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EPA loses federal court battle over mercury

Ruling forces nation's proposed plants to install maximum controls before coming online

Washington D.C. –The Environmental Protection agency must require power plants, the leading source of mercury pollution in the U.S, to better control their emissions of the dangerous toxin, a federal court ruled today. The D.C. Court of Appeals ruled that EPA violated the Clean Air Act when it removed oil and coal fired power plants from the list of sources that are subject to the Act's most stringent air pollution controls. The agency must now develop tougher standards to control mercury and other toxic pollutants from new and existing power plants.

“Today's decision is a huge victory as it requires EPA to get back to the business of protecting people's health rather than higher profits for electric utilities,” said John Suttles, attorney with the Southern Environmental Law Center. “As a result of this ruling, EPA will have to go back to the drawing board and follow the Clean Air Act and the advice of the nation's leading health experts to adequately protect the public from this harmful neurotoxin.” SELC represents the American Academy of Pediatrics, the American Public Health Association, the American Nurses Association and Physicians for Social Responsibility in the legal challenge. These leading public health groups, which represent more than 300,000 doctors, nurses, medical researchers and healthcare professionals, joined 14 state attorneys general, a dozen national environmental organizations and several Indian tribes in the case.

Power plants are major sources of mercury, arsenic, lead, other heavy metals, and dioxins. Because these toxic pollutants are all classified as “hazardous,” the Clean Air Act requires EPA to identify their sources and develop the most stringent standards to control emissions from those sources. The court ruled today that EPA erred when it took power plants off the list of hazardous pollution sources when issuing its Clean Air Mercury Rule. EPA now has two years to develop mercury emissions standards for existing plants.

More immediately, the ruling will have a significant effect on the nation's approximately 100 proposed new coal-fired power plants. According to the ruling, new plants must determine on a case-by-case basis how to control mercury pollution at least as well as the best-controlled similar source. This could result in as much as a 95 percent or greater reduction in coal fired power plants.

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Founded in 1986, SELC is the only non-profit regional organization dedicated to protecting the native forests, wetlands, air and water quality, wildlife habitat and rural landscapes in Alabama, Georgia, North Carolina, South Carolina, Tennessee and Virginia. SELC works in partnership with more than 100 diverse groups on legal advocacy, policy reform and public education to achieve lasting environmental protections.

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Released in May 2005, the EPA's Clean Air Mercury Rule exempted power plants from the most stringent Clean Air Act requirements to control mercury and instead instituted a flawed "cap and trade" scheme, which allows facilities to trade mercury pollution credits with other less-polluting power plants. Under its plan, the EPA projects that U.S. power plants will continue to emit nearly 20 tons of mercury into the air every year through 2025 or later. Conversely, Clean Air Act requirements would rid the nation of 90 percent of mercury emissions within two years.

"The mercury emitted by our nation's coal-fired power plants poses serious health risks for all Americans," said Georges C. Benjamin, MD, FACP, FACEP (E), executive director of American Public Health Association. "Congress and now the courts are recognizing the need for stronger environmental protections to safeguard human health. We call upon the EPA to uphold the intent of Clean Air Act and work to eliminate mercury emissions."

Mercury emissions from power plants are deposited in water bodies, where it is converted to its most toxic form, methylmercury. EPA estimates that as many as than 600,000 children are born each year with unhealthy levels of methylmercury in their bodies. Despite this figure, EPA adopted the flawed mercury rule ignoring the counsel of its own Children's Health Public Advisory Committee and thousands of health professionals nationwide.

"For pediatricians, who see daily the direct impact dangerous environmental emissions have on children's health, the D.C. Circuit Court's decision is an important victory for children, families and communities" said American Academy of Pediatrics' President Renée R. Jenkins, MD, FAAP. "This decision is a step towards a cleaner, safer environment and improved child health outcomes for today's children and future generations."

Methylmercury is a toxic pollutant that is linked to permanent damage to the central nervous system. Developing fetuses, breast-fed infants and children exposed to methylmercury are at risk for lowered intelligence and learning disabilities. Adults exposed to even low amounts of methylmercury also may be at higher risk for altered sensation, impaired hearing and vision, and motor disturbances linked directly to exposure from eating contaminated fish.

"ANA applauds this decision as a victory for the environment, and for those of us in health care who see and treat the devastating effects of mercury exposure," said ANA President Rebecca M. Patton, MSN, RN, CNOR. "Florence Nightingale cited a healthy environment as one of the key components to quality nursing care, which is why ANA will continue to work toward eliminating mercury in the workplace, and the environment. The nursing profession has daily contact with women, children, and families who are affected by mercury exposure; obstetric nurses teaching expectant mothers about good nutrition and how to protect themselves from environmental threats for the sake of their babies, school nurses seeing more and more children with learning disabilities. As caregivers, we understand the vital need to protect our air, water, and food."

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