

Congress of the United States
Washington, DC 20515

October 16, 2003

Marianne Horinko
Acting Administrator
U.S. Environmental Protection Agency
401 M Street NW
Washington, DC 20001

John L. Henshaw
Assistant Secretary of Labor for Occupational Safety and Health
Occupational Safety and Health Administration
Room S2315
200 Constitution Ave.
Washington, DC 20210

Dear Acting Administrator Horinko and Assistant Secretary Henshaw:

We write to you regarding your responsibility to protect the public from risks of injury from asbestos. EPA recently received a request made under the Data Quality Act to withdraw EPA's "Guidance for Preventing Asbestos Disease Among Auto Mechanics." Withdrawal of this Guidance is not warranted under the Data Quality Act. In fact, such a withdrawal would mislead the public by conveying the false impression that asbestos exposures from brake repair work is no longer a risk.

In addition, we are concerned that neither EPA nor OSHA appears to be monitoring the risks of asbestos exposure to auto mechanics and ensuring that protections are in place. As Members of the House Committees of Government Reform and Education and the Workforce, we urge EPA and OSHA to carry out their respective duties to protect the general public, and specifically workers, against harmful exposure to toxic substances such as asbestos.

Repair Work on Asbestos-Containing Vehicle Brakes Poses Serious Health and Environmental Risks

We strongly oppose the request made by the Morgan Lewis law firm to withdraw and disaffirm the "Guidance for Preventing Asbestos Disease Among Auto Mechanics" ("Gold Book.") This request, No. 12467, was made on August 19, 2003.

Morgan Lewis requests EPA to withdraw the Guidance on the grounds that the Guidance was based on inadequate data at the time it was prepared and is now outdated. The request also asserts that "the overwhelming weight of the scientific evidence ...

supports the proposition that brake usage and work does not cause asbestos-related disease.” This claim is not correct. On the contrary, scientific evidence that is not mentioned in the withdrawal request disputes the findings of studies cited by Morgan Lewis.

As noted in the Guidance, asbestosis has been reported in mechanics as a result of asbestos exposures from brake repair with asbestos-containing friction materials. (Lorimer et al., *Mt Sinai J Med* 43: 207-218, 1976.) Lorimer found that where grinding, beveling, and compressed air blowout was done, exposures exceeded the short-term exposure limits in the OSHA asbestos standard of 1 f/cc. There is no reason to believe that the widely recognized cancer hazards associated with asbestos exposure do not similarly extend to mechanics working with asbestos-containing products.

In addition, more recent data continues to provide support for the conclusions in the Guidance. One important source of data is the Australian Mesothelioma Register. This is a comprehensive collection of data of all histologically confirmed mesothelioma cases in the country, which has been in operation since 1980 and is considered the best register of mesothelioma cases in the world. According to Dr. James Leigh, an author of many reports based on the register’s data, the average annual mesothelioma incidence rate for vehicle mechanics is 32.5 per million person-years during the years 1986-2001. This incidence rate for vehicle mechanics is more than 30 times as high as the background mesothelioma rate for individuals not exposed to asbestos, which is less than 1 per million person-years.¹

The data in the Australian Mesothelioma Register has been widely used. For example, in a dispute before the World Trade Organization brought by Canada against the French asbestos ban in January 2000, Dr. Douglas Henderson, a leading asbestos expert in Australia on asbestos pathology, presented data from the register. The final decision of the WTO dispute resolution panel reflected the view that mesothelioma in mechanics was a demonstration of the carcinogenic hazard of chrysotile asbestos. The panel found that the statistical data on mesothelioma “confirmed the impact of chrysotile on mechanics exposed to that material in a car brake maintenance context.” (8.192).

Morgan Lewis also claims that short asbestos fibers, which are fibers shorter than 5 microns long, are not harmful and that the Gold Book asserts the contrary. At the time the Gold Book was published, and until recently, routine air measurement of short asbestos fibers for enforcement of OSHA standards was not possible with the tools that were available to scientists. Therefore, the available epidemiological studies of humans affected by asbestos are not capable of stating the contribution by short fibers, which are always present along with the longer ones counted by the OSHA method.

In lung tissues, it is now possible to measure short fibers with electronic microscopes. More recent evidence shows that short fibers appear to be hazardous. In a recent study, short fibers were found to compose the majority of asbestos fibers in lung

¹ The actual rate for vehicle mechanics is likely even higher than the Register indicates, given the non-response rate and the inclusion of vehicle mechanics that do not work on brake linings.

and mesothelial tissues of the pleurae of 168 patients with mesothelioma. (Suzuki et al., Ann NY Acad Sci, Vol. 982, pp. 160-176, 2002). In these patients, short chrysotile fibers were by far the most predominant type in the pleurae and were commonly found alone and in combination with other fiber types in the lung tissues. While the short fibers may be more easily cleared from the lungs, the short fibers continue to travel through the body. When tissue from mesothelioma tumors is studied, it is laden with these short fibers, implicating the role of short fibers in causing disease.

In short, there is substantial evidence, which is ignored by Morgan Lewis, indicating that considerable risks remain for individuals that work with brake maintenance or manufacture. While EPA could update the Guidance with this information, it should by no means simply withdraw the Guidance. Withdrawing the Guidance without issuing new guidance would create the misleading and dangerous impression that little or no risk exists.

