

For Immediate Release

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SCIENTISTS URGE COURT OF APPEALS TO REVERSE SUPERFUND RULING

(*United States v. Vertac Chemical Corp.*)

The Washington Legal Foundation (WLF) filed a brief with the United States Court of Appeals for the Eighth Circuit today on behalf of itself and a group of prominent scientists and organizations urging the court to reverse a district court ruling that upheld the Environmental Protection Agency's (EPA) arbitrary 1980 measure of dioxin's cancer potency factor. EPA's misguided regulation of the chemical has resulted in the unnecessary expenditure of billions of dollars to remediate so-called "Superfund" sites that were not shown to pose hazards to human health.

In *United States v. Vertac Chemical Corp.*, a federal district court in Arkansas upheld EPA's efforts to seek reimbursement of approximately \$100 million in cleanup costs from Hercules, Inc. and Uniroyal Chemical Co. under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), otherwise known as "Superfund," for dioxin that was generated years ago by a third company, Vertac Chemical. In its brief on appeal, WLF argued that EPA's dioxin policy constitutes a rule that should have been subject to notice and comment rulemaking under the Administrative Procedure Act.

WLF's brief also demonstrated that the EPA ignored studies by its own Science Advisory Board and other experts clearly showing that certain levels of dioxin were not harmful. For example, studies show that dioxin, like its chemical cousin tamoxifen, actually reduces breast and liver cancers. WLF's brief also cited to several other treatises and books to demonstrate the folly of EPA's excessive regulation. One such book, "Breaking the Vicious Circle: Towards Effective Risk Regulation" by then-Judge Stephen Breyer, discusses examples of costly regulation by the EPA. In one case, the EPA required the expenditure of \$9.3 million to clean a site that *already* was clean enough for children to eat small amounts of the dirt daily for 70 years without any significant harm. As Judge Breyer pointed out, the site was a swamp where no children lived or played in any event, or were likely to live or play. By ignoring sound science and common sense, WLF argued that EPA's dioxin policy was similarly arbitrary, capricious, contrary to law, and against public policy.

WLF's clients include: **John Doull, Ph.D., M.D.**, Professor Emeritus of Toxicology at the University of Kansas Medical Center who has extensive expertise on dioxin issues and who served as a consultant to the Health Panel of EPA's Science Advisory Board, Dioxin Reassessment Review; **Karl K. Rozman, Ph.D.**, Professor of Pharmacology and Toxicology at the University of Kansas Medical Center who is considered a leading expert on dioxin; **William J. Waddell, M.D.**, Professor and Chair, Emeritus, Department of Pharmacology and Toxicology, School of Medicine, University of Louisville; **K. Roger Hornbrook, Ph.D.**, Professor and Chair of the Department of Pharmaceutical Sciences, College of Pharmacy, at the University of Oklahoma Science Center, who served as a member of the Halogenated Organics Subcommittee of EPA's Science Advisory Board; **Daniel M. Byrd III, Ph.D., D.A.B.T.** (Diplomate, American Board of Toxicology), who is President of Consultants in Toxicology, Risk Assessment and Product Safety, a scientific support firm that helps clients acquire and interpret biomedical data for purposes of product safety and a Senior Science Fellow with Federal Focus, Inc.; **Robert Golden, Ph.D.** (Environmental Toxicology) who is President of ToxLogic which assesses the health related aspects of environmental chemical exposures; and **B. Frank Vincent, Ph.D.**, who is President of the **International Society of Regulatory Toxicology and Pharmacology (ISRTP)**, a professional membership organization whose mission is to ensure that the regulatory policy and process in public health and the environment are driven by objective scientific principles.

In addition to ISRTP, WLF's organizational clients include the **American Council on Science and Health (ACSH)**, a national nonprofit consumer education association, directed and advised by over 200 scientists, health professional, and policy advisors, and the **Allied Education Foundation**, a nonprofit charitable and educational foundation based in Englewood, New Jersey.

The EPA will be filing its brief next month, and the Court of Appeals is expected to hear this case later this year.

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