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No Longer Certify Its Talc Product Asbestos-Free

The Circuit Court held that the Review Commission's application of the standards to Bechtel was correct. Though the company's employees performed no construction work, they were responsible for the administration and coordination of the entire construction project. Thus, according to the court, the company was "engaged in construction work" within the meaning of 29 CFR 1910.12(a) of the Act. The court also noted that administration of the construction site's safety program was among the company's managerial duties. Because the company possessed this power to protect its employees it did not come within the *Anning-Johnson* exclusion for those employers at multi-employer construction sites who are unable to exercise any control over the violative conditions.

The undersigned opinion of the court, consisting of Circuit Judges Donald P. Lay, Donald H. Ross, and William H. Webster, will appear in a future Decisions supplement.

Noise

RECORD EXTENDED TO FEBRUARY 28, MAY INCLUDE INTER-INDUSTRY STUDY RESULTS

The Occupational Safety and Health Administration announced January 24 that the public record on the hearing on the economic impact of the workplace noise standard will be reopened for limited comment from January 28 to February 28.

Limited comment should be directed to the post-hearing comments prepared by Bolt Beranek and Newman, Inc., defending the consulting firm's economic analysis report on the cost of the proposed workplace noise standard, according to the OSHA announcement (Current Report, January 20, p. 11078).

OSHA is "not speculating" on just when it will issue a final rule on the noise standard, Acting Assistant Secretary Bert Concklin told OSHR at the January 24 press briefing. Grover Wrenn, director of the OSHA office of health standards, added that, from a legal standpoint, the agency can issue the standard any time after February 28.

Wrenn did not rule out that the extension of time for comments until February 28 may open the door for submission of the results of the Inter-Industry Noise Study. Wrenn said that, while the record officially is reopened only for "limited" comments, the agency would not refuse "any evidence" submitted prior to February 28.

The Inter-Industry Noise Study Steering Committee recently asked outgoing Assistant Secretary Morton Corn to hold the hearing record open until February 20 so that the study's results could be considered in rulemaking. Corn replied January 10 that the agency could not open the post-hearing comment period specifically for that purpose.

Steering Committee Chairman Raymond Yerg told OSHR he does not anticipate any difficulty in meeting a February 28 deadline. If the computer analyses continue at the present rate, the steering committee will know by February 15 whether its data show a clear relationship between hearing impairment and exposure to noise between 82-92 dBA, Yerg said.

The last status report on the study indicated that the final results will involve some 440 experimental noise-exposed subjects and some 256 control group subjects.

Copies of the Bolt Beranek and Newman post-hearing comments are available for inspection and copying from the Technical Data Center (Docket No. OSHA-11A), Room N3620, OSHA, Department of Labor, Third St. and Constitution Ave., N.W., Washington, D.C. 20210.

Asbestos

COMPANY MAY NO LONGER CERTIFY ITS TALC PRODUCTS ASBESTOS-FREE

The Occupational Safety and Health Administration, reversing a position it took more than two years ago, announced January 28 that it has rescinded permission for the R.T. Vanderbilt Company to certify that its talc products were free of asbestos.

The action came in a letter to the Norwalk, Conn., firm from former Assistant Secretary Morton Corn on January 19, Corn's final day in office.

Vanderbilt, one of the top two or three companies mining talc in the country, responded by asking Labor Secretary F. Ray Marshall to cancel Corn's decision, which the company said was based on "totally inconclusive" considerations.

The company had been given permission to use its discretion to certify talc products as asbestos-free in October 1974 by Corn's predecessor, former Assistant Secretary John Stender.

In addition to nullifying Stender's action, Corn sent a memorandum to OSHA regional administrators and area directors canceling Field Information Memorandum #74-92, which was issued November 21, 1974 elaborating on Stender's decision.

Corn directed compliance officers to evaluate fibrous tremolytic talc in accordance with OSHA's sampling data sheet for asbestos and said bulk samples of talc substances should be obtained. If laboratory tests indicate the presence of asbestos fibers in any amount, the caution labeling requirement at 29 CFR 1910.1001(g)(2) should be enforced, the OSHA announcement said.

The Health Research Group accused OSHA of illegally exempting Vanderbilt from the asbestos standard by continuing the policy initiated by Stender. It asked in a December report that "Vanderbilt's special arrangement" be moved.

Reacting to the OSHA announcement, HRG staff associate Peter Greene called it "a disgrace that it took so long and took further medical evidence than OSHA already had."

Greene added that HRG wanted the agency to request from Vanderbilt a list of its talc customers and to notify the customers that the talc contains asbestos. "We think Vanderbilt has the responsibility to give OSHA the list," he said.

Allan Harvey, a Vanderbilt official, said the request to the new Labor Secretary asked for a decision from him within 30 days. At the end of that time the company would have to "conclude that we have exhausted all administrative resources." Harvey said there was a possibility then of seeking "legal remedies."

Vanderbilt has maintained throughout the controversy over its tremolytic talc that the current method used by OSHA and the National Institute for Occupational Safety and Health for determining the presence of asbestos in substances is inadequate and has called for the development of new methodology.

Quoting from the company's letter to Marshall, Harvey said "no medical data by NIOSH can be relevant to wholly mineralogical questions, such as what constitutes an asbestos fiber."

OSHA said the 1974 letter was rescinded on the basis of information received from NIOSH, which has been studying possible health hazards to Vanderbilt employees due to exposure to the company's talcs.

A final report has not been released, but OSHA said the investigation has found significant exposures to airborne dusts, including fibers, among the millers and miners. It also