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February 06, 2009

SG Changes Stance in Clean Air Act Case

We wrote [here this week](#) that change can come in big and small ways when the solicitor general's office presents itself to the Supreme Court after a change in administration. What may be the first example came today in a motion from the SG's office asking the Court to dismiss *Environmental Protection Agency v. New Jersey*, a Clean Air Act case that the Bush administration had appealed to the justices.

The EPA was challenging a decision last year by the U.S. Court of Appeals for the D.C. Circuit that nullified the agency's decision not to regulate mercury emissions from power plants under the Clean Air Act. The Bush administration claimed that it had the authority to take the action without further testing and that the mercury did not pose a harm to public health. [The Washington Legal Foundation](#) and other allies said assertions that the mercury is harmful were based on "junk science."

In the motion filed today, Acting Solicitor General Edwin Kneedler told the Court that the EPA has now decided "to develop appropriate standards to regulate power-plant emissions" as directed by the circuit opinion. In light of that EPA decision, Kneedler said, "the government no longer seeks review of the court of appeals' holding." The Court had not yet acted on the petition, but was scheduled to discuss it at its next conference Feb. 20.

Posted by Tony Mauro on February 06, 2009 at 04:19 PM in [Supreme Court](#) | [Permalink](#)

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