

US EPA ARCHIVE DOCUMENT

IN THE SUPREME COURT OF THE UNITED STATES

No. 08-512

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

STATE OF NEW JERSEY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MOTION OF THE ENVIRONMENTAL PROTECTION AGENCY
TO DISMISS THE CASE

Pursuant to Rule 46.2(a) of the Rules of this Court, the Acting Solicitor General, on behalf of the Environmental Protection Agency (EPA), respectfully moves to dismiss this case. All fees due the Clerk have been paid, and petitioner has assumed all the costs. The government filed the petition for a writ of certiorari in this case on October 17, 2008, and the petition is currently pending before the Court.

The question presented in this case concerns the circumstances under which EPA, having initially listed power plants as a source category to be regulated under 42 U.S.C. 7412, may remove power plants from that list. The court of appeals held that EPA could delete power plants from the list only if it made the findings specified in 42 U.S.C. 7412(c)(9), a step that the agency concededly had not taken. Since the petition for a writ of certiorari was filed, EPA has decided, consistent with the court of appeals' ruling, to develop appropriate standards to regulate

power-plant emissions under Section 7412. In light of EPA's decision, the government no longer seeks review of the court of appeals' holding that Section 7412(c)(9) provides the sole mechanism for delisting power plants as a covered source category.

EPA is the only petitioner in this case. However, the petition for a writ of certiorari in Utility Air Regulatory Group v. State of New Jersey, et al., No. 08-352, is also currently pending before the Court, and that petition seeks review of the same court of appeals judgment that is at issue in this case.

Respectfully submitted.

EDWIN S. KNEEDLER
Acting Solicitor General

FEBRUARY 2009