

PRESS RELEASE

Wiley Rein Obtains Fourth Circuit Reversal in Major Endangered Species Act Case

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Addressing an issue of first impression, the U.S. Court of Appeals for the Fourth Circuit today ruled in favor of Wiley Rein clients Dow AgroSciences, LLC and Makhteshim Agan of North America, Inc., that Federal District Courts have jurisdiction to review Endangered Species Act "Biological Opinions" issued in connection with pesticide registrations. *Dow AgroSciences, LLC, et al., v. National Marine Fisheries Service*, No. 09-1968. The District Court case was the first to address the scientific soundness of Endangered Species Act determinations relating to pesticides that are being made as a result of a series of lawsuits against the Services and EPA. All of the prior suits have focused on procedural matters.

With its decision, the appellate court reversed a district court ruling that challenges to such opinions could not proceed until the United States Environmental Protection Agency had taken action upon them. Unless the government seeks rehearing or appeals to the U.S. Supreme Court, the decision means that the District Court will now consider whether the National Marine Fisheries Service relied upon the "best scientific and commercial data available" and otherwise complied with the Administrative Procedure Act when it found that two pesticides registered by Wiley Rein's clients could jeopardize or damage several species of endangered salmon or their habitat.

Wiley Rein's Environment & Safety Practice is widely recognized for its expertise on pesticide and related matters. The firm has represented a number of pesticide manufacturers and trade associations in litigation addressing the relationship between pesticide registrations and the Endangered Species Act around the nation, and currently has cases pending in Maryland, California and the State of Washington.

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Practice Areas

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