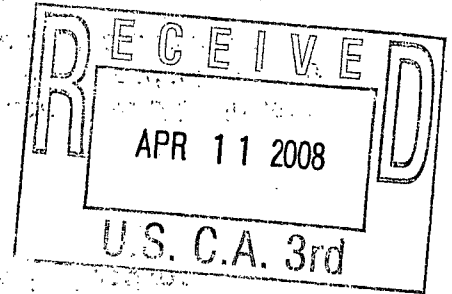




UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 10, 2008

OFFICE OF THE
GENERAL COUNSEL



Marcia M. Waldron, Clerk
United States Court of Appeals
For the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106-1790

ATTENTION: DANA MOORE

VIA FEDERAL EXPRESS

RE: *State of New Jersey v. U.S. Nuclear Regulatory Commission*, Nos. 06-5140,
07-1559, and 07-1756 (consolidated). Oral argument scheduled for
April 16, 2008.

Dear Ms. Waldron:

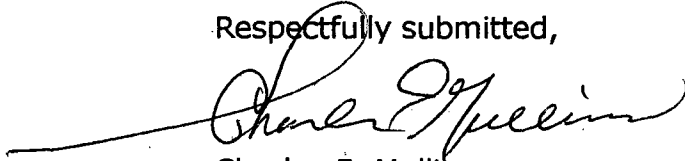
Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, the U.S. Nuclear Regulatory Commission and the United States of America (the Federal Respondents) hereby advise the Court of a recent decision by another U.S. Court of Appeals that supports the Federal Respondents' position in this case.

On April 8, 2008, the U.S. Court of Appeals for the First Circuit issued a decision in *Commonwealth of Massachusetts v. U.S. Nuclear Regulatory Commission*, — F.3d —, 2008 WL 927941 (C.A. 1), in which the Court of Appeals denied two petitions for review of NRC decisions. The Commonwealth sought "immediate injunctive relief from claimed statutory violations by the NRC." Slip Op. at 35 (footnote omitted). The Court of Appeals held that the Commonwealth failed to "meet the basic prerequisite that a petitioner for judicial review of an agency action first exhaust administrative remedies." *Id.* (citations omitted). "The administrative exhaustion requirement gives agencies 'a fair and full opportunity' to adjudicate claims presented to them by requiring that litigants use 'all steps that the agency holds out, and do[] so properly (so that the agency addresses the issues on the merits).'" Slip Op. at 36 (citations omitted) (emphasis in original).

This decision supports the argument presented at pages 42-45 of Federal Respondents' brief and at pages 22-23 of the Intervenor-Respondent's brief. Exhaustion of administrative remedies allows the agency to create a record which can be reviewed in this Court on a subsequent petition for review.

We have enclosed four copies of this letter, each of which transmits a copy of the slip opinion for the Court's review. Could you please deliver a copy of this letter and slip opinion to each member of the panel that will hear this case promptly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles E. Mullins". The signature is written in a cursive style with a long horizontal line extending to the left.

Charles E. Mullins
Senior Attorney
U.S. Nuclear Regulatory Commission

Enclosure: As stated

cc: Service List