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February 12, 2009

William K. Suter
Clerk
United States Supreme Court
One First Street, NE
Washington, DC 20543

Re *Utility Air Regulatory Group v. State of New Jersey*, No. 08-352
Environmental Protection Agency v. State of New Jersey, No. 08-512

Dear General Suter:

In separate petitions, the Utility Air Regulatory Group (UARG) (in No. 08-352) and the Environmental Protection Agency (EPA) (in No. 08-512) requested certiorari arising out of a decision of the District of Columbia Circuit vacating EPA's Clean Air Mercury Rule (CAMR) and ordering promulgation of standards under 42 U.S.C. § 7412. Subsequent to preparation of UARG's reply brief, which was distributed to the court on February 6, 2008, the Acting Solicitor General filed a motion to dismiss EPA's petition for writ of certiorari in No. 08-512. This letter supplements UARG's reply in support of its petition for certiorari.

In the motion to dismiss, the Acting Solicitor states that EPA "no longer seeks review of the court of appeals" decision because EPA has subsequently decided to comply with that ruling and promulgate standards under 42 U.S.C. § 7412. Because the Solicitor General has acquiesced in a decision he earlier described as presenting "fundamental legal errors" that need to be corrected, and as posing "substantial practical harms" that need to be prevented, EPA Pet. at 11, the dismissal of the EPA petition would not in any way moot the petition filed by UARG. As the Solicitor General stated in his petition: "Granting review . . . is . . . the only way to correct the serious legal errors of the court of appeals and avoid the adverse practical consequence that will otherwise result from its ruling." *Id.* at 24. The new administration's decision to undertake rulemaking that would "once and for all" deprive EPA of "an important regulatory tool" in future EPA rulemakings as well as in the rule vacated by the D.C. Circuit,



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id., distinguishes this case from those where a new administration chooses to terminate litigation to pursue an alternative policy within its discretion.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry V. Nicke". The signature is fluid and cursive, with a large initial "H" and "V".

Henry V. Nicke
F. William Brownell
Lee B. Zeugin
Counsel for the Utility Air Regulatory Group

cc: Counsel of Record No. 08-352 and No. 08-512