

07-589 PSEG FOSSIL LLC, ET AL. V. RIVERKEEPER, INC., ET AL.

DECISION BELOW:475 F3D 83

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

QUESTIONS PRESENTED:

1. Whether the Second Circuit erred by holding that §316(b) of the Clean Water Act, 33 U.S.C. § 1326(b), bars any use of cost-benefit analysis, in conflict with decisions of several other circuits and the precedents of this Court.
2. Whether the Second Circuit erred by concluding that §316(b) bars the use of restoration measures as a compliance alternative to “minimiz[e] adverse environmental impact,” in conflict with decisions of other courts of appeals.

CERT. GRANTED 4/14/2008

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 ARE CONSOLIDATED AND A TOTAL OF ONE HOUR IS ALLOTTED FOR ORAL ARGUMENT.