

## **EPA Revised Gold Book -- Comments on Docket # EPA-HQ-OPPT-2006-0398**

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### **I. Background and Disclosure**

My first efforts to warn brake mechanics about asbestos hazards were in 1972, as an official of the Baltimore County Division of Air Pollution and Industrial Hygiene, before any of the manufacturers of brake and clutch friction elements were complying with the OSHA asbestos standard requiring caution labels on these products. These efforts were later expanded to include outreach in Washington DC, with participation of officials from the District of Columbia Department of Human Resources and the Mt. Sinai School of Medicine in New York (B. I. Castleman *et al.*, “Hazards of Asbestos for Brake Mechanics,” *Publ. Health Rep.* 90: 254-256, 1975).

Starting in 1976, I began historical research for lawyers representing plaintiffs in asbestos personal injury litigation, and have testified as an expert witness in such cases since 1979. I have also been a consultant to federal agencies on asbestos and other subjects, including EPA, OSHA, FTC, CPSC, the Department of Justice, and the Congress’ Office of Technology Assessment. I wrote my doctoral thesis on the public health and corporate history of asbestos in this country and the world, and this has been published and repeatedly revised in a text cited by the US government in submission to the World Trade Organization and by numerous courts as a learned treatise (B. I. Castleman, *Asbestos: Medical and Legal Aspects*, 5<sup>th</sup> Ed., Aspen, New York, 2005).

My involvement in litigation has acquainted me with the arguments that are used by defendants in these cases, and I have been amazed that the brake manufacturers and distributors have in recent years adopted the argument that mechanics do not get asbestos disease from their asbestos exposure. One reason for my surprise was that the trade association of the brake manufacturers, the Friction Materials Standards Institute (FMSI), had published a brochure in 1978 advising safeguards by mechanics and warning that “potentially hazardous airborne concentrations of asbestos dust can be created by improper cleaning and handling of worn brake and clutch assemblies, uncontrolled machining operations, and poor housekeeping.” The brochure went on to say in the next paragraph, “Breathing excessive quantities of asbestos dust can cause respiratory disease and cancer.” (*Friction Materials Work Practices Guide*, FMSI, October, 1978, 10 pp.) Knowing that trade associations operate on the basis of consensus, it seemed to me that this settled the matter as far as the position of the industry went, in accepting what was otherwise the consensus of scientific opinion by 1978. I never imagined that in the 21<sup>st</sup> century, defendant corporations would assert that mechanics don’t get asbestos disease, on the basis of new analyses of earlier reports, most of which had little power to explore the question of the asbestos disease hazard from brake servicing.

However, by raising the issue, the clients of the petitioning law firm have provided an opportunity for EPA to update and renew outreach 1) to today’s mechanics, who are still exposed to asbestos, 2) to student mechanics at voc-tech schools, and 3) to the people who do approximately 2 million brake repair jobs on their own vehicles each year and may unwittingly

expose themselves and their families to mortal danger. My comments are intended to fully explore the possibility of EPA seizing this opportunity in prevention.

## II. Specific Comments on EPA Proposal

I have the following specific comments to make on the revised draft brochure, "Current Best Practices for Preventing Asbestos Exposure Among Brake and Clutch Repair Workers":

1. In the proposed revised document, EPA poses the question, "How Do I Know if I Have Asbestos Brake or Clutch Components?" The reply proposed is essentially, "you cannot tell so be careful." EPA can do better than this. Congressman Kucinich documented *OSHA's Failure to Monitor and Enforce Asbestos Regulations in Auto Repair Shops* (Feb. 2004), and my own perusal of citations by OSHA since 1972 suggests that no manufacturer has ever been cited for failure to place the required OSHA warning labels on automotive friction materials. Corporate documents show that some companies started to place the OSHA warnings on these products in 1973, but others, including Ford and Chrysler, did not do so until the 1980s.

US imports of vehicle brake pads have increased 83 percent from 1996-2005, with most of these imports now coming from Mexico, Brazil, China, and Colombia. Asbestos-containing friction materials have not been made in the US for about 5 years. If the past is any guide, it is very possible that asbestos-containing friction components are still being brought into the US today, without the cancer warning label required by OSHA, by less reputable companies than the leading auto makers and parts suppliers.

Therefore, EPA should do two things. First, EPA should offer to do bulk sample analysis for anyone who has a friction material that is suspected of containing asbestos. The sender should be asked to include a photocopy of identifying information as to the seller and manufacturer of the product, date of purchase, and location of supplier. A few grams of material can be scraped into a plastic bag by someone properly advised to wear an approved respirator, taking the effort to prevent contamination of the area. The name and contact information of the sender can be taped on the sample bag.

Second, EPA should take action to see what products are coming into the country that may be unlabeled asbestos friction elements. Regional offices can be directed to visit auto parts dealers and carefully scrape samples of products for bulk analysis, focusing on cheap replacement brakes from the above countries and others where asbestos is still used.

