Personal, Organizational, and Scientific Loyalty
Is “Government Scientist” a Contradiction in Terms?

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OCCUPATIONAL SAFETY

THE ‘UNRECOGNIZED EPIDEMIC’

Beryllium can be toxic to the workers who handle it. Where has OSHA been?

Adam Finkel never planned on becoming a whistleblower. But after he told a trade reporter two and half years ago that his agency, the Occupational Safety & Health Administration, was failing to protect its own inspectors from a workplace danger, Finkel was attacked and demoted, he says—a charge OSHA disputes. So he filed a whistleblower complaint. Now, he’s gaining a certain measure of vindication.

The settlement of his case brought Finkel an undisclosed lump sum and keeps him on OSHA’s payroll, though he says he does not speak for the agency. More importantly, the health tests that Finkel charged were being denied to OSHA’s inspectors—the men and women who check American workplaces for a range of hazards—finally have been administered. And the results are disturbing: In late March, OSHA disclosed that 13 of 271 inspectors tested have been “sensitized” to the toxic metal beryllium, putting them at risk for a potentially fatal lung disease.

Since beryllium is used in an increasing number of products, from cell phones and computers to cars and golf clubs, the results have broader implications. If OSHA’s own inspectors, who make brief, infrequent visits to plants, are breathing in worrisome amounts of beryllium, what about tens of thousands of workers who toil with it daily? There’s overwhelming evidence, Finkel and beryllium experts say, that the current half-century-old standard for beryllium exposure is woefully inadequate. Yet OSHA has failed to tighten it. “I think OSHA is really just abdicating its responsibility,” says epidemiologist David M. Michaels of George Washington University, and a former Secretary of the Energy Dept.

Not so, agency officials retort. “The agency has never stopped working on beryllium, but the process [of issuing a new standard] is difficult and cumbersome,” says one top official. The agency also denies it has been lax in providing tests for its own workers. “I don’t think people really understand how involved and how complex it is to set up a program like this,” says another top official.

What is clear, however, is that concern is growing. There is an “unrecognized epidemic of chronic beryllium disease,” says one of the nation’s leading experts, Dr. Lee Newman of the National Jewish Medical & Research Center in Denver, which offers testing and treats people with the disease. “We know we are on the tip of an iceberg of the number of industries that realize they have a problem.”

A SICKENING STANDARD

In some ways, beryllium is a miracle metal—one-third the weight of aluminum yet six times stiffer than steel, and a free conductor of electricity. It’s a vital ingredient in atom bombs. But the dust is dangerous for people working with the metal. “Ones for ounces, it is more toxic than plutonium,” says Newman. A few milligrams of a gram can trigger a massive attack by the immune system—which in turn can fatally damage lungs and other organs. Even smaller amounts can sensitize the immune system, setting the stage for disease. In one recent study, 31% of sensitized people developed chronic beryllium disease in an average of less than four years.

After bomb plant workers began dying of lung disease in the 1940s, two health officials hastily calculated an exposure limit for beryllium. Still the official standard, it limits workers’ exposure to 2 milligrams of a gram of beryllium dust per cubic meter of air, averaged over eight hours. The standard keeps workers from dying after a few days or weeks on the job, but doesn’t protect everyone against the chronic disease. “We know people are getting sick at the current standard,” says Michaels.

That’s why the Energy Dept. started a program in the 1990s to test thousands of employees in its weapon factories, uncovering hundreds of cases of disease. It also tightened controls on beryllium exposure. Meanwhile, the American Conference of Governmental Industrial Hygienists issued a draft report this year recommending that the limit be cut to one hundredth of its current value.

Even the nation’s leading producer of

Unlike many whistleblowers, Finkel has done well, snaring not only the sizable financial settlement but also posts as professor at the University of Medicine & Dentistry of New Jersey and visiting professor at Princeton University. “Some days I feel like the character in The Shawshank Redemption, who crawled through a river of s--- and came out clean on the other side,” he says.
14 “Whistleblower” Statutes Administered by OSHA

