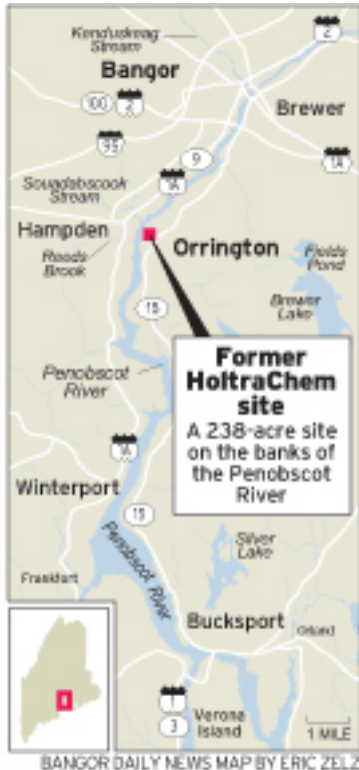


## Court: HoltraChem owner must pay for studies

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A federal appeals court has ordered the former owner of the HoltraChem plant to pay for detailed studies of mercury pollution in the Penobscot River downstream from the contaminated Orrington site.

The 1st Circuit Court of Appeals in Boston rejected Mallinckrodt Inc.'s appeal of a court-mandated environmental study of the river from Orrington to Penobscot Bay. The three-judge panel also turned back Mallinckrodt's attempts to discredit the legal standing of the groups that initiated the lawsuit.

Representatives of the plaintiffs — the Maine People's Alliance and the Natural Resources Defense Council — praised the decision as a ringing endorsement of citizens' right to sue polluters when they believe the government is moving too slowly to protect public health.

Supporters also described the ruling as one step closer to cleaning up mercury pollution that they fear could pose an imminent threat to both humans and the river's aquatic life.

"This is extremely important because we will now, for the first time, find out in a scientific manner what is going on in the river system," said Mitchell Bernard, legal counsel for the New York-based Natural Resources Defense Council.

A spokeswoman for St. Louis-based Mallinckrodt said the company is weighing its options, which could include an appeal to the U.S. Supreme Court.

The now defunct HoltraChem Manufacturing Co. produced chlorine and other chemicals at the Orrington plant from the mid-1960s to 2000. Mercury was a key ingredient to the production, resulting in tons of known toxin ending up in the soil surrounding the plant and unknown amounts in the water.

Mallinckrodt owned and operated the plant from 1967 to 1982 and is the sole former

owner still in existence. The company is in the middle of a multiphase cleanup project that has removed several tons of mercury from the former plant site.

But Mallinckrodt has steadfastly fought a July 2002 court order to pay for an extensive study of mercury pollution downstream from the plant. The study also would evaluate the need for a cleanup plan and, if necessary, determine the process for completing any remediation.

The study would cost an estimated \$4 million. That does not include the cost of any cleanup if deemed necessary.

In legal filings and testimony, the company questioned everything from the court's interpretation of the federal Resource Conservation and Recovery Act to the study panel's leadership and cost estimations.

While praising Mallinckrodt's "skillfully presented" arguments and legal counsel, the 1st Circuit judges called the company's legal interpretation of the federal act "cramped" and ruled that the lower court had acted within its discretion by mandating the environmental study.

The court also dismissed the company's contention that it was unfair to force Mallinckrodt to shoulder the full costs of the river study when it was one of several companies to own the HoltraChem site over the decades.

"That plaint rings hollow," the judges wrote in their Dec. 22 opinion. "While Mallinckrodt was not the sole source of mercury contamination, it was a dominant one, so in that sense its claim of inequitable treatment comprises more cry than wool."

Representatives of the Maine People's Alliance, which is a grass-roots organization that works on environmental, health and other social issues, said in a statement Tuesday that they were delighted with the court ruling.

Adam Goode, environmental organizer for the alliance, called the ruling "an enormous victory for the citizens of Maine" to know that Mallinckrodt will have to pay for the environmental study.

"Mallinckrodt has been dragging their feet with appeals for more than four years," said Jesse Graham, associate director of the group. "Active and persistent citizens have prevailed, and we are looking forward to the truth about what the tons of mercury are doing to this ecosystem."

Mallinckrodt spokeswoman Joanna Schooler said the company was "disappointed" with the court decision. "We are evaluating our options," she said.

Because the ruling was made by a three-judge panel, Mallinckrodt could request that the full 1st Circuit Court of Appeals reconsider the case. The company's other legal option is to appeal the case to the U.S. Supreme Court.

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