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PLAINTIFF'S EXHIBIT

UC-2818

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Current Report

Litigation

COURT REVIEW OF FINAL ASBESTOS RULES SOUGHT IN PETITIONS BY INDUSTRY, LABOR

Two departments of the AFL-CIO and an asbestos industry association petitioned federal courts for review of the final asbestos standards for general industry and construction, which establish an exposure level 10 times lower than the current permissible level set in 1976.

The labor groups claimed the new permissible exposure limit is not stringent enough, and the industry group argued that monitoring at the new, lower level would be difficult.

The new standards — one covering general industry, including maritime, and the other covering construction — were published June 20 and are scheduled to become effective July 21. Both rules set an identical permissible exposure limit of 0.2 fibers per cubic centimeter of air and an action level of 0.1 f/cc that triggers worker training and medical monitoring requirements (51 FR 22612). The standards do not establish a short-term exposure limit (Current Report, June 19, p. 51).

Labor Groups

The Industrial Union Department of the AFL-CIO filed a petition for review (No. 86-1360) of the general industry standard in the U.S. Court of Appeals for the District of Columbia Circuit. George Cohen, the attorney representing the department, told BNA that "the AFL-CIO is concerned that the permissible exposure limit is higher than it should be and that there is no short term exposure limit in the standard."

The Building and Construction Trades Department of the AFL-CIO, a group of 15 international unions representing 4.1 million construction workers, filed a petition for review of the construction standard in the U.S. Court of Appeals for the District of Columbia Circuit.

Its petition in *Building and Construction Trades Department v. Brock* (No. 86-1359) was filed June 17, the date that the asbestos standard officially was filed at the *Federal Register*, according to Elihu Leifer, the attorney representing the construction group. Leifer told BNA that the petition for review does not ask the court to stay enforcement of the asbestos standard. Filing a petition for review of an agency standard rather than a traditional complaint is "the normal avenue of proceeding for relief if an affected party is not satisfied" with the standard, Leifer said.

Industry Group

The Asbestos Information Association, a group of approximately 50 companies that mine asbestos or market asbestos products, filed two petitions for review June 17 with the U.S. Court of Appeals for the Fifth Circuit in New Orleans, according to association attorney Tim Hardy. The petitions in *Asbestos Information Association v. OSHA* (Nos. 86-4422 and 86-4423) challenge both the general industry standard and the construction standard. The petitions were filed in New Orleans because "the Fifth Circuit had previously addressed the same issue," Hardy told BNA.

In 1984 that court declared both an emergency temporary asbestos standard, concluding that the data failed to

show a need for the emergency temporary standard's lowered permissible exposure level (Current Report, March 15, 1984, p. 1123; 11 OSHC 1817).

Hardy said the industry group is seeking review of the standard because it has "questions about the feasibility, particularly of monitoring, at the new lower permissible exposure limit."

Administration

RADER NOMINATION TO OSHRC DEFEATED IN CLOSE VOTE BY SENATE LABOR COMMITTEE

In the wake of his formal nomination's defeat by the Senate Labor and Human Resources Committee June 18, Robert E. Rader Jr. said he does not expect to complete his temporary appointment to the Occupational Safety and Health Review Commission.

The defeat came after a motion by Chairman Orrin G. Hatch (R-Utah) to move the nomination from the committee to the full Senate failed by an 8-8 vote. A similar motion by the chairman to move the nomination without the panel's recommendation failed by the same margin.

Rader told BNA that he may ask President Reagan to withdraw his nomination, and said he does not expect to serve out the remainder of his current recess appointment, which began in August 1985. The appointment, a temporary action which did not require Senate approval, is scheduled to expire in October, at the end of the current session of Congress.

In a statement issued after the vote, Sen. Edward M. Kennedy (D-Mass), the committee's ranking minority member, called Rader's defeat "a victory for the safety of workers." As an attorney in private practice, Rader "advised firms to ignore valid [Occupational Safety and Health Administration] search warrants, and to disregard contempt citations," Kennedy charged.

Key Vote by Weicker

As observers had expected, the key vote on the nomination was cast by Sen. Lowell P. Weicker Jr. (R-Conn), who joined with Kennedy and the other six Democratic members of the committee to defeat both of Hatch's motions.

The Democrats had expressed strong opposition to the nomination in hearings earlier this year, charging that Rader, as an attorney in private practice, overemphasized procedural protections for employers facing inspection by OSHA (Current Report, March 20, p. 1045).

Prior to voting, Sen. Howard M. Metzenbaum (D-Ohio) described the choice of Rader as a commission member as "one of those appointments we wonder how they ever got on the list in the first place." Rader's past performance in private practice has demonstrated that he cannot be "fair-minded and unbiased," the senator asserted.

Sen. Paul Simon (D-Ill) pointed to Rader's voting record as a recess appointee as highlighting concerns the Democrats had about Rader's qualifications to serve as a commissioner. In 11 cases in which Rader participated, he upheld the secretary of labor's position in only one case, and only on one count, Simon said.