Global Environment and Technology Foundation. *Asbestos Strategies* 16 May 2003
<<http://www.getf.org/asbestosstrategies/>>.

⁴ Schneider, Andrew. "EPA Warning on Asbestos is Under Attack." *St. Louis Post Dispatch* 26 Oct. 2003.

⁵ Schneider, Andrew. "Nation's Mechanics at Risk from Asbestos." *Seattle Post Intelligencer* 16 Nov. 2000.

For decades, it has been known that such work causes high levels of asbestos exposure. In a study from 1976, where grinding, beveling, and compressed air blowout was done with asbestos-containing friction products, exposures exceeded the short-term exposure limits in the OSHA asbestos standard of 1 f/cc.⁶ Other studies have confirmed these findings, showing significant exposures above OSHA's standard: "Blowing out automobile brake drum dust yielded exposures of 6.6 to 29.8 f/cc with measurable exposure 50-75 feet away."⁷ In a *Seattle Post Intelligencer's* investigation of gas station and brake repair shops in the District of Columbia and six states, asbestos levels were detected at substantial levels in more than two-thirds of the surveyed locations.⁸ The study tested samples in government-certified labs, and according to an EPA regional toxicologist, "the results indicate some workers' exposure was about 43 times higher than what is recommended."

Health Hazards of Asbestos

Asbestos exposure from brake repair results in asbestos-related disease in mechanics and their families.⁹ The average annual mesothelioma incidence rate for vehicle mechanics is 32.5 per million person-years during the years 1986-2001.¹⁰ This incidence rate for vehicle mechanics is more than 30 times as high as the background mesothelioma rate for individuals not exposed to asbestos. Based on such recent data, in 2000, a World Trade Organization dispute resolution panel upheld the French asbestos ban because the statistical data on mesothelioma "confirmed the impact of chrysotile on mechanics exposed to that material in a car brake maintenance context."¹¹

OSHA'S DUTIES TO PROTECT AUTO REPAIR WORKERS FROM ASBESTOS

OSHA has regulated asbestos for general industry since 1972. These regulations for general industry (not including construction and shipbuilding) mandate maximum air exposure limits, monitoring activities, controls and processes to minimize asbestos exposure, labeling requirements, as well as storage and clean up requirements.¹²

Seeking to learn of OSHA's asbestos-related monitoring and enforcement activities, Members of Congress charged with oversight of OSHA wrote to Assistant Secretary John Henshaw.¹³ After

⁶ Lorimer et al., *Mt Sinai J Med* 43: 207-218, 1976.

⁷ Rohl, A.N. et al. "Asbestos Exposure During Brake Lining Maintenance and Repair." *Environ. Research*. 12 (1976):110-128.

⁸ Schneider, Andrew. "Nation's Mechanics at Risk from Asbestos." *Seattle Post Intelligencer* 16 Nov. 2000.

⁹ Ziem, G. 1984. Three case reports of mesothelioma in brake mechanics In: Castleman, B. *Asbestos: Medical and Legal Aspects*. Harcourt Brace Jovanovich.

EPA, 1986. Yorkshire Television. "Alice: A Fight for Life." 14 July 1982. Mesothelioma in a ten year old son of brake mechanic described and filmed. In: *Guidance for Preventing Asbestos Disease Among Auto Mechanics*. U.S. Environmental Protection Agency, June 1986.

¹⁰ Leigh, J., Davidson, P., Hendrie, L., and D. Berry. "Malignant mesothelioma in Australia, 1945-2000." *Am. J. Ind. Med.* 41(2002): 188-201.

Leigh, J. and T. Driscoll. "Malignant Mesothelioma in Australia, 1945-2002." *Int. J. Occ. Env. Health*. 9(2003): 206-217.

¹¹ *World Trade Organization*. "European Communities – Measures Affecting Asbestos and Asbestos-Containing Products – Report of the Panel." 18 Sep. 2000. <[http://www.worldtradelaw.net/reports/wtopanels/ec-asbestos\(panel\).pdf](http://www.worldtradelaw.net/reports/wtopanels/ec-asbestos(panel).pdf)>.

¹² 29 CFR 1910.1001 et seq.

