According to an old saying, "dog bites man" isn't newsworthy, but "man bites dog" is worth a headline. Similarly, it's not especially newsworthy when standing doctrine is used to toss environmentalists out of court. It's much more so when it's used against industry.

Yet in two recent cases, that's exactly what the D.C. Circuit was done. The first case involved the industry challenge to EPA's tailoring rule for greenhouse gases. The second case, *Grocery Manufacturers Association v. EPA*, was decided earlier today. It involved EPA's decision to waive certain restrictions on the use of ethanol in fuels for cars. What the two cases have in common is that industry was challenging rule waivers rather than mandates.

There are two major parts of today's decision. The first part threw out claims based on economic injury by car manufacturers and oil companies. The car manufacturers and oil companies claimed that, as a result of economics and another federal statute regulating renewable fuels, the waiver would in effect force increased sales of ethanol. The court either found that (1) the claims were unsubstantiated or (2) that they stemmed from the renewable fuel statute or from independent choices by refiners or consumers, rather than from the waiver decision as such. The dissent protested that the court was ignoring the common sense economic impact of the waiver.

The food producers were thrown out for a different reason. They argued that the decision would result in higher food prices. The court concluded, however, that this harm was outside the "zone of interests" protected by the waiver provision of the Clean Air Act. Thus, the food producers lacked what is called "prudential standing." A dissent argued that this issue was not before the court because it had not been raised by EPA, and that prudential standing is not jurisdictional. Anyway, the dissent argued, the waiver provision should be read in conjunction with the renewable fuel statute to create a broader zone of interests.

The dissent was right that the majority's opinion seems hyper-technical if not hair-splitting, perhaps at the expense of common sense. But that's just the way modern standing doctrine works on a routine basis!

For example, the Supreme Court has denied standing to environmental plaintiffs because people alleged that they were going to be "near" a specific location rather than "at" it, or because they intended to return to a place that they had visited before but weren't able to do so at the present. Recently, even though it was admittedly very likely that an individual would run into one of the many plots of land affected by a decision, the Supreme Court said there was no standing because he couldn't identify exactly which plot it would be. In short, hairsplitting is business as usual in standing law.

The only thing novel about these recent D.C. Circuit cases is that the technicalities of standing doctrine are being used against industry rather than environmentalists. But what’s sauce for the goose should be sauce for the gander.