

07-588 ENTERGY CORPORATION V. RIVERKEEPER, INC.

DECISION BELOW: 475 F3d 83

LOWER COURT CASE NUMBER: 04-6692ag - 04-6699ag

QUESTION PRESENTED:

This case involves regulation under the Clean Water Act ("CWA") of the intake structures used by power plants to take in cooling water. After 30 years of regulating new facilities, the Environmental Protection Agency ("EPA") promulgated a regulation requiring existing cooling water intake structures to be retrofitted to comply with EPA's latest determination of the "best technology available for minimizing adverse environmental impact," measured in terms of the potential effects on early life stages of fish. The Second Circuit, deferring to EPA, held that EPA has authority to retrofit existing facilities. Siding with environmental petitioners and against EPA, the court also held that EPA's weighing of costs and benefits is limited to a narrow "cost-effectiveness" test. The questions presented, all of which implicate splits in circuit court authority, are:

1. Whether the CWA provides EPA authority to impose new requirements under Section 316(b) of the Act, 33 U.S.C. § 1326(b), with respect to existing cooling water intake structures?
2. Whether a court should accord Chevron deference to an agency's interpretation of its own statutory jurisdiction?
3. Whether Sections 301 and 316(b) of the CWA, 33 U.S.C. § 1301, 1326(b), limit EPA's weighing of costs and benefits only to the Second Circuit's "cost effectiveness" test?

THE PETITIONS FOR WRITS OF CERTIORARI ARE GRANTED LIMITED TO THE FOLLOWING QUESTION: WHETHER SECTION 316(b) OF THE CLEAN WATER ACT, 33 U.S.C. 1326(b), AUTHORIZES THE ENVIRONMENTAL PROTECTION AGENCY (EPA) TO COMPARE COSTS WITH BENEFITS IN DETERMINING THE "BEST TECHNOLOGY AVAILABLE FOR MINIMIZING ADVERSE ENVIRONMENTAL IMPACT" AT COOLING WATER INTAKE STRUCTURES. THE CASES [07-588, 07-589, 07-597] ARE CONSOLIDATED AND A TOTAL OF ONE HOUR IS ALLOTTED FOR ORAL ARGUMENT.

CERT. GRANTED 4/14/2008