

PUBLIC CITIZEN LITIGATION GROUP

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November 12, 2008

Molly Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Public Citizen v. U.S. Nuclear Regulatory Commission*, No. 07-71868
(consolidated with No. 07-72555)

Dear Ms. Dwyer:

Pursuant to F.R.A.P. 28(j), I am writing to inform the Court that the opinion in *Center for Biological Diversity v. NHTSA*, 508 F.3d 508 (9th Cir. 2007), which was cited on pages 25 and 26 of the Reply Brief for Petitioners Public Citizen, Inc., and San Luis Obispo Mothers for Peace in the above-cited case, has been vacated and withdrawn and replaced with an opinion published at 538 F.3d 1172 (9th Cir. 2008). Like the withdrawn opinion, the new opinion rejects the argument that there is never a significant environmental impact when a new rule increases environmental protection, stating that "simply because the Final Rule may be an improvement over the [pre-existing] standard does not necessarily mean that it will not have a 'significant effect' on the environment." *Id.* at 1224. The amended opinion holds that the remedy for an agency's failure adequately to explain its refusal to prepare an Environmental Impact Statement (EIS), where the record is insufficiently complete for the Court to determine whether the rule may have a significant environmental impact, is an order that the agency prepare a new Environmental Assessment or, as necessary, a complete EIS.

Sincerely,

/s/

Adina H. Rosenbaum
Attorney for Petitioners Public Citizen, Inc. and
San Luis Obispo Mothers for Peace

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2008, I filed the foregoing letter with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF System. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I am mailing a copy of the foregoing letter by first-class mail, postage pre-paid, to the following counsel:

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/s/ _____
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