

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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ENTERGY CORP. *v.* RIVERKEEPER, INC., ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

No. 07–588. Argued December 2, 2008—Decided April 1, 2009*

Petitioners’ powerplants have “cooling water intake structures” that threaten the environment by squashing against intake screens (“impingement”) or suctioning into the cooling system (“entrainment”) aquatic organisms from the water sources tapped to cool the plants. Thus, the facilities are subject to regulation under the Clean Water Act, which mandates that “[a]ny standard established pursuant to section 1311 . . . or section 1316 . . . and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.” 33 U. S. C. §1326(b). Sections 1311 and 1316, in turn, employ a variety of “best technology” standards to regulate effluent discharge into the Nation’s waters. The Environmental Protection Agency (EPA) promulgated the §1326(b) regulations at issue after nearly three decades of making the “best technology available” determination on a case-by-case basis. Its “Phase I” regulations govern new cooling water intake structures, while the “Phase II” rules at issue apply to certain large existing facilities. In the latter rules, the EPA set “national performance standards,” requiring most Phase II facilities to reduce “impingement mortality for [aquatic organisms] by 80 to 95 percent from the calculation baseline,” and requiring a subset of facilities to reduce entrainment of such organisms by “60 to 90 percent from [that] baseline.” 40 CFR §125.94(b)(1), (2). However, the EPA expressly declined to mandate closed-cycle cooling systems, or equivalent re-

*Together with No. 07–589, *PSEG Fossil LLC et al. v. Riverkeeper, Inc., et al.*, and No. 07–597, *Utility Water Act Group v. Riverkeeper, Inc., et al.*, also on certiorari to the same court.

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ductions in impingement and entrainment, as it had done in its Phase I rules, in part because the cost of rendering existing facilities closed-cycle compliant would be nine times the estimated cost of compliance with the Phase II performance standards, and because other technologies could approach the performance of closed-cycle operation. The Phase II rules also permit site-specific variances from the national performance standards, provided that the permit-issuing authority imposes remedial measures that yield results “as close as practicable to the applicable performance standards.” §125.94(a)(5)(i), (ii). Respondents—environmental groups and various States—challenged the Phase II regulations. Concluding that cost-benefit analysis is impermissible under 33 U. S. C. §1326(b), the Second Circuit found the site-specific cost-benefit variance provision unlawful and remanded the regulations to the EPA for it to clarify whether it had relied on cost-benefit analysis in setting the national performance standards.

Held: The EPA permissibly relied on cost-benefit analysis in setting the national performance standards and in providing for cost-benefit variances from those standards as part of the Phase II regulations. Pp. 7–16.

(a) The EPA’s view that §1326(b)’s “best technology available for minimizing adverse environmental impact” standard permits consideration of the technology’s costs and of the relationship between those costs and the environmental benefits produced governs if it is a reasonable interpretation of the statute—not necessarily the only possible interpretation, nor even the interpretation deemed *most* reasonable by the courts. *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843–844. The Second Circuit took “best technology” to mean the technology that achieves the greatest reduction in adverse environmental impacts at a reasonable cost to the industry, but it may also describe the technology that *most efficiently* produces a good, even if it produces a lesser quantity of that good than other available technologies. This reading is not precluded by the phrase “for minimizing adverse environmental impact.” Minimizing admits of degree and is not necessarily used to refer exclusively to the “greatest possible reduction.” Other Clean Water Act provisions show that when Congress wished to mandate the greatest feasible reduction in water pollution, it used plain language, *e.g.*, “elimination of discharges of all pollutants,” §1311(b)(2)(A). Thus, §1326(b)’s use of the less ambitious goal of “minimizing adverse environmental impact” suggests that the EPA has some discretion to determine the extent of reduction warranted under the circumstances, plausibly involving a consideration of the benefits derived from reductions and the costs of achieving them. Pp. 7–9.

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(b) Considering §1326(b)'s text, and comparing it with the text and statutory factors applicable to parallel Clean Water Act provisions, prompts the conclusion that it was well within the bounds of reasonable interpretation for the EPA to conclude that cost-benefit analysis is not categorically forbidden. In the Phase II rules the EPA sought only to avoid extreme disparities between costs and benefits, limiting variances from Phase II's "national performance standards" to circumstances where the costs are "significantly greater than the benefits" of compliance. 40 CFR §125.94(a)(5)(ii). In defining "national performance standards" the EPA assumed the application of technologies whose benefits approach those estimated for closed-cycle cooling systems at a fraction of the cost. That the EPA has for over thirty years interpreted §1326(b) to permit a comparison of costs and benefits, while not conclusive, also tends to show that its interpretation is reasonable and hence a legitimate exercise of its discretion. Even respondents and the Second Circuit ultimately recognize that some comparison of costs and benefits is permitted. The Second Circuit held that §1326(b) mandates only those technologies whose costs can be reasonably borne by the industry. But whether it is reasonable to bear a particular cost can very well depend on the resulting benefits. Likewise, respondents concede that the EPA need not require that industry spend billions to save one more fish. This concedes the principle, and there is no statutory basis for limiting the comparison of costs and benefits to situations where the benefits are *de minimis* rather than significantly disproportionate. Pp. 9–16.

475 F. 3d 83, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined. BREYER, J., filed an opinion concurring in part and dissenting in part. STEVENS, J., filed a dissenting opinion, in which SOUTER and GINSBURG, JJ., joined.