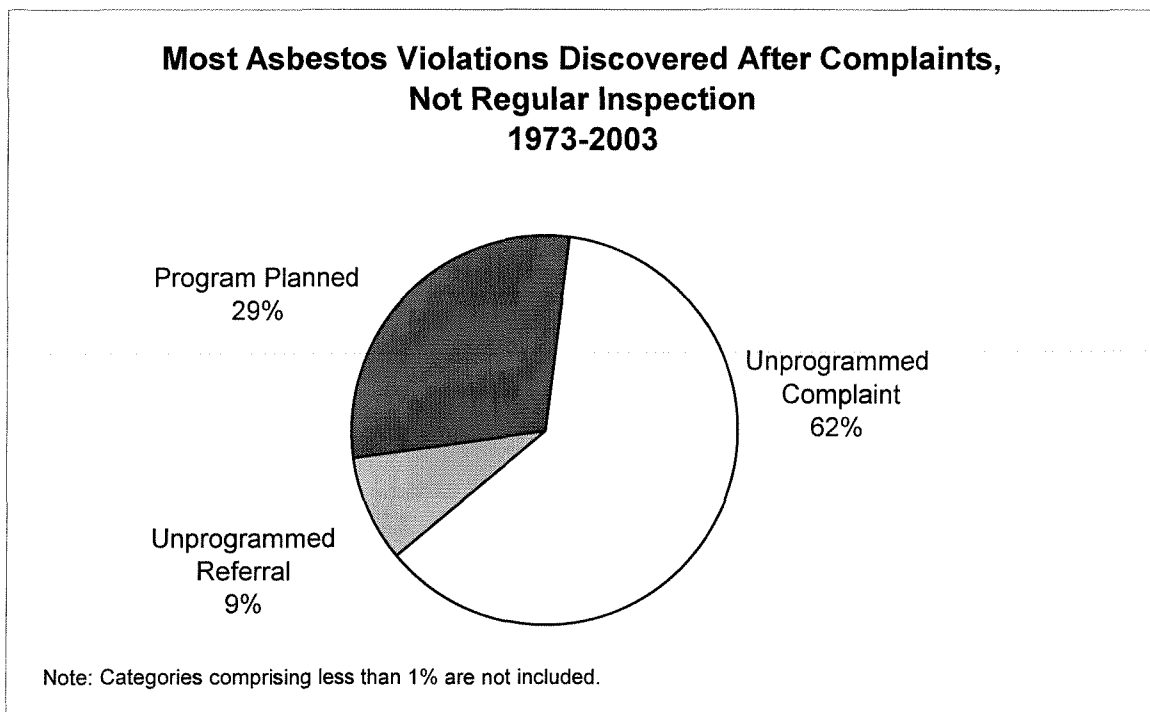
¹³ Reps. Dennis J. Kucinich, Henry Waxman, George Miller, et al. Letter to Asst. Sec. John Henshaw. 16 Oct. 2003.

OSHA failed to respond to any of the questions, this office analyzed data from OSHA's record of enforcement activities to: 1) determine the adequacy of OSHA's monitoring and compliance activity, and 2) assess OSHA's enforcement activities related to asbestos regulation. All violations of general industry asbestos regulations for auto repair facilities were gathered for analysis from the period between 1973 through October 2003. The data from October-December 2003 were not available at the time the data set was established.

FINDINGS: OSHA HAS LARGELY NEGLECTED TO PROTECT WORKERS FROM ASBESTOS IN AUTO REPAIR FACILITIES.

