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Case Information	*Issue Summary*	*Background*	*Questions Raised*	*Status*
Donald C. Winter, Secretary of the Navy, et al., **v. NRDC** No. 07-1239 Cert to the Ninth Circuit *Brief for Respondent*: NRDC California Coastal Commission *Amicus Briefs in Support of Petitioner:* California Forestry Association American Farm Bureau Federation American Forest & Paper Association CropLife America National Association of Home Builders Pacific Legal Foundation US Navy League - Honolulu Council Military Affairs Council, HW C. of C Southwest Defense Alliance San Diego Regional C. of C San Diego Military Advisory Council Washington Legal Foundation National Defense Committee Allied Education Foundation *Amicus Briefs in Support of Respondent:* Ecological Society of America Defenders of Wildlife Humane Society of the United States Center For Biological Diversity Oceana, Inc. Sierra Club The Wilderness Society Animal Legal Defense Fund Greenpeace, Inc. Law Professors Julia Brownley (California Assembly) Sen. Christine Kehoe (D-39th CA)	Whether the U.S. Navy may continue its use of high-powered sonar off the Southern California coast in spite of alleged harm to marine mammals based on a finding that training is an emergency circumstance under NEPA.	The district court found a likelihood that the Navy failed to comply with the National Environmental Policy Act (NEPA) and preliminarily enjoined the Navy's use of midfrequency active (MFA) sonar during training exercises that prepare Navy strike groups for worldwide deployment. The Chief of Naval Operations concluded that the injunction unacceptably risks the training of naval forces for deployment to high threat areas overseas, and the President of the United States determined that them use of MFA sonar during these exercises is "essential to national security." The Council on Environmental Quality (CEQ), applying a longstanding regulation, accordingly found "emergency circumstances" for complying with NEPA without completing an environmental impact statement. The Ninth Circuit sustained the district court's conclusion that no "emergency circumstances" were present and affirmed the preliminary injunction.	1. Whether CEQ permissibly construed its own regulation in finding "emergency circumstances?" 2. Whether the preliminary injunction, based on a finding that the Navy had not satisfied NEPA, is inconsistent with established equitable principles limiting discretionary injunctive relief.	The Navy sought and the Court granted expedited oral argument, scheduling the case for the first week of the October 2008 term. **Oct. 8, 2008 -** Oral Argument

Sources: SCOTUSblog - http://www.scotusblog.com
Pacific Legal Foundation - http://community.pacificlegal.org
On The Docket – Supreme Court News - http://otd.oyez.org
Edison Electric Institute - http://www.eei.org

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Priscilla Summers **v. Earth Island Institute** No. 07-463 Cert to the Ninth Circuit *Amicus Briefs in Support of Petitioner:* American Forest & Paper Association National Association of Home Builders American Farm Bureau Federation Croplife America American Forest Resource Council California Forestry Association Minnesota Forest Industries Timber Operators Montana Logging Association Montana Wood Products Association *Amicus Briefs in Support of Respondent:* Law Professors State of California Ex Rel. Edmund G. Brown Jr., Attorney General *Amicus Briefs in Support of Neither:* Pacific Legal Foundation	Whether environmental groups can sue to overturn an entire U.S. Forest Service regulation or if they must instead sue to halt specific programs enacted under that regulation.	In 1992, USFA enacted a rule providing a categorical exclusion from notice, comment and appeal for projects the agency considered to be environmentally insignificant. In response to protest from environmental groups, Congress enacted the Forest Service Decision Making and Appeals Reform Act (ARA), which required the agency to establish an administrative appeals process including notice and comment. In 2002, USFA again enacted rules limiting appeals and comment on categorical exclusions of salvage logging and other projects (as part of the Healthy Forest Initiative). The rules stated that only individuals and organizations that submit "substantive" comments during public comment periods could file administrative appeals. The Forest Service approved, under the "categorical exclusion" rules, salvage logging of 238 acres in the Sequoia National Forest, which had been destroyed in a fire the previous summer. Environmental groups sued in Sept.. 2003. USFA withdrew its decision In March 2004. Parties entered into a partial settlement agreement whereby USFA agreed that it would not reissue the Burnt Ridge Timber Sale without first preparing an EIS or EA in accordance with NEPA. Enviromentalists agreed to dismiss with prejudice claims challenging the legality of the Burnt Ridge Project. The district court approved the settlement, and respondents' challenges to the project were dismissed, but the groups pursued the suit as a direct facial challenge to the regulations. In 2005, the District Court for the Eastern District of CA issued a nationwide injunction USFA. The 9th U.S. Circuit Court of Appeals upheld the decision in August 2006.	1. Whether the Forest Service's promulgation of 36 C.F.R. 215.4(a) and 215.12(f), as distinct from the particular site-specific project to which those regulations were applied in this case, was a proper subject of judicial review. 2. Whether respondents established standing to bring this suit. 3. Whether respondents' challenge to 36 C.F.R. 215.4(a) and 215.12(f) remained ripe and was otherwise judicially cognizable after the timber sale to which the regulations had been applied was withdrawn, and respondents' challenges to that sale had been voluntarily dismissed with prejudice, pursuant to a settlement between the parties. 4. Whether the court of appeals erred in affirming the nationwide injunction issued by the district court.	**Oct. 8, 2008 -** Oral Argument

