



For Immediate Release

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**WLF URGES SUPREME COURT TO REJECT EPA'S
CHALLENGE OF CLEAN AIR ACT RULING**
(Environmental Defense v. Duke Energy Corp.)

The Washington Legal Foundation (WLF) filed a brief with the Supreme Court last week urging it to reject an attempt by several environmental groups and the Environmental Protection Agency (EPA) to overturn a court of appeals ruling in favor Duke Energy Corporation regarding EPA's controversial interpretation of one of its major Clean Air Act regulations.

In *Environmental Defense v. Duke Energy Corp.*, the EPA filed an enforcement action against Duke Energy in 1999 in federal court in North Carolina claiming that the power company violated EPA's 1980 Prevention of Significant Deterioration (PSD) rule by failing to get a permit when it modified its power plants. At issue is the EPA's recent interpretation of its 1980 PSD Rule that would require power companies to comply with the rule and incur huge costs, even though the modification would result in *less* emissions from its power plant. The district court and the U.S. Court of Appeals for the Fourth Circuit ruled in favor of Duke Energy, stating that EPA's application of rule violates the plain language of both the Clean Air Act and rule itself.

Several environmental groups that intervened sought review in the Supreme Court, arguing that the lower courts were not only wrong, but were precluded from even reaching the merits of Duke Energy's defense because as a jurisdictional matter, challenges to EPA's action or rule under the Clean Air Act can only be brought in the U.S. Court of Appeals for the D.C. Circuit within 60 days after a final rule or action is taken. EPA filed a separate brief agreeing with those arguments.

In its brief, WLF forcefully argued that the lower courts had jurisdiction to adjudicate Duke Energy's valid defense to the enforcement action brought by the EPA. WLF contended that Duke Energy was not challenging the 1980 PSD Rule itself, but EPA's more recent and inconsistent interpretation of that rule in the enforcement action. To rule otherwise would unfairly enable the EPA to escape any judicial review of its enforcement actions when it misinterprets the underlying statute and the language of the original rule itself. Oral argument in this case is scheduled for November 1, 2006.

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