

## ASBESTOS RISK POLITICS

Dear Subscriber,

How would your employees react if your safety department wrote two separate risk assessment communications on the same hazardous substance — published about 30 months apart — that differed noticeably in tone and sense of urgency, and that drew on different research sources?

How much head-scratching would be going on?

This is the story now playing out at OSHA, centering on asbestos risks to auto mechanics. And in Washington, where every move is political and everyone is suspected of hiding an agenda in their back-pocket, there's a whole lot more than head-scratching going on:

- OSHA has been accused by one activist of borderline "criminal negligence" for delaying publication of a risk alert bulletin.
- A 32-year agency veteran, author of the bulletin finally released this summer, has been bullied and turned into a scapegoat, according to a union chief.
- A former OSHA administrator, a career industrial hygienist, has been flamed on a blog as an embarrassment to the entire industrial hygiene profession for allegedly trying to changing the bulletin.
- The current OSHA head comes off as clueless about the current use of asbestos in a Congressional hearing and is sharply rebuked by a United States senator.

In this edition of *ISHN's* ezine, we examine asbestos risk communication politics. The story illustrates the challenge of communicating risk information when the topic is highly emotional, highly controversial, and mired in litigation.

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### RISK COMMUNICATION #1 (2004)

At the core of the current commotion — the subject of newspapers articles and blog rants — are two documents prepared by the agency on the subject of asbestos exposure risks, specifically risks faced by auto mechanics working on brake and clutch repair jobs.

The first document takes the form of a letter drafted by agency staffers, signed by then-OSHA chief John Henshaw, and sent to U.S. Senator Patty Murray (D-Wash.) on February 10, 2004. The letter is available at — [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATION&p\\_id=24758](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATION&p_id=24758)

Sen. Murray, who wants to ban all asbestos imports, had asked OSHA (and EPA) for their most current information on the risks from asbestos exposure faced by mechanics working on brake maintenance.

(Car and truck manufacturers claim they stopped using asbestos in brakes in the 1990s, according to a November 20, 2006 article in *The Baltimore Sun*. But the paper reports that the U.S. is one of the few industrialized nations that hasn't banned the use or

importation of most asbestos products, and imports of brakes with asbestos increased 83 percent in the past decade. In 2000, the *Seattle Post-Intelligencer* published an investigative series that documented high levels of asbestos being released as mechanics worked on brakes in garages in seven U.S. cities.)

In its February 2004 response to Sen. Murray's inquiry, OSHA explained that much of its current information on the risks from asbestos exposure faced by auto mechanics comes from studies conducted by NIOSH.

"The NIOSH studies (OSHA cited 13) indicate that brake mechanics' exposures to asbestos from brakes at various facilities... have characteristically been below the currently applicable OSHA permissible exposure limits for asbestos," the letter stated.

The letter to Sen. Murray also noted a 2003 article — "An Evaluation of the Historical Exposures of Mechanics to Asbestos in Brake Dust" by Dennis Paustenbach. OSHA said data from this analysis "indicate that the exposures to brake mechanics have typically been below current OSHA asbestos PELs."

Paustenbach runs two consulting firms that have been hired by automakers to provide expert testimony in asbestos litigation, according to the November 20 report in *The Baltimore Sun*.

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## RISK COMMUNICATION #2 (2006)

Flash forward to the summer of 2006.

In late July, John Henshaw, now a private consultant, receives his daily Google Alert on OSHA issues and is surprised to discover his former agency has published a Safety and Health Information Bulletin (SHIB) to inform mechanics of the precautions that must be taken when working with automotive brakes and clutches containing asbestos.

"I didn't know the agency was working on an asbestos SHIB," Henshaw told *ISHN*. "I thought the issue was put to bed after the Murray letter."

The bulletin, "Asbestos - Automotive Brake and Clutch Repair Work" (SHIB 07-26-2006) can be accessed at — <http://www.osha.gov/dts/shib/shib072606.html#ast>.

Henshaw says he was startled by the tone of the bulletin, which is noticeably more urgent than Henshaw's 2004 letter. Henshaw simply calls the two documents "different."

