



For Immediate Release

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WLF URGES COURT TO REJECT CHALLENGE TO EPA'S NEW SOURCE REVIEW REGULATION

(New York, et al., v. EPA)

The Washington Legal Foundation (WLF) filed a brief on November 25, 2005, in the U.S. Court of Appeals for the District of Columbia Circuit opposing attempts by certain states, environmental groups, and U.S. Senators to strike down the Environmental Protection Agency's (EPA) Equipment Replacement Provision (ERP) under the New Source Review (NSR) program. EPA's ERP regulation would require existing manufacturing and power generating facilities to comply with the time-consuming and costly NSR procedures only when the facility undertakes major modifications to the plant as opposed to routine maintenance and repair. Otherwise, if the regulation were to be found invalid, many existing facilities would have to install expensive retrofit technology or shut down, thereby jeopardizing thousands of jobs and reliable energy supplies.

In its brief, WLF argued that EPA's rule is a reasonable definition of "physical change" under the statute that provides industry with a clear standard. On the other hand, the broad interpretation suggested by the petitioners is vague and confusing, and would require compliance with NSR for minor and routine maintenance or repair, even if no new pollution were subsequently emitted. WLF's brief further argued that the states are quite capable of enforcing their various plans that implement EPA's ambient air quality standards, and that applying NSR to existing facilities as suggested by the petitioners would violate the intent of Congress that enacted NSR amendments to the Clean Air Act.

The states joining New York's challenge include New Jersey, Connecticut, Maine, Massachusetts and Vermont. The environmental groups include the Natural Resources Defense Council, Sierra Club, and the U.S. Public Interest Research Group. U.S. Senator Hillary Rodham Clinton also filed a brief, joined by Senators Schumer, Leahy, Dodd, Boxer and Lautenberg. The states supporting EPA include Ohio, Indiana, South Carolina, Virginia, Alabama, Utah and Wyoming. Industry groups supporting EPA include the Utility Air Regulatory Group and the Alliance of Automobile Manufacturers.

WLF's brief was drafted with the *pro bono* assistance of Paul M. Seby, a partner in the Denver, Colorado office of McKenna Long & Aldrige LLP. Oral argument in the case is scheduled for February 6, 2006.

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