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Diesel report's publication delayed as industry demands to see documents first

By Jim Morris, Published: February 5, 2012

Publication of a landmark government study probing whether diesel engine exhaust causes lung cancer in miners — already 20 years in the making — has been delayed by industry and congressional insistence on seeing study data and documents before the public does.

A federal judge has affirmed the right of an industry group and a House committee to review the materials and has held the Department of Health and Human Services in contempt for not producing all of them.

The much-anticipated study of 12,000 miners exposed to diesel fumes carries broad implications. If the research suggests a strong link between the fumes and cancer, regulation and litigation could ramp up — with consequences not only for underground mining but also for industries such as trucking, rail and shipping.

Exposure isn't limited to workers; people who live near ports, rail yards and highways also are subjected to diesel exhaust.

But for the time being, at least, the results of the \$11.5 million investigation by the National Cancer Institute and the National Institute for Occupational Safety and Health are under lock and key.

Richard Clapp, emeritus professor of environmental health at Boston University, is among several public health experts who called the situation unusual.

"I've never heard of an industry group demanding manuscripts from a government agency before a study has been accepted for publication," Clapp said.

Andrea Hricko, a professor of clinical preventive medicine at the University of Southern California who has followed the dispute, said a statistically powerful government study could have far-reaching impact.

"They feel compelled to challenge it because they don't want more regulations on mining equipment and locomotives and trucks," she said of the mining industry.

Henry Chajet, a lawyer with D.C.-based firm Patton Boggs who represents the Mining Awareness Resource Group (MARG) declined to comment for this report. But in a recent court filing, Chajet and other lawyers for the group wrote that publication of the diesel study, along with government plans to notify its subjects of any health risks, is “likely to spawn public concerns, regulatory actions, and lawsuits, likely based on inaccurate and faulty Study reports.”

Republicans on the House Committee on Education and the Workforce have expressed similar worries. But the committee’s ranking Democrat is skeptical.

“It’s alarming that special interests appear to be trying to derail independent, peer-reviewed science,” Rep. George Miller (D-Calif.) said in an e-mailed statement to the Center for Public Integrity. “Politics and profits should never be allowed to meddle with the scientific process, especially when health and safety are at stake.”

The panel’s chairman said there is no such agenda. “The committee’s ongoing interest is to ensure the results of this research are accurate and meet the highest standards of scientific review,” Rep. John Kline (R-Minn.) said in a statement.

Long fight over records

The legal and political tangling over the diesel study began in the mid-1990s, with countless twists and turns since.

Last August, MARG won a contempt order against HHS, parent of the two institutes that conducted the study. The group alleged that the agency had deliberately withheld materials from the House committee. U.S. District Judge Richard Haik, of Lafayette, La., who had earlier granted the right to pre-publication review of the research to the committee and mining companies and their scientists, issued the order.

The Justice Department appealed the contempt order, which required HHS to hand over “all non-confidential documents, data, draft reports, publications, and draft results” associated with the study and to pay the plaintiffs’ court costs and attorneys’ fees. The order is stayed while the New Orleans-based U.S. Court of Appeals for the 5th Circuit ponders the matter; a decision is expected soon.

Government researchers have written seven papers on the study, which is noteworthy not only for its large number of subjects but also because of its controls for factors such as cigarette smoking. Four of the papers — describing only the study’s methodology — were published in the *Annals of Occupational Hygiene* in 2010. A fifth, also dealing with technical matters, has been accepted for publication by the same journal. Papers six and seven, which detail the study’s results, have been accepted by the *Journal of the National Cancer Institute*.

None of the last three papers can see the light of day until the legal dispute is resolved.

Worst case for the government: Haik's contempt order stands and publication of the papers is postponed indefinitely while the House committee and MARG comb through mountains of documents and data. Best case: The order is overturned and the papers are published as soon as March.

Health community awaits

In an affidavit filed with the 5th Circuit, Robert Hoover, director of epidemiology and biostatistics at the National Cancer Institute, said it would be "unconscionable that there be further delay in publication" and noted that "several major organizations focused on public health are awaiting the results."

Among them is the International Agency for Research on Cancer (IARC), an arm of the World Health Organization, which considers diesel exhaust "probably carcinogenic to humans" and is scheduled to revisit the science in June. The HHS study could play a major role in the IARC reassessment — assuming the findings are published by then.

Clapp, of Boston University, said the mining industry has an incentive to keep any bad news about diesel under wraps. "When IARC designates something a known human carcinogen, that changes the balance in these liability cases," he said. "It makes it harder for industry to win."

There have long been suspicions about diesel's cancer-causing properties. A study published in *Environmental Health Perspectives* in 2004, for example, found elevated lung cancer death rates among U.S. railroad workers. "These results indicate that the association between diesel exhaust exposure and lung cancer is real," the authors wrote.

John Froines, a professor of toxicology at UCLA and Hricko's husband, said that more than 90 percent of the particles emitted in diesel exhaust are ultrafine — "smaller than a virus." These diesel particles, coated with toxic chemicals and metals, can penetrate cells and cause cancer and other diseases, said Froines, who also is the director of the Southern California Particle Center, a government-funded research institute. The exhaust also contains vapors with "significant toxicity," he said.

Industry experts say the evidence against diesel is far from conclusive. A scientist and a doctor employed by Navistar, a manufacturer of diesel engines, wrote in a letter to the *American Journal of Respiratory and Critical Care Medicine* last year that "available data do not quantitatively link occupational [diesel] exposure to increases in lung cancer."

Early missteps in study

The HHS study, conceived in 1992, was supposed to help settle the debate. But some early missteps by the government — using what MARG calls three "illegal" advisory groups to design the study, and filing one group's charter with the wrong House committee — opened the door for a legal challenge by the mining industry in 1996.

The House Education and Workforce Committee joined the dispute at the behest of its Republican chairman in 1999, and Haik eventually granted the committee and MARG 90 days to review study data and documents before they could be publicly released.

HHS maintained last year that it had been “cooperative and responsive” by providing all the requested information. Two Republican leaders of the committee disagreed, as did the judge, who held the agency in contempt. In its appeal, the Justice Department said it could take HHS six months to a year to collect and vet additional materials the committee and MARG are demanding — “a burdensome undertaking that will commandeer scarce resources.”

Jim Morris is a senior reporter at the Center for Public Integrity, a nonprofit, nonpartisan organization dedicated to original investigative journalism on issues of public concern.

Further information:

Landmark diesel exhaust study stalled amid industry and congressional objections

by Jim Morris February 6, 2012

<http://www.iwatchnews.org/2012/02/06/8088/landmark-diesel-exhaust-stalled-amid-industry-and-congressional-objections>

August 19, 2011 Contempt Order Civil Number 96-2430

by US District Court Judge Richard T. Haik

<https://www.documentcloud.org/documents/289170-2011-contempt-order.html>