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Permanent Benzene Standard Struck Down

A federal appeals court has overturned the Occupational Safety and Health Administration's (OSHA) permanent standard for limiting exposure to benzene. The U.S. Court of Appeals for the Fifth Circuit late yesterday set aside OSHA regulations which would have limited employee exposure to benzene to one part per million (ppm) over an eight-hour period. In addition, the regulations would have required numerous monitoring, labelling, health surveillance, medical record, and work practice controls to be placed into effect.

The court said OSHA had failed to demonstrate that its regulations were reasonably necessary to provide for safe or healthful employment. It found that OSHA was "unable to justify a finding that the benefits to be realized from the standard bear a reasonable relationship to its one-half billion dollar price tag." In this ruling, the court agreed with the arguments NPRA and others in the industry have been raising ever since OSHA first proposed a stricter benzene standard.

OSHA's initial attempt at reducing the permissible benzene exposure limit from 10 ppm to 1 ppm came in May 1977. OSHA issued an Emergency Temporary Standard which never went into effect due to a successful judicial challenge by NPRA and others. Subsequently, OSHA published a proposed permanent standard on May 27, 1977. Public hearings followed, and on February 3, 1978, the permanent benzene standard was announced with an effective date of March 13, 1978. This led NPRA back to court, and a temporary stay of the new standard was issued on the day the regulations would have gone into effect. A month later, the Fifth Circuit ordered the temporary stay to be continued until a final review on the merits of the NPRA suit had occurred. Shortly thereafter, OSHA amended its benzene standard to exempt workplaces where exposure was from liquid mixtures containing 0.1 percent or less benzene by volume.

Yesterday's decision also dealt with the volumetric restriction on liquids. The court found that OSHA's restrictions on exposure to liquids containing benzene were not supportable under a cost/benefit analysis. The court noted that OSHA's reasoning here had not been "based on the best available evidence or the latest available scientific data in the field." Obviously, this plus the other aspects of the decision represent a tremendous setback in OSHA's efforts to establish a comprehensive carcinogen program. Indications are that the agency is seriously considering either asking the Court of Appeals for a rehearing or appealing to the Supreme Court.

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