

Warning Auto Mechanics about Asbestos Hazards

In 1986, the U.S. Environmental Protection Agency (EPA) published *Guidelines for Preventing Asbestos Disease among Auto Mechanics*,¹ a brochure warning of the dangers of asbestos exposure and advising procedures to reduce exposure to asbestos in brake repair work. This report was widely distributed to vocational training schools around the United States. The EPA's 1989 regulation phasing out asbestos in many products was overturned in court before the provisions for brakes took effect, and asbestos-containing brakes continue to be widely used in the United States today. U.S. imports of brake-friction elements more than doubled from 1996 to 2002, to a total value of \$125 million, and most of this comes from asbestos mining and manufacturing countries. News reports by investigative journalist Andrew Schneider in 2000 and 2003^{2,3} found that asbestos-containing replacement brake parts are widely used in the United States, but mechanics are largely under the impression that such products were banned long ago.

Schneider's October 2003 article³ reported that U.S. Occupational Safety and Health Administration (OSHA) air sampling for asbestos in workplaces where brake repair was done had been virtually nonexistent over the preceding 20 years. In the nine years after OSHA added a section (f)(3), "Specific compliance methods for brake and clutch repair," to its asbestos standard in 1994, only five workplaces in the United States were subject to fines for violation of this section. In only one case did the fine exceed \$750; another 12 employers were cited for (f)(3) violations but were not fined by OSHA.⁴

With this continuing worker and consumer danger flourishing in a state of official neglect, some lawyers have now written to the EPA demanding that the EPA's brake guidance document be officially withdrawn.⁵ The law firm's selective scientific argument claimed that new reports have shown that the asbestos exposure of mechanics does not cause asbestosis, lung cancer, or mesothelioma. The U.S. National Institute for Occupational Safety and Health (NIOSH) alert bulletin to mechanics of 1975, the 1978 brochure by the Friction Materials Standards Institute (an industry group) advising that mechanics be protected from asbestos, and many reports in the scientific literature, including those from Dr. James Leigh and his co-workers at the Australian Mesothelioma Register,⁶ are not mentioned at all.

In its letter to the EPA,⁵ counsel from Morgan, Lewis, and Bockius declined to say whom they represented. However, one gets an idea who hired this firm (ranked sixth in a recent "Who Represents Corporate America" survey) from their statements about the "impact" of the EPA report. They emphasize that, in thousands of damage suits, the report is portrayed as a "definitive EPA statement that friction products are indeed hazardous and cause asbestos-related disease." They continue by claiming that, outside the courtroom, the report "hinders a fair-minded assessment of the hazards of . . . asbestos-containing friction products." The law firm has been a registered lobbyist for the American Insurance Association and the insurer CNA, and has also represented corporate defendants in asbestos personal injury litigation; so their clients may not be pres-

ent sellers of asbestos-containing brake parts imported to the United States from Mexico, China, and Colombia. All we know for sure about the clients is that they seek to justify corporate suppression of warnings in the past with government suppression of warnings today.

The lawyers' claim that the EPA report is very important in brake asbestos lawsuits is exaggerated. Castleman's book on the history of discovery of asbestos hazards⁷ has a 41-page chapter on brake workers, but mentions the EPA brake guidance document only briefly because of the report's late date. However, if the brake guidance document is withdrawn by the EPA, that would instantly become the linchpin of the defense case against mechanics with asbestos disease claims against the brake manufacturers.

Four paragraphs slipped into a Congressional appropriations bill in 2001, now given the exaggerated titles of Information Quality Act and/or Data Quality Act (DQA), instruct all U.S. government agencies to develop procedures to accept requests to ensure that all information the government puts out meets high standards of quality. The language was introduced by Congresswoman Jo Ann Emerson, whose staff confirmed to journalist Andrew Schneider that the text was provided by Jim Tozzi, chief of the industry group, Center for Regulatory Effectiveness (CRE). In 2003, the CRE also tried to use the DQA to get the EPA to refrain from publicly stating that the herbicide atrazine is an endocrine disruptor despite persuasive publications on this point, claiming that there are "no validated test methods for assessing such effects." By this reasoning, the Natural Resources Defense Council points

out, peer-reviewed epidemiologic studies would also be inappropriate as a basis for EPA assessments of data and information releases.⁸ Most recently, Tozzi's group and manufacturers of the chemical have tried to use the DQA to interfere with the EPA's addition of diisononyl phthalate to the list of chemicals for which industry must publicly disclose its environmental releases (the Toxics Release Inventory).

It remains to be seen whether parties whose requests to suppress public health information such as this, if declined, will be able to get the courts to permit them to pursue lawsuits against the government (in which case their lawyers would at least have to say whom they represent!). Congressman Dennis Kucinich⁹ and other Members of Congress are opposed to the effort to get the EPA to withdraw the brake guidance document and have asked the EPA and OSHA what they are doing to protect mechanics from asbestos. The EPA stoutly refused Kucinich's request to ask Morgan, Lewis, and Bockius whom they represent, incredibly asserting that the law firm is itself an "affected party" and therefore is itself entitled to make such requests under the EPA's rules. The EPA's Acting Administrator at the time this request was reviewed, Marianne Horinko, had previously worked at Morgan, Lewis.¹⁰ It is not known how high up the real affected parties had to go to enlist

the U.S. government as accomplice to their concealment.

Authoritative comments on the medical evidence on asbestos brake hazards have been filed with the EPA by former NIOSH Director Richard Lemen and Drs. James Leigh, David Egilman, and Barry Castleman. Additional comments were filed by the Natural Resources Defense Council and by attorneys representing mechanics with claims against asbestos brake manufacturers. The EPA had no procedure for publicly posting comments received from these scientists or anyone else who commented while the clock ticked on the EPA's 90-day deadline for reply. Industrial parties and their consultants do not appear to have sent comments to the EPA.

On Nov. 24, 2003, the EPA responded that the agency was revising "various information materials" in its asbestos program, including the brake guidance document.⁵ The draft revised brake document will be made available for public comment in the second quarter of 2004. At that time, public health professionals and other interested parties will have the opportunity to submit their opinions of the draft revised document to the EPA.

What will the EPA tell the mechanics being instructed in vocational training schools now?

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Note: Public comments to EPA can be sent to: <quality.guidelines@epa.gov>.