OSHA Rarely Enforces Asbestos Regulations on its Own Initiative

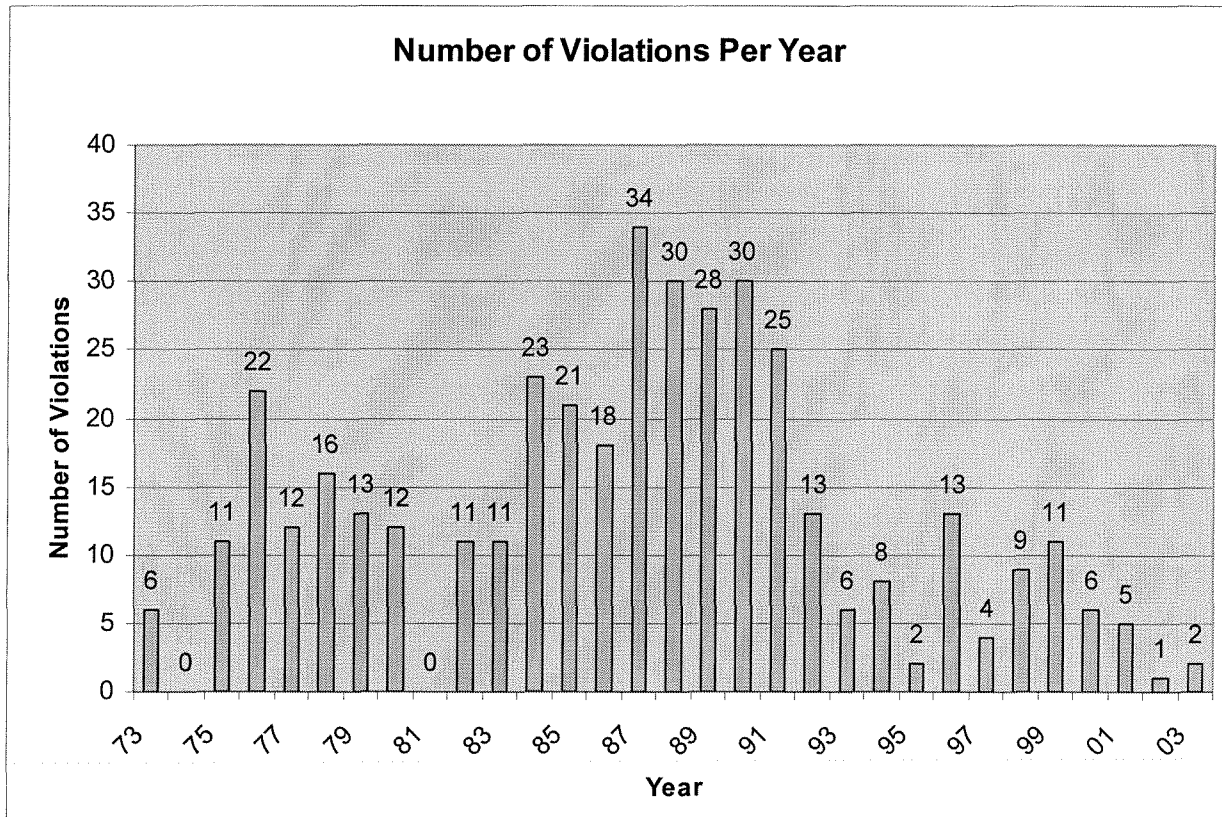
When OSHA inspects a worksite, the inspection is usually not part of a regular program of compliance or oversight. Sixty-two percent of violations were the result of an "unprogrammed complaint," meaning that OSHA inspected because of a complaint that was not part of an ongoing program for that site. Twenty-nine percent were "program planned," meaning that OSHA inspected the site as part of an ongoing program for that site, and 9 percent were prompted by a referral from an agency or other organization.



By and large, OSHA is depending on people to complain about working conditions to determine when and how it monitors facilities. This is particularly disturbing because evidence has shown that most employees of auto repair facilities are not even aware they are working with asbestos containing materials.

OSHA Assesses Few Violations and Rarely Fines Offenders, but the Bush Administration OSHA Has the Worst Record of Any Previous Administration.

From 1973-2003, OSHA cited 404 violations of asbestos regulations in auto repair facilities. There were 5 violations in 2001, 1 in 2002 and 2 in 2003. This is the lowest average number of violations cited over a three-year period than any other three-year period in the history of the asbestos regulation.



To provide some context for these very low numbers of OSHA violations, there are approximately 87,425 auto repair facilities¹⁴ and about 750,000 auto mechanics nationwide. Given that the most recent survey shows that two-thirds of auto repair facilities have excessive asbestos levels,¹⁵ approximately 57,700 facilities are in violation of OSHA regulations. The most number of violations issued per year was in 1988, when one in 2571 facilities was cited with a violation. During the Bush Administration, on average, one in 33,625 facilities was cited.

Compared to previous Administrations, the Bush Administration OSHA is the most lax by far. With high level of asbestos products on the market and high levels of contamination in auto repair facilities,¹⁶ OSHA's neglect of this obvious problem is inexcusable.

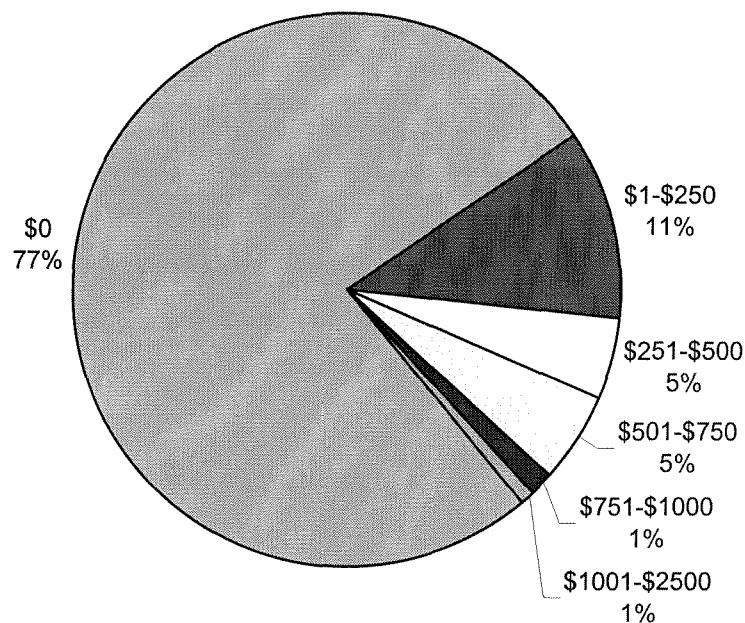
¹⁴ See NAICS codes 811111 and 811118, corresponding to SIC codes 7538 and 7539. U.S. Census Bureau. "1997 Economic Census, Other Services (Except Public Administration) Subject Series." (Apr. 30, 2001) <<http://www.census.gov/prod/ec97/97s81-sm.pdf>>.

