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Action on Smoking and Health, Petitioner v. Occupational Safety and Health Administration, Respondent

No. 89-1656

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

1991 U.S. App. LEXIS 10487; 15 OSHC (BNA) 1030

May 10, 1991, Filed

NOTICE: [*1]

UNPUBLISHED DISPOSITION - NOT TO BE CITED AS PRECEDENT. SEE LOCAL RULE 11(c).

JUDGES: Ruth B. Ginsburg, Silberman, and D. H. Ginsburg, *Circuit Judges*.

OPINION BY: PER CURIAM

OPINION:

ON PETITION FOR REVIEW OF AN ORDER OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

JUDGMENT

The petition was considered on the record from the Occupational Safety and Health Administration and on the briefs and oral arguments of counsel. The court concludes that the issues presented occasion no need for a published opinion. See D.C. Cir. Rule 14(c).

Petitioner challenges the OSHA's decision not to issue an emergency temporary standard banning tobacco smoking in the workplace. The agency is authorized to issue an ETS only if it reasonably determines that "employees are exposed to grave danger" from a toxic substance in the workplace and an ETS is "necessary" to protect employees from that danger. The standard of review for the OSHA's decision not to issue an ETS is narrow. *See In re International Chemical Workers Union*, 830 F.2d 369 (D.C. Cir. 1987). Substantially for the reasons stated in the OSHA's decision letter of September 1, 1989, we believe that the OSHA reasonably determined that it could [*2] not at this time sufficiently quantify the degree of risk associated with workplace exposure to ambient tobacco smoke to justify issuing an ETS. It is therefore

ORDERED and ADJUDGED that the petition for review be denied.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. R. 15(b)(2).