2. EPA's Gold Book was distributed 20 years ago to all of the vocational and technical schools around the country. This effort should be reviewed as a model, and the revised Gold Book made similarly available through outreach to voc-tech schools and through public announcements, to distribute the information as widely as possible. It is obviously insufficient to just quietly post the information on an EPA website.

3. EPA's account of the asbestos health hazards of brake repair are too scant. It should be explained that there is no safe level of asbestos exposure and that the cancer hazard of asbestos to family members from dust coming into the home on the clothes of workers has been confirmed by scientific studies. Explicit warning against getting the dust on clothing should be

included. Showering and changing into uncontaminated clothes should be advised before going home after doing brake repairs.

### III. Attack on the Gold Book: The Scientists

It is to be expected that EPA will be prevailed upon by the parties that initiated this review of the Gold Book to consider the writings of authors from Exponent and Chemrisk published since the EPA was asked to withdraw the Gold Book in August of 2003. I have previously provided to the EPA docket on the request to withdraw the Gold Book an Exponent bill jointly to General Motors, Ford, and DaimlerChrysler under the heading “Technical Support – Asbestos Litigation” (July 2, 2003). One line item on this bill was “Prepare Materials to Challenge 1986 EPA.” Additional charges were billed for this litigation support service to the Big Three auto makers in August, twice in October, and in November of 2003.

Defendant corporations have recently been prevailed upon to produce copies of the bills received for litigation services by Exponent and Chemrisk. The publication and presentation of medical articles was clearly a major element of the litigation defense strategy of the Big Three. The Exponent bill to the Big Three on Apr. 4, 2003, also titled “Technical Support – Asbestos Litigation,” has a line item, “Completion of Meta-Analysis.” Additional charges for “Completion of Meta-Analysis” were billed on May 2, Aug. 1, and Aug. 29, and Oct. 31, 2003. On Jan. 2, 2004, there was a charge of \$19,500 for “Presentation of Mechanic Meta-analysis.” In all, “Presentation at Conferences” was billed seven times between February and November, 2004 as “Technical Support – Asbestos Litigation.” The “Finalization of 2 Submitted Manuscripts” (on garage mechanics epidemiology) was another item in bills for technical support in asbestos litigation to the Big Three (May 28 and July 1 and 30, 2004). Additional Exponent billings to the auto companies in 2004 were for writing responses to separate articles by Drs. Dodson, Lemen, and Egilman.

GM, Ford, and DaimlerChrysler have spent at least \$23 million between 2001 and spring of 2006, for the consulting and publishing services of Exponent and Chemrisk, and scientists including Dennis Paustenbach, Michael Goodman, David Garabrant, Mary Jane Teta, Patrick Hessel, Patrick Sheehan, Elizabeth Lu, Gregory Brorby, and Brent Finley. (D. S. Egilman and S. R. Bohme, “Scientific Method Questioned” *Int. J. Occ. Env. Health* 12: 292-293, 2006; and Exponent and Chemrisk bills produced by in Sept. 2006, in Rebekah Price v. DaimlerChrysler Corp. et al.). So, in addition to their technical shortcomings, such as selectivity in what was included in meta-analyses and what was not, the recent meta-analyses and commentaries of Exponent and Chemrisk authors should be read with it in mind that they were solicited for the purpose of fighting personal injury claims brought by mechanics and their family members. These publications were part of a strategy of corporate defense lawyers, approaching and generously supporting the scientist-authors, most of whom had no previous publications on asbestos. These publications were created to provide evidence that mechanics’ asbestos exposures do not cause asbestos diseases. They were to be published by the best scientists money could buy.

Scientists commenting on this EPA proposal should be required to disclose if they received payments from interested parties to write comments to EPA. I have not.

#### IV. Attack on the Gold Book: The Lawyers

The law firm that petitioned EPA to withdraw the Gold Book in August of 2003, Morgan Lewis & Bockius, was never prevailed upon by EPA to disclose the identities of its clients, and no such disclosure was made to press and Congressional inquiries, either. However, I have previously provided to the EPA docket on the Gold Book the article from *Corporate Counsel* magazine, Nov. 2004, entitled "Who Represents America's Biggest Companies?" Here, it was recorded that Honeywell relied on Morgan Lewis & Bockius as one of its primary outside law firms. Honeywell (successor to Bendix) and the Big 3 auto makers are the leading defendants in asbestos brake personal injury cases now pending in the courts.

Morgan Lewis & Bockius also represented General Motors at the time of the request to EPA to withdraw the Gold Book and probably still does. More recently, when I met the author of that request (Dino Privitera) at a deposition in which he was representing another defendant corporation in asbestos litigation, I showed him the section in my book where this Gold Book attack was discussed. His reaction was to ask me how I knew about General Motors.

#### V. Conclusion

This project is a laudable effort to update the warnings to people doing brake and clutch repair, so these people can understand the asbestos hazards and take steps to minimize them. As EPA realizes, the time when such a public health and environmental program needed to be justified has long passed.

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