Guidance for Preventing Asbestos Disease Among Auto Mechanics (“Gold Book”)

The request by Morgan Lewis also asserts that the Guidance’s “content is inconsistent with more recent pronouncements made by EPA and OSHA.” (Morgan Lewis, Request for Correction of Information, 5 (Aug. 19, 2003).) On the contrary, the Guidance, which EPA drafted in cooperation with OSHA, is currently referenced in another more recent OSHA document, which is provided on OSHA’s website: Preventing Asbestos Disease Among Auto Mechanics, 1997.

While published in 1986, the Guidance provides critical workplace safety guidelines to protect the health and safety of mechanics. The latest and most extensive statistical information from the Australian Mesothelioma Register confirms the mesothelioma hazard to auto mechanics from asbestos exposures. More recently, the *Asbestos Strategies* report from Global Environment and Technology Foundation (May 16, 2003: <http://www.getf.org/asbestosstrategies/>), completed at EPA’s request, confirms the concern over continuing use of asbestos in friction materials in the US and the need for “coordinated effort to educate consumers, employers, and building owners about products with commercially-added asbestos.”

We urge you to reject the request to withdraw the Guidance.

Lack of Monitoring of Asbestos Exposures in Auto and Brake Repair Facilities

The Morgan Lewis request is instructive, however, in illustrating the failings of EPA and OSHA to monitor asbestos contamination and exposure in auto and brake repair facilities and to educate workers and the public about these risks.

In fact, workers in brake repair shops and mechanics mistakenly believe that brake replacements no longer contain 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. Seattle Post Intelligencer, *Nation’s*

Mechanics at Risk from Asbestos (Nov. 16, 2000). 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.

Currently, high levels of asbestos contamination exist at many auto and brake repair facilities. In the *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. The amount of the asbestos in the dust ranged from 2.26 percent to 63.8 percent. If those auto mechanics were EPA employees, they would have to wear protective suits and full-face respirators in any area where materials are handled that contain asbestos at levels of 1 percent or higher. The nation's 750,000 brake mechanics are at risk of serious harm from grinding and drilling asbestos-containing brake parts and cleaning brake assemblies.

As far as we know, the *Seattle Post Intelligencer* survey is the only recent investigation of current practices and exposures for those who work with asbestos-containing brakes in the United States. We are concerned that EPA and OSHA have failed in their duties to monitor and protect against the risks from asbestos in this context. It appears that recent comprehensive information on the risk of vehicle mechanics' exposure to asbestos from brakes is not available from EPA and OSHA because the agencies have not gathered this information. Given the apparently widespread and serious nature of the problem, we believe this is an issue worthy of much more attention than it has been given.

Further Information

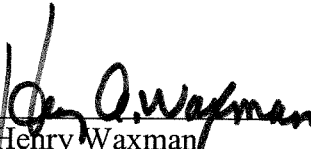
In light of the issues raised above, please answer the following questions:

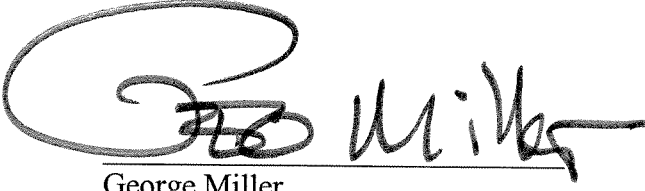
- 1) Will EPA reject the Morgan Lewis request to withdraw the Guidance? If not, what affirmative evidence shows that asbestos no longer contaminates brakes in new vehicles, brake replacements or auto or brake repair facilities, or that auto mechanics are not at risk of exposure to asbestos from brake work?
- 2) What is EPA and OSHA's current information on the risks from asbestos exposure faced by auto mechanics working on brake maintenance? If current information is available, is it based on data from small, privately owned facilities? If current information is not available, why have the agencies failed to collect such information?
- 3) What is known about the extent to which imported brake parts containing asbestos comply with the requirements for warning labeling? This is a particular concern because imported brake parts appear to have increased in volume by one-third over the past 2 years.
- 4) What activities are EPA and OSHA currently undertaking to monitor the risks of asbestos exposures to auto mechanics, provide adequate asbestos-related safety

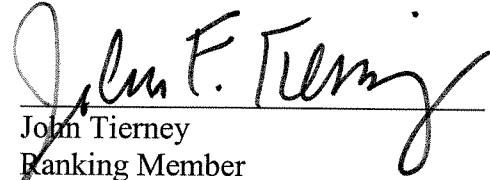
information to auto mechanics, and enforce asbestos labeling requirements and safety standards?

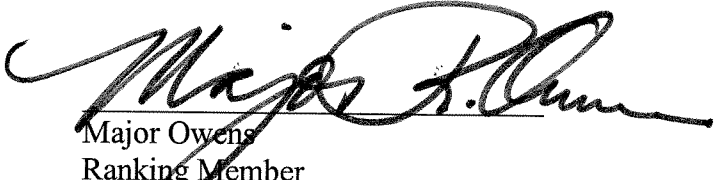
We request a reply by October 31, 2003. Thank you for your attention to this matter.

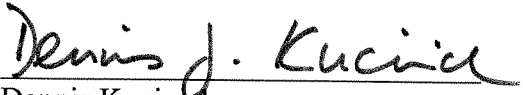
Sincerely,


Henry Waxman
Ranking Member
Committee on Government Reform


George Miller
Ranking Member
Committee on Education and the Workforce


John Tierney
Ranking Member
Subcommittee on Energy Policy,
Natural Resources and Regulatory Affairs


Major Owens
Ranking Member
Subcommittee on Workforce Protections


Dennis Kucinich
Ranking Member
Subcommittee on National Security,
Emerging Threats and International Relations