

SUNDAY POST-DISPATCH

Vol. 125, No. 299 ©2003

PROUDLY SERVING ST. LOUIS FOR 125 YEARS

1 2 3 4 5 6 ★★★★★ ●●● \$1.25 ST. CHARLES

www.STLtoday.com

OCTOBER 26, 2003

EPA warning on asbestos is under attack

Lawyers target materials detailing dangers in brakes

By **ANDREW SCHNEIDER**
Of the Post-Dispatch
©2003, St. Louis Post-Dispatch

The federal government's 17-year effort to warn backyard and professional mechanics of the dangers of cancer-causing asbestos in brakes is under attack.

The international law firm of Morgan, Lewis & Bockius has petitioned the Environmental Protection Agency to stop distributing warning booklets, posters and videotapes that give mechanics guidance on the need to protect themselves from asbestos. The 10-page petition called the science on which the material was based unproven and irrational.

The firm said the EPA's guidance for mechanics had been used to support thousands of personal injury lawsuits brought against hundreds of American companies by mechanics. The suits involving the auto workers alleged they were sickened or killed by exposure to asbestos in brakes.

The firm refused repeated requests to identify its client in the effort to stop the booklets, but it has represented at least one major asbestos firm and two insurance companies involved in asbestos litigation.

The lawyers took their action under an obscure law passed in 2001 called the Data Quality Act. It demands that government agencies work with the White House's Office of Management and Budget to establish a process that permits "affected persons" to challenge information gathered and disseminated by the government.

Rep. Jo Ann Emerson, R-Mo., said she introduced the four-paragraph measure as a rider to an appropriation bill "to ensure accountability to the taxpayer." Emerson's staff said the language for the law came from Jim Tozzi. He is the director of the Center for Regulatory Effectiveness, an industry-funded group scrutinizing government regulations. Tozzi worked for the Office of Management and Budget during the Nixon, Ford, Carter and Reagan administrations.

Still a threat

Court filings and public health surveys indicate that thousands of auto workers are diagnosed each year with asbestos-related diseases, such as mesothelioma, lung cancer and asbestosis. Few mechanics take protective measures when working with brakes — mainly, they say, because they believe asbestos is no longer present.

They are wrong. Although the major car makers say they no longer use asbestos, the brakes on many older cars contain the fibers. More than \$124 million worth of asbestos brake material was imported into the United States last year. Thus, the potential danger will exist for decades as replacement brakes containing asbestos continue to be put on vehicles.

The Post-Dispatch talked to about two dozen St. Louis mechanics or garage managers. All but two said that asbestos had been banned and is no longer in brakes.

Leaving no fingerprints

Dr. Sidney Shapiro, a law professor at the University of Kansas who has written and lectured on the value and danger of the information act, said he is concerned that "the legislation opens the door for corporations and trade associations to attack any scientific information that EPA makes public, and asbestos is a fine example." Shapiro is with the Center for Progressive Regulation, a group that examines regulations on environmental and consumer interests.

He added: "The act is also a great tool for OMB to try to influence policy because their involvement won't leave any fingerprints."

The White House is already being heavily criticized by some lawmakers for its Council on Environmental Quality, which guides the president on environmental issues, and allegations that the Office of Management and Budget is influencing the



Bob Wind works on brakes Thursday at B&B Muffler & Service at Chippewa Street and Nebraska Avenue. He was surprised to learn that some brakes still contained asbestos.



A brake box at B&B Muffler & Service carries warnings about asbestos. Mechanic Bob Wind was amazed when a Post-Dispatch photographer showed him the box. "I just can't believe it," he said, squinting to read the small type.

actions of the EPA. The budget agency counters that it doesn't meddle in the agency's Data Quality Act decisions.

"The Act itself places us in a broad oversight role but does not specify how the OMB-agency relationship should be handled," said a senior OMB official. "OMB has encouraged agencies to consult with us before they respond. However, it is the agencies that decide how to respond."

The Gold Book

The law firm, based in Philadelphia, says the dire warnings regarding asbestos exposure have no scientific basis. It has demanded that the EPA renounce years of extensive studies that state otherwise.

The main target in their petition is a thin gold-colored EPA pamphlet titled "Guidance for Preventing Asbestos Disease Among Auto Mechanics." Tens of

thousands of copies of the Gold Book and other asbestos warning material have been distributed to schools, garages, auto dealers and unions since they were first published 17 years ago.

For two years in the mid-'80s, the EPA and asbestos experts from the Occupational Safety and Health Administration gathered extensive research on exposure to mechanics from leading government and civilian scientists.

The petition says that the EPA has it all wrong and that brake repair work is safe.

"The continuing availability of the Gold Book, and its alarmist and inflammatory tone continues to hinder a fair-minded assessment of the hazards, if any, imposed to users of asbestos-containing friction products," the petition states.

Steve Johnson, the acting deputy administrator of the EPA, said the Gold Book was being revised before the peti-

tion arrived, but he insisted that the science upon which the guide was based was "solid" and "we stand by it today." Over the past few years, "we've learned a great deal more about asbestos and its dangers, which are significant," Johnson said. "We are looking at all of our asbestos programs to ensure that they reflect the latest information on the hazards."

Johnson said he wasn't permitted to discuss the EPA's position on the petition but said a decision would be made by Nov. 24.

Thousands of suits

The lawyers said they are concerned about what happens in court.

