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THE BENZENE DECISION--A BLOW TO HEALTH AND SAFETY

The Supreme Court recently blocked the implementation of the Occupational Safety and Health Administration's strengthened controls on benzene, a highly toxic chemical used throughout American industry. The Court's decision not only allows industry to continue exposing workers to benzene at levels which scientific studies have shown may be dangerous, but may also prevent the government from issuing tough laws in the future to control cancer-causing chemicals on the job.

The benzene decision was immediately hailed as a victory by the American Petroleum Institute, representing the major oil corporations, and by the U.S. Chamber of Commerce. United Auto Workers President Douglas Fraser, however, termed it "an extraordinary blow to workers" and Oil, Chemical, and Atomic Workers safety director Anthony Mazzochi said the Court was "institutionalizing the body count, telling us we've got to come up with a new bubonic plague before OSHA can do anything."

Danger in the Workplace

Benzene is a common substance in American industry, used in the production of motor fuels, solvents, detergents, pesticides, and other organic chemicals. The standard OSHA proposed would have protected 600,000 workers at more than 150,000 worksites in 20 different industries, most importantly the petroleum, petrochemical and steel industries.

Benzene is known to cause disorders of the central nervous system, blood deficiencies, and possibly chromosomal damage. Even more ominously, it has been linked to leukemia, a malignant cancer of the white blood cells. Under OSHA's proposed standard, exposures to the chemical would have been limited to the lowest level technically feasible, which OSHA defined to be one part of benzene per million parts of air (1 ppm).

The proposed benzene standard was in accord with OSHA's general policy on proven carcinogens, which requires that the exposures be reduced to the lowest feasible level, rather than search for a threshold level of safety. This general policy is directly endangered by the Supreme Court's decision.

The Court majority is clear about the overall priority it wants to accord to workplace health and safety. "The (OSHA) Act implies that, before promulgating any standard, the Secretary (of Labor) must make a finding that the workplaces in question are not safe. But 'safe' is not the equivalent of 'risk-free'."

Shifting the Burden of Proof

The government has traditionally held that employers are legally responsible to provide their employees with safe and healthy workplaces, and hence must prove to OSHA that the chemicals to which their workers are exposed produce no serious danger. Under the benzene decision, however, the government would have to prove to the employers that existing levels of chemical exposure are significantly

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dangerous. In the case of cancer-causing chemicals, this could be a difficult procedure, since scientific tests are often not conclusive, and effects in humans may not appear for many years.

The recent ruling did not tackle the more difficult issue of whether OSHA must explicitly compare the value of those lives expected to be saved under a new health and safety standard with the expected cost of implementing that standard. A lower court had originally blocked the benzene standard for lacking such a cost-benefit analysis.

The Supreme Court did not rule on the cost-benefit analysis issue in the benzene case for technical reasons, but has promised to deal with it directly in an upcoming consideration of OSHA's standard concerning cancer-causing emissions from coke ovens used in the manufacture of steel.

Vehement Dissent

The four Justice minority on the Supreme Court was vehement in its criticism of the majority's decision. It came out strongly in favor of the procedure followed in the issuing of the benzene standard, upholding OSHA's right to maintain a general policy for cancer-causing chemicals that recognizes no thresholds for safety, and denying any necessity for OSHA to compare costs of implementation with expected benefits from a health standard.

The minority wrote that "the threshold finding that the (five Justice) plurality requires is the plurality's own invention. It bears no relationship to the acts or intentions of Congress (in passing the original OSHA Act) and it can only be understood as reflecting the personal views of the plurality as to the proper allocation of resources for safety in the American workplace."

- Jamie Robinson

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