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Case Information	*Issue Summary*	*Background*	*Questions Raised*	*Status*
Shell Oil Co. **v. United States** No. 07-1607 **Burlington Northern & Santa Fe Railway Co.** **v. United States** No. 07-1601 (consolidated) Cert to the Ninth Circuit Burlington Northern and Santa Fe Railway Company, et al., *Petitioners* United States, et al., *Respondent* *Amicus Briefs:* U.S. Chamber of Commerce American Chemistry Council American Petroleum Institute	Whether the Court of Appeals erred in finding the companies jointly responsible for Superfund cleanup costs at a chemical distribution plant near Bakersfield, Calif.	The EPA sued a defunct chemical distributor, Brown & Bryant Inc., along with Shell Oil, which made two chemicals that contaminated the site, and the railroads, which leased the land to Brown & Bryant. The District Court apportioned liability among defendants proportionate to their relative involvement in the site. The Ninth Circuit reversed, holding that Shell and the railroads may be held liable for up to the entire amount of the clean-up costs. According to the court, apportionment under Superfund "is the exception, available only in those circumstances in which adequate records were kept and the harm is meaningfully divisible." Shell and BNSF argued to the Supreme Court in petitions seeking Supreme Court review that Superfund does not mandate joint and severed liability, and therefore the Ninth Circuit should have affirmed the District Court's reasonable apportionment of liability supported by evidence. Trade groups argued the appeals court ruling would "impose substantial and unwarranted burdens on manufacturers and suppliers of chemicals and other products and disrupt longstanding relationships between suppliers and the common carriers that deliver their goods."	*07-1607:* 1. Whether liability for 'arranging' for disposal of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607(a)(3), may be imposed upon a manufacturer who merely sells and ships, by common carrier, a commercially useful product, transferring ownership and control to a purchaser who then causes contamination involving that product." 2. Whether joint and several liability may be imposed upon several potentially responsible parties under CERCLA, 42 U.S.C. § 9607(a), even where a district court finds an objectively reasonable basis for divisibility that would suffice at common law." *07-1601:* 1. Whether the Ninth Circuit erred by reversing the district court's reasonable apportionment of responsibility under CERCLA, and by adopting a standard of review and proof requirements that depart from common law principles and conflict with decisions of other circuits.	**Oct. 1, 2008 -** Court accepted the case for review

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Entergy Corporation **v. EPA** No. 07-588 **PSEG Fossil, LLC** **v. Riverkeeper, Inc.** No. 07-589 **Utility Water Act Group** **v. Riverkeeper, Inc.** No. 07-597 (consolidated) Cert to the Second Circuit *Amici for Petitioner:* Pacific Legal Foundation State of Nebraska, et al. (in 07-597 only) ACC, AF&PA, AISI, US Chamber, NAM