"In the highly charged environment of such litigation, the Gold Book has been used to try to sway jurors, who are told that it represents EPA's current position and thinking on the question of whether asbestos-containing friction products are dangerous to users."

"Outside the courtroom," the petition reads, "continuing availability of the Gold Book, and its alarmist and inflammatory tone, hinders a fair-minded assessment of the hazards, if any, posed to users of asbestos containing friction material."

Ernie Conry, a retired mechanic, is involved in a suit. He is sick. He has mesothelioma, a fast-killing form of cancer caused only by exposure to asbestos. It usually is fatal within eight to 10 months. It has been 22 months since his doctor diagnosed the disease.

"I'm lucky. Very lucky," said Conry, 70. "My younger brother had mesothelioma from the Navy, and he died 12 months to the day from when he was told he had the disease. Just wasted away."

For a man told he only had

months to live, Conry looked healthy. He held up an X-ray of his lungs and ran a weathered finger along the gray shadow of the fast-spreading tumor. He doesn't need to look at the X-ray. The pain reminds him that he's sick all the time, he said.

Conry worked on brakes in various Ford garages in St. Louis. He said he was never told to wear a respirator or to be cautious. His blue eyes sparkle with anger when he speaks of never being told about asbestos in brakes.

"Nobody told us then and no one is telling the guys changing brakes today they had better be careful because they may be covering themselves with asbestos in the dust from the brakes," Conry said. "It's like a secret. A deadly secret."

He prints up his own fliers warning of the dangers and hands them out at union halls and in gas stations. He admits that few take it seriously.

"If I can just save one guy, one other human from suffering the pain that I live with, then it's worth it," he said and paused for a moment. "But you know, they don't really believe me."

On Thursday morning, Bob Wind was hammering loose a brake drum from a 1996 Ford Escort at B&B Muffler & Service at Chippewa Street and Nebraska Avenue. Black dust and grime covered his clothes and the floor beneath the car. There was no visual way to tell whether the dust contained asbestos. "You just can't get away from the dust. It's everywhere: your hair, your nose, your eyes," Wind said.

He was surprised to learn that some brakes still contained asbestos. "I thought it was outlawed years ago," said the mechanic. "I've never seen anyone wear a mask in a garage. Never."

Wind was amazed when a Post-Dispatch photographer showed him a box of replacement brakes in his own store-room that said "Caution. Contains Asbestos Fibers."

"I just can't believe it," he said squinting to read the small type. Another box said "100 percent asbestos free." But on the back of the box, in even smaller type, was written: "Product may contain a chemical fiber know to the state of California to cause cancer."

Who protects the mechanics?

The EPA says that its regulations direct it to worry about the safety of home mechanics and students, but that OSHA has the responsibility for the workers.

An examination by the Post-Dispatch of 31 years of OSHA inspection records shows that nationwide, fewer than ten gas stations a year had been cited for asbestos problems.

Richard Fairfax, OSHA's director of enforcement, said in a telephone interview that OSHA does not have a national program on asbestos exposure.

"I know we've done sampling. Going through the old inspection reports I found a couple that I did," Fairfax said. When asked when his were done, he answered: "A long time ago. In the '70s."

In 20 phone calls to various OSHA regional offices and some of the states designated to do their own OSHA inspections, the Post-Dispatch found no one who could recall the last time they'd actually tested for asbestos in a gas station or garage.

"Most of the operations are small businesses and do not have a lot of employees. Our targeting system is geared at employers with 40 or more workers," Fairfax said.

Fairfax said he had no opinion "either way" when asked whether asbestos exposure to brake workers was a health concern.

But the National Institute of Occupational Safety and Health, OSHA's research arm, has conducted repeated studies over the years documenting the dangers of asbestos, not only to mechanics but also to their family members who may be exposed to asbestos on their work clothes and to others in the garage area exposed to large amounts of asbestos in the air.

As far back as 1975, NIOSH had many recommendations on protecting workers, including the posting of warning signs in garages saying "Breathing Asbestos Dust May Cause Asbestosis or Cancer."

But many proposals were ignored, said Dr. Richard Lemen, a former director of NIOSH and an assistant U.S. surgeon general.

"NIOSH cared. EPA cared. It was as if the rest of government didn't really care about the health of these mechanics and their families," Lemen said.

"Eliminating EPA guidance is absurd. The risks from asbestos still exist and unless meaningful actions are taken by the government, mechanics, and all too often, their family members, will continue to die."

Last week, five members of various House committees wrote to the heads of the EPA and OSHA expressing concern that neither agency "appears to be monitoring the risk of asbestos exposure to mechanics and ensuring that protections are in place."

The five lawmakers urged the EPA not to withdraw the brake guidance, saying "it would mislead the public by conveying the false impression that asbestos exposure from brake repair work was no longer a risk."

Other public health experts shared their views.

"In making this move on EPA, the law firm seeks to justify corporate suppression of warnings in the past with government suppression of warnings today," said Dr. Barry Castleman, a national authority on asbestos and health issues. "The loser in this gambit is the public."

Post-Dispatch photographer Andrew Cutraro assisted in the reporting of this story.

Andrew Schneider
E-mail: aschneider@post-dispatch.com
Phone: 314-340-8101



Ernie Conry, a retired mechanic, was diagnosed with mesothelioma 22 months ago. He worked on brakes at garages in St. Louis and says he was never told to wear a respirator or to be cautious. He has produced fliers warning of the dangers of asbestos and hands them out at union halls and auto shops.