States the July, 2006 OSHA bulletin: "Although the use of asbestos in friction products is declining annually, it remains a substantial source of potential exposure. In addition, there is still potential exposure to asbestos contained in automotive brakes and clutches on older vehicles in need of service. Exposure to asbestos, if not properly controlled can cause mesothelioma, lung cancer, and asbestosis.

"Mechanics should assume that all brakes have asbestos-type shoes. Worn non-asbestos-type brake shoes cannot be readily distinguished from asbestos type shoes," the bulletin warns.

The July bulletin cites one reference, "Asbestos in Brakes Exposure and Risk of Disease," by Richard A. Lemen, Ph.D. It makes no mention of the studies cited in OSHA's 2004 letter to Sen. Murray.

"It's appropriate for the agency to change its views after I left," Henshaw told *ISHN*. "But they should tell the public how they got there."

Risk communication expert Peter Sandman told *ISHN*: "When a conclusion or recommendation is controversial, you should say so. Review the evidence in both directions, and explain why you come down on the side you're on."

Henshaw said he was immediately concerned by the lack of consistency between the 2004 letter and the 2006 bulletin, calling it a credibility issue for OSHA. There was no "bridge" between the two, he said, no reference to the earlier data.

"I was taken aback. How can you have a different tone coming from the agency since I left?"

Henshaw was also concerned by the bulletin's reliance on a single research source. The author of that research, Richard A. Lemen, Ph.D., sits on the science advisory board of the Asbestos Disease Awareness Organization (ADAO), which bills itself as "the voice of the victim."

In 2005, Lemen wrote an article for the ADAO publication, *Reflections*, titled, "Asbestos Still Kills and Disables Countless Workers, Consumers, and Unsuspecting Bystanders."

In the article, Lemen describes "an epidemic of asbestos-related diseases in the United States" and writes: "It is incomprehensible that (asbestos) is still permitted in commercial products meant for general consumer use, such as brakes." His article byline reads: "Dr. Lemen has testified in asbestos litigation on behalf of asbestos victims since his retirement from the U.S. Government. (Lemen served as Assistant Surgeon General of the U.S. and Deputy Director of NIOSH.)"

Henshaw contends the asbestos brake bulletin needs more "balance," more references to studies done in recent years, and "bridging" between the SHIB and the 2004 Murray letter.

"It's a major quality issue," he said. "A document like this needs more supporting references, a bridge to the Murray letter and balance to be credible."

On the subject of balance, risk communication expert Sandman explained: "It seems the earlier, more reassuring communication from OSHA apparently neglected to say some experts think the risk is serious, while the later, more alarming communication neglected to say some experts, including those who prepared the earlier OSHA statement, think it's not so serious."

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## THE MEDIA WEIGHS IN

Former OSHA chief John Henshaw made news, and drew the wrath of Internet bloggers, when *The Baltimore Sun* reported November 20 that he had called August 15 for the agency to make changes to the bulletin. According to the article, Henshaw worked with two consulting firms run by Dennis Paustenbach that had been paid more than \$23

million since 2001 by Ford, General Motors and Daimler-Chrysler to help fight asbestos lawsuits brought against them by former workers.

Henshaw told *ISHN* he never worked directly for either firm, Exponent and ChemRisk, He said he did partner with ChemRisk on several projects, but none relating to the Big Three automakers or asbestos.

"I was not representing any client when I talked to OSHA," he said. Henshaw said he does have a friction products client currently involved in asbestos litigation, but he adamantly asserted the client never requested, "never once asked or even suggested" that he approach OSHA about the bulletin.

"I approached OSHA because as a private citizen I was concerned about the inconsistency with the 2004 letter and the quality of the bulletin document, using only one reference," he said. "I did not want the warning changed. I'm in favor of warning workers, especially if they might be unaware of the presence of asbestos in brakes and clutch products.

"I suggested to OSHA that the bulletin be pulled off the web site until it included more data references." Henshaw says he was concerned about the attention the SHIB would get, and the impact on being able to issue future bulletins without charges of backdoor rulemaking.