Section 11(c) of the Occupational Safety and Health Act of 1970 (OSHA)
The Surface Transportation Assistance Act of 1982 (STAA)
The Asbestos Hazard Emergency Response Act of 1986 (AHERA)
The International Safety Container Act of 1977 (ISCA)
The Safe Drinking Water Act of 1974 (SDWA)
The Federal Water Pollution Control Act of 1972 (FWPCA)
The Toxic Substances Control Act of 1976 (TSCA)
The Solid Waste Disposal Act of 1976 (SWDA)
The Clean Air Act of 1977 (CAA)
The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)
The Energy Reorganization Act of 1978 (ERA)
The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21)
Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002 (CCFA) (Sarbanes-Oxley Act)
Section 6 of the Pipeline Safety Improvement Act of 2002 (PSIA)
Excerpts from e-mails among OSHA’s Director of Administrative Programs and his staff, early September 2003 (note: e-mails provided to Finkel during discovery phase of litigation)

“[Finkel is] still communicating with his friends ET, Uncle Martin, and Mork,” and that “at least he says all is forgiven and he’s sorry for trying to blow us up, even if we didn’t listen to him when we should have.”

“Hardball is the name of the game… I like it”

“I’d settle for a round trip ticket to Denver and a working weapon”
The "Weld it Yourself" Defense:

"Appellant has submitted a statement arguing why he believes that the record discloses that he had a reasonable belief that his disclosure concerned a substantial and specific danger to public health or safety. He has argued at length that the threat was not negligible, remote, or ill-defined. But to truly determine what the Appellant’s belief was, one must examine his actions, not his jurisdictional statement. *Faced with what he claims to believe was a serious and substantial threat to the health and safety of others, Appellant took no action to protect those individuals.*"

--from Agency’s Response to Appellant’s Memorandum to Establish Jurisdiction (Finkel v. DOL), Howard Radzely, *et al.*, November 17, 2003 (emphasis added).
"Your figure of 500 inspectors conflicts with the printout, which states that a total of 492 inspectors nationwide were "involved" in a total of 553 inspections where beryllium was found, … whether they conducted sampling or were on-site during the inspection… Thus, your nationwide estimate of 500 inspectors who actually performed sampling exceeds the agency’s total number of inspectors involved in those inspections in any capacity."

-- Leonard M. Dribinsky, Associate Special Counsel
(letter to AMF 1/16/04)
"Your assertions regarding the likelihood of sensitization among OSHA inspectors are based on assumptions carried over from research done on different populations of workers."

-- Jennifer Pennington, OSC attorney
(letter to AMF Nov. 25, 2003)

"Indeed, you advised us that you do not know of a single instance where an OSHA inspector—current or former—has been diagnosed with CBD or has been determined to be sensitized to beryllium."

-- Ibid.
To the Editor *(New York Times)*:

Re "Truths Worth Telling," by Daniel Ellsberg (Op-Ed, Sept. 27):

Let’s stop describing public officials who condone or conceal wrongful decisions or actions as being loyal to their superiors. They are not loyal; they are obedient. Loyalty is given freely to those who deserve it. Obedience is given to those who, in their hierarchical roles, demand it.

Compromised subordinates face a tough choice. Most remain silent in fear of the end of their professional lives. But that silence betokens obedience—submission to authority— not loyalty.

Tom Gorman
Newton, Mass., Sept. 28, 2004
We have repeatedly asked that you take action to address this intolerable situation and restore integrity and leadership to OSC. At this point, continued inaction on your part can only lead the public to conclude that you prefer a discredited and toothless Office of Special Counsel to an effective one. Accordingly, for one more time, my clients request that you remove Mr. Bloch from his position and provide relief to the OSC employees who were injured by the illegal and pretextual reorganization that Mr. Bloch implemented in 2005.

“It is essential to the security of the nation and the very lives of the people... [that employees do not become] a parade of yes-men for administration policies.”

Sen. R.M. Nixon (R-Calif.), April 26, 1951 (upon introducing his bill S. 1390)

“The demotion, dismissal, or retirement (other than voluntary or for physical disability) of such witness within **one year** after attending or testifying in such inquiry or investigation, unless such testimony discloses misfeasance, malfeasance, dereliction of duty, or past reprehensible conduct on the part of such witness, shall be considered prima facie evidence that such witness was demoted, dismissed, or retired because of such attendance or such testimony.”
Once to every man and nation, comes the moment to decide,
In the strife of truth with falsehood, for the good or evil side;
Some great cause, some great decision, offering each
the bloom or blight,
And the choice goes by forever, ’twixt that darkness and that light.

James Russell Lowell (1845), “The Present Crisis”
--a.k.a. “Once to Every Man and Nation,” Episcopal Hymnal #519