¹⁵ Schneider, Andrew. "Nation's Mechanics at Risk from Asbestos." *Seattle Post Intelligencer* 16 Nov. 2000.

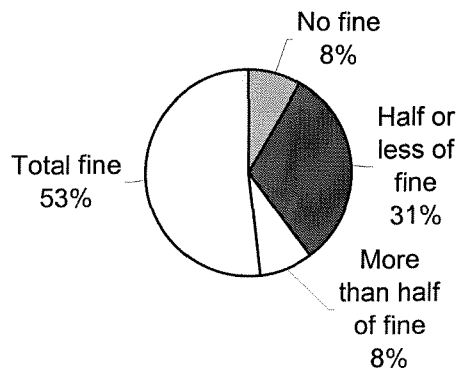
¹⁶ *Id.*

In cases where OSHA has found violations, it has failed to impose significant fines that would constitute a strategy of deterrence. Of all violations over the course of three decades, only 76 violations, or 23 percent, resulted in *any fines at all*. Of these, about half were reduced. In one case, an \$1800 fine was eliminated and the violator paid nothing. If violators are permitted to negotiate lower fines in the rare cases where fines are made, employers learn that the law can be violated without any consequences to them.

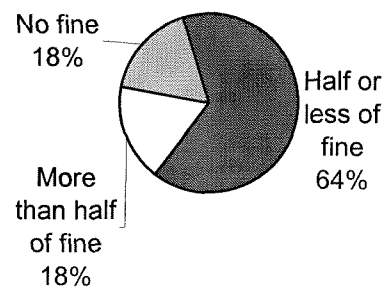
**Of All Asbestos Violations, Most Were Fined Nothing
1973-2003**