The *Baltimore Sun* reported on November 20 that David Ippolito, an official in OSHA's Directorate of Science, Technology, and Medicine, told the OSHA scientist who wrote the bulletin, 32-year veteran Ira Wainless, that he would be suspended without pay for ten days if changes weren't made.

The suspension notice faulted Wainless for failing to have adequate scientific documentation to support the claim of asbestos' danger. Wainless refused, reportedly citing dozens of studies showing his assessment of the medical risk to mechanics was solid, according to *The Baltimore Sun*.

Henshaw said he had no idea of the personnel issues surrounding the bulletin. But he added, "If there were dozens of studies, then they should have been cited for the public to see."

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## HIGH STAKES

Asbestos risk assessments represent arguably the most high-profile and longest-running controversy in workplace safety and health.

"Asbestos causes cancer, whether it is pulled out of a mountain, scraped off a steam pipe or shed from a brake shoe," said a physician in the November 20 *Baltimore Sun* report.

"Changing brakes doesn't make you sick," wrote a commentator on The Huffington Post blog. "Dozens of analytic epidemiological studies by dozens of unrelated researchers have proven this. Why not? Not enough of a dose."

Amid this polarized debate, in the glare of asbestos litigation and politics, obscure OSHA "letters of interpretation," SHIBs, NIOSH studies and research by authors working as expert witnesses take on magnified meaning:

- Wainless's union boss has blasted OSHA for turning on one of its own, making Wainless a "whipping boy" for industry lobbyists.
- Current OSHA chief Edwin Foulke is licking his wounds after being attacked by Sen. Murray at his January 31, 2006 confirmation hearing for stating he wasn't aware that asbestos products were used anymore in the United States.
- Sen. Patty Murray's office is mulling an investigation, according to *Inside OSHA*.
- Two days after *The Baltimore Sun* story was published, the New York Supreme Court ordered Daimler-Chrysler to pay \$20 million to a 73-year-old former brake repairman who lost his right lung to a cancer linked to asbestos, and was diagnosed with mesothelioma two years ago.
- Honeywell Consumer Products Group, which purchased auto-parts maker Bendix, faces more than 47,000 asbestos cases related to injuries caused by exposure to asbestos friction materials, according to the web site mesothelioma411.
- In the past 30 years, \$70 billion dollars have been spent on asbestos litigation; more than 70 companies have gone into bankruptcy; and more than 8,000 companies have been named as defendants, according to a March 6 article in *The New Yorker* magazine.
- Asbestos-related claims could quadruple, pushing costs past \$200 billion, according to a study by the RAND Institute for Civil Justice. By 2002, 600,000 asbestos-related lawsuits had been filed; another 500,000 to 2.4 million similar claims could be on the way.
- Sixty percent of all the money spent on litigation has gone to attorneys, according to the article.

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## OSHA RESPONDS

"This is an emotionally-charged issue with billions of dollars at stake," explained Henshaw. "OSHA needs to make sure they do it right."

On December 4, a Department of Labor spokesman responded to *ISHN* questions, stating in an email: "The July 2006 Safety and Health Information Bulletin (SHIB) and the 2004 letter to Senator Murray are two different documents that were created for two different purposes. The 2004 letter was written to answer three specific questions posed to OSHA by Senator Murray.

"Those questions focused on asbestos exposure faced by auto mechanics working on brake maintenance, imported brake parts containing asbestos, and monitoring the risk of asbestos exposures.

"The purpose of the SHIB is to provide employee and employers information on how to ameliorate potential exposure to asbestos."

DOL did not respond to *ISHN's* questions regarding why the July 2006 SHIB made no reference to the 2004 letter to Sen. Murray, or the NIOSH or Paustenbach studies cited in the letter indicating mechanic exposures are typically under the PEL; and why the SHIB cited only a single source.

This much is clear: When "billions of dollars are at stake," attempts at risk communication become politicized, scandalized, skewered and confused. Attorneys, lobbyists, claimants and expert witnesses bag the billions, and workers still facing exposures are left scratching their heads.