



**February 12, 2008**

**COURT STRIKES DOWN EPA  
MERCURY EMISSIONS RULES**  
*(New Jersey v. EPA)*

The U.S. Court of Appeals for the District of Columbia Circuit last week granted the petitions of New Jersey and several other states to nullify the Environmental Protection Agency's (EPA) decision not to regulate mercury emissions from power plants under Section 112 of the Clean Air Act (CAA). EPA had found that mercury emissions from utilities do not pose a hazard to public health, and that in any event, any risks to health were adequately addressed by other CAA programs. Nevertheless, the court held that EPA's so-called Delisting Rule and cap-and-trade program were promulgated in a manner that violated the plain language of the statutory provision in question, and thus, no deference was due to the EPA's decision.

The ruling was a setback for WLF, which had argued that government agencies charged with protecting the public's health, including the EPA and the Food and Drug Administration (FDA), should use sound science, rather than junk science, to govern regulatory decisionmaking. News reports that mercury levels found in fish are at dangerous levels have prompted calls to cut mercury emissions by utilities. But as WLF pointed out in its brief, utility mercury emissions have been substantially reduced by 40 percent over the last 10 years, and that the mercury levels found in emissions from utilities are not harmful.

In order to affect human health, mercury, which is found in nature and generated by burning vegetation and fuel combustion, must undergo a complex change into methylmercury, a compound which turns up in low levels in fish. Eating moderate amounts of low-mercury fish from restaurants and grocery stores is not considered harmful to human health. Thus, even if EPA were to order reductions in mercury emissions from utilities by 50 percent, the affect on methylmercury levels in fish would be negligible, but the costs to the industry would be substantial. Moreover, U.S. utilities account for only one percent of total global mercury emissions, with China generating approximately 500 tons of mercury per year compared to 40 tons by all U.S. utilities. Indeed, most mercury deposits in the U.S. come from globally distant sources such as Asia.

WLF's brief was filed with the *pro bono* assistance of Peter Glaser, partner in the Washington, D.C. office of Troutman Sanders LLP, and associate Christine J. Sommer.

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