

EPA to conduct a study.

The bill also authorized the government to allocate chlorine so that public water authorities have enough to purify drinking water.

The bill is expected to reach the House floor sometime in July. A possible floor fight over the question of state vs. federal rights may emerge.

Note: No action yet on the compromise legislation authorizing continuance of comprehensive health planning programs. A clean bill is being drafted by the House Commerce subcommittee staff for possible consideration sometime this month.

PLAINTIFF'S EXHIBIT

USX-1113

APPEALS COURT DECISION GIVES INTERESTING INSIGHT ON HEALTH PROOF:

The decision of the three-judge U.S. Court of Appeals panel which overturned the lower court decision ordering Reserve Mining to shut down includes some interesting philosophy on proof of health effects, which will have far-reaching implications in future cases, and so we thought we'd share the court's opinion.

After reviewing the pros and cons of the medical evidence, as presented to Judge Lord in the District Court in Duluth by Drs. Brown of Mayo and Selikoff of Mount Sinai, the appeals court said:

"We think Doctors Brown and Selikoff share a common medical concern, but are essentially in agreement that the discharges here simply have not been proven to be a demonstrable hazard.

"Interestingly enough, although Judge Lord does on occasion speak of a substantial health danger, based on the presence of asbestiform in the environment, a careful reading of his initial and supplemental memoranda reveals an acknowledgement, at least in certain instances, that any ill effects are simply beyond proof. This is indicated in the 'negative' findings which Judge Lord sometimes makes. For example, Judge Lord responds to the small number of excess deaths from rectal cancer in the Duluth area by finding:

"We cannot say that the increase seen, although small in number at this time, is not due to ingestion by these persons of asbestos from Reserve's taconite waste."

"Of course, neither can the opposite be said. Perhaps the most revealing statement of all is contained in Judge Lord's initial memorandum:

"The state of the scientific and medical knowledge available in this area is in its early stages and there is insufficient knowledge upon which to base an opinion as to the magnitude of the risks associated with this exposure."

"Considering all of the above, we think one conclusion is evident: although Reserve's discharges represent a possible medical danger, they have not in this case been proven to amount to a health hazard. The discharges may or may not result in detrimental health effects, but, for the present, that is simply unknown. The relevant legal question is thus, what manner of judicial cognizance may be taken of the unknown.

"We do not think that a bare risk of the unknown can amount to proof in this case. Plaintiffs have failed to prove that a demonstrable health hazard exists. This failure, we hasten to add, is not reflective of any weakness which it is within their power to cure, but rather, given the current state of medical and scientific knowledge, plaintiffs' case is based only on medical hypothesis and is simply beyond proof.

"We believe that Judge Lord carried his analysis one step beyond the evidence. Since testimony clearly established that an assessment of the risk was made impossible by the absence of medical knowledge, Judge Lord apparently took the position that all uncertainties should be resolved in favor of health safety. Since the appropriate threshold level for safe toleration of fibers was unknown, the district court tipped the balance in favor of attempting to protect against the unknown and simply assumed that Reserve's discharge presents a health hazard.

"In doing so, he disregarded the tissue studies of his own experts which provided direct evidence to the contrary. If we are correct in our conclusion that evidence does not exist in the record on which to find Reserve's discharges to be unsafe, the district court's determination to resolve all doubts in favor of health safety represents a legislative policy judgment, not a judicial one."

It was this language which EPA cited as constituting "an overly restrictive burden of proof for the Government," and which formed the basis of its request to the Justice Department to appeal the decision to the Supreme Court. Justice, however, respectfully declined to do so pending further action by the company.

DR. SENCER DENIES CDC IS REDUCING RAT, LEAD CONTROL PROGRAMS:

HEW's Center for Disease Control, contrary to rumors, has not reduced the scope of the rat and lead control programs since the demise of the Bureau of Community Environmental Management, insists Dr. David J.