

ATTORNEYS GENERAL OF THE STATES OF NEW JERSEY,
CALIFORNIA, CONNECTICUT, DELAWARE, ILLINOIS, MAINE,
MARYLAND, MINNESOTA, NEW HAMPSHIRE, NEW MEXICO,
NEW YORK, RHODE ISLAND, VERMONT, COMMONWEALTH
OF MASSACHUSETTS, AND MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY

January 29, 2009

Edwin S. Kneedler, Acting Solicitor General
Office of the Solicitor General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Re: *Environmental Protection Agency v. New Jersey, et al.*
Docket No. 08-512

Dear Acting Solicitor General Kneedler:

We write today to urge you to consult with EPA Administrator Jackson and withdraw the petition for a writ of certiorari filed in the United States Supreme Court, *EPA v. New Jersey*, No. 08-512. We appreciate the Administrator's pledge, expressed in her January 23, 2009 memorandum to EPA employees, to follow the principles articulated by President Obama and believe that immediate withdrawal of the petition is consistent with both her promise and the judicious use of government resources. We accordingly urge you to end the federal government's years-long battle during which power plants were allowed to emit toxic air pollutants contrary to law and enable EPA to move forward expeditiously with stringent emissions standards for power plant hazardous air pollutants as the Clean Air Act (CAA or Act) requires.

On February 8, 2008, the United States Court of Appeals for the District of Columbia Circuit rejected EPA's attempt to replace stringent Maximum Available Control Technology (MACT) standards under CAA section 112 with a cap-and-trade program for mercury pollution under CAA section 111. *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008). Denominated the Clean Air Mercury Rule, EPA's substitute not only contravened the Act, but failed to achieve in significant ways and on many levels that which would have been achieved by a stringent MACT rule. More fundamentally, EPA advanced its substitute regulatory scheme in an abrupt shift by first "delisting" power plants without complying with Congress's mandated procedure for delisting source categories. 42 U.S.C. 7412(c)(9). The court's decision is fully consistent with the law while further review, we submit, would be futile and a poor use of government and judicial resources.

The importance of properly regulating mercury emissions, as well as the many other hazardous air pollutants that power plants emit, cannot be overstated. Mercury pollution has contaminated our waters, resulting in numerous fish advisories and adverse impacts on human

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health, wildlife and welfare. Rather than continuing the battle which we respectfully believe promotes an unlawful interpretation of the Act and delays timely, meaningful reductions of hazardous air pollutant emissions, we urge you to withdraw the petition and allow EPA to move forward with the stringent standards that Congress required to reduce the amount of toxic air pollutants that harm our environment and health.

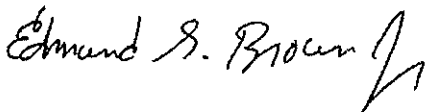
We thank you for your attention to this matter of importance to the states and the air quality of our nation.

Very truly yours,



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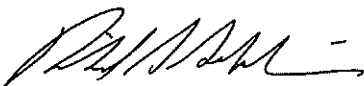
Attorney General of New Jersey



EDMUND G. BROWN JR.
Attorney General of California



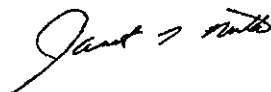
RICHARD BLUMENTHAL
Attorney General of Connecticut



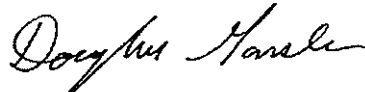
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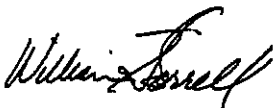
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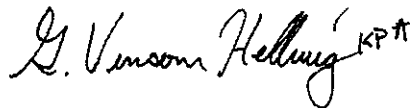
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cc: Lisa P. Jackson, EPA Administrator
Neal Katyal, Principal Deputy Solicitor General
Malcolm Stewart, Deputy Solicitor General
Henry V. Nickel, Esq.