

FOR IMMEDIATE RELEASE: September 29, 2011

## **PA Healthcare Groups Urge Court to Protect PA Agency's Ability to Enforce Public Health Laws**

Philadelphia, Pennsylvania -- On September 19, several Pennsylvania environmental and public health groups, represented by public interest law firm Earthjustice and the Public Interest Law Center of Philadelphia (PILCOP), asked permission to file a friend of the court brief. The proposed brief argues that a trial judge's overturning of a Federal Court jury verdict should be affirmed.

In the case, four employees from the Northeast Regional Office of the Pennsylvania Department of Environmental Protection (Wilkes-Barre) were found liable for \$6.5 million in damages while enforcing state public health rules. Then, on February 16, 2011, federal judge Joel Slomsky ruled in a 142-page opinion that there was not sufficient basis to award the damages to MFS, Inc., a former mineral wool manufacturer, and reversed the jury verdict. MFS has appealed to the U.S. Court of Appeals for the Third Circuit.

*Late yesterday, MFS opposed the friend of the court motion filed by the health groups supporting the judge's reversal.*

"Law enforcement is essential to protecting the public health," said Charles McPhedran, lead attorney for Earthjustice. "For everyone's sake, courts must reject lawsuits against public officials who are just doing their jobs."

*The case is seen as a pivotal, since it decides whether state officials in Pennsylvania can enforce environmental laws without fear of personal financial disaster.*

"It appears with this latest action, MFS does not want the court to hear from public health groups," said Heather Sage, Vice President, Citizens for Pennsylvania's Future (PennFuture). "But we will not be stifled. It is our duty to speak up for a healthy environment."

In an alarming and unprecedented verdict that sent shock waves through both state government and the environmental community in Pennsylvania, in March 2010 a state jury issued a \$6.5M verdict personally against four current and former employees of the Pennsylvania Department of Environmental Protection (DEP) for violating the constitutional rights of MFS.

MFS' operations at a plant in Bethlehem, Pa. provoked many complaints from neighbors and local officials about air pollution. The DEP employees had responded with enforcement measures against the plant, which closed in 2006.

After trial, the judge found that the employees acted lawfully, and vacated the damage awards. The friend of the court brief proposed by Earthjustice and PILCOP urges the Third Circuit court to affirm the trial judge's decision in favor of the DEP workers, so that DEP can continue to effectively enforce the law and protect the public health.

"If polluters sense that the decisions of state environmental agency officials can be influenced by the threat of personal liability, then we'll see a flood of unwarranted lawsuits," said Adam Cutler, lead attorney for PILCOP. "Enforcement and public health will suffer."

Joining the brief are Physicians for Social Responsibility—Philadelphia; Clean Air Council, an advocacy group in Pennsylvania; PennFuture, a statewide advocacy group; and the Pennsylvania State Nurses Association, a statewide professional group.

Earthjustice, PILCOP and the four health and environmental interest groups support Pennsylvania state officials in the appeal by underscoring the severe chilling effect on law enforcement that would flow from

subjecting government officials to trial in their personal capacities when they enforce environmental laws in good faith. Moreover, they seek to discourage such trials in the future.

“The numerous adverse health consequences from air pollutants are too great to risk,” said Joe Minott, Executive Director, Clean Air Council. “We simply must ensure that DEP employees can do their jobs to best protect our health – without fear of personal attack.”

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**Earthjustice** is a non-profit public interest law firm that specializes in cases protecting natural resources, safeguarding public health, and promoting clean energy. The firm has been a critical player in a number of important, precedent-setting cases including forcing the EPA to fight global warming by limiting greenhouse gas emissions, the first Supreme Court case to ever address the issue of climate change.

**The Public Interest Law Center of Philadelphia** uses high impact legal strategies to improve the well-being and life prospects of the most vulnerable populations in the Philadelphia region, including by providing legal and technical expertise and assistance to local communities of color and poverty that seek to overcome the disproportionate burdens of environmental impacts.

**PennFuture** is a statewide public interest membership organization that advances policies to protect and improve the state’s environment and economy.

**Clean Air Council** is a Pennsylvania environmental organization dedicated to protecting everyone’s right to breathe clean air. The Council works through public education, community advocacy, and government oversight to ensure enforcement of environmental laws.