**Of Fined Violations, the Proportion of
the Fine that Was Paid
1973-2003**



**When Fines Were Reduced, Most
Paid A Small Proportion of the Initial
Fine
1973-2003**

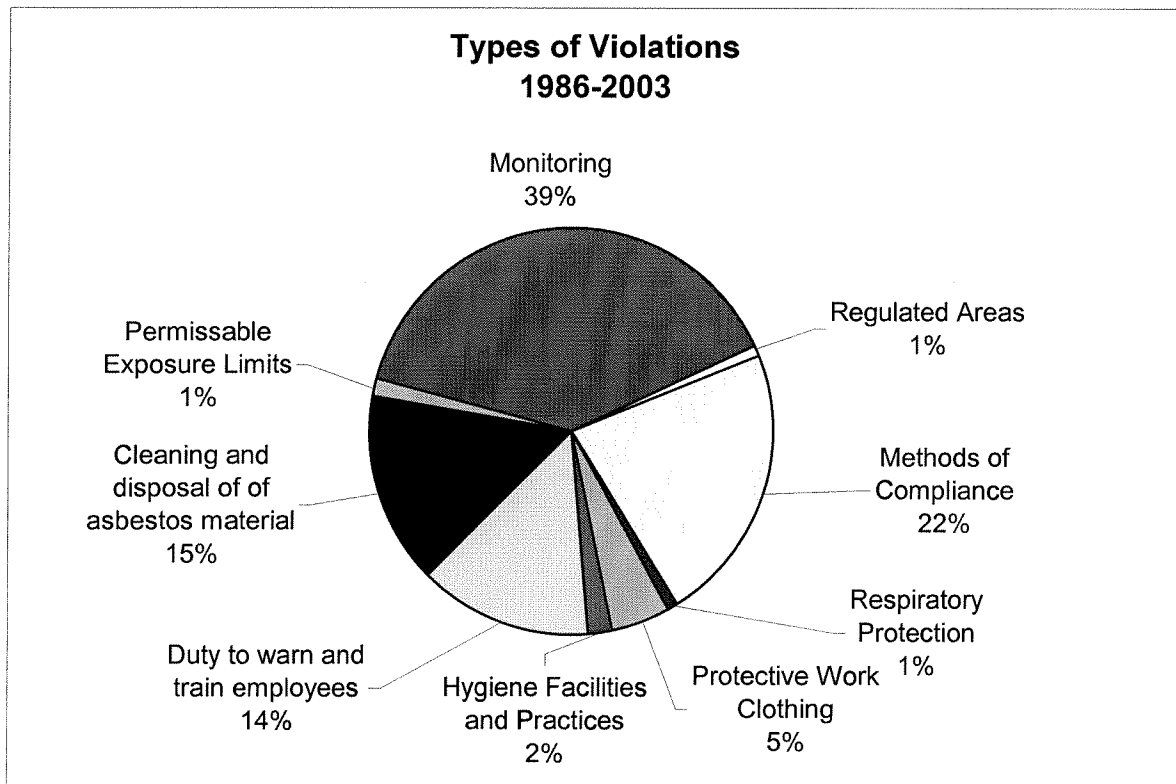


Violations Indicate Unknown Dangers

Taking a closer look at the types of violations, the scope of the danger to employees grows. Of all violations, 40 percent were for monitoring violations. This demonstrates that facilities do not test what airborne exposures are. If these tests were conducted, test results would likely trigger other provisions of the OSHA asbestos regulations that mandate lower exposures and use of appropriate equipment and processes.

Next, 22 percent were for compliance violations, such as failure to have local exhaust ventilation, appropriate tools, and a program to reduce employee exposure. It is very likely that when these precautions are not in place, unmitigated asbestos presence exists at hazardous levels.

The very small number of labeling violations is also disconcerting because there is widespread ignorance of the continuing presence of asbestos in friction products. Labeling is one of the “Duties of Employers” in OSHA’s asbestos regulations.¹⁷ Overall, there have been only 14 total labeling violations registered, with just 1 in 2000 and 1 in 2001. If clear warning labels were in place on friction products, it is improbable that 96 percent of mechanics would believe that asbestos had been banned in friction products and therefore not contained in such products. Either labels exist and they are ineffective, or labels do not exist and OSHA is not enforcing this regulation.



¹⁷ 29 C.F.R. 1910.1001(g)(2)(i) in 1972-1985, and 1910.1001(j)(4)-(ii) from 1986-2003.

WHAT SHOULD BE DONE

In *Asbestos Strategies*, a report commissioned by the U.S. EPA, a wide array of stakeholders, including OSHA and asbestos industry representatives, created a set of recommendations. The purpose of Action 7 was to enforce existing asbestos regulations. “Inconsistent interpretation leads to confusion; lax enforcement allows substandard practices. Both can lead to increased health risk as regulations are ignored. EPA, OSHA, Consumer Product Safety Commission (CPSC), and state regulators should focus on more stringent, predictable, and consistent enforcement of these existing regulations, which may offer greater benefit than committing scarce resources to new rule-making efforts. This recommendation can be implemented immediately; however, such an effort must continue for the long term.”¹⁸

This simple, common sense recommendation has yet to be implemented. In fact, EPA is moving in the opposite direction of this recommendation which it took part in crafting. EPA has announced it will engage in comprehensive revisions of rules and guidance in Spring 2004.¹⁹

Other recommendations laid out in *Asbestos Strategies* should also be implemented, such as developing a national mesothelioma registry, encouraging compliance with regulations and advancing a federal ban on asbestos. Many countries have already established a national mesothelioma registry. This would be an important tool for doing epidemiological studies, tracking the status and health of victims, and improving treatment of asbestos-related disease.

Given widespread misinformation among employees, educational seminars would be an important place to start in order to encourage compliance. Target audiences would be instructed about good practices, the importance of following regulations and agencies would work on a long-term basis to improve consistency.

Finally, a national ban on asbestos should be pursued. A ban is the most direct means of eliminating health and safety risks to millions of workers and consumers. Legislation has been introduced in both the House and Senate to this effect, and agencies, which also have the authority to make a regulatory ban, should also advance a ban.

To start, however, OSHA has an overdue obligation to enforce its regulations. OSHA must reverse its record of oversight and enforcement in order for regulations to protect workers and consumers from asbestos disease.

¹⁸ Global Environment and Technology Foundation. *Asbestos Strategies* 16 May 2003
<<http://www.getf.org/asbestosstrategies/>>.

¹⁹ Hazen, Susan B. Letter from U.S. EPA to Dino Privitera, Morgan Lewis & Bockius LLP. 24 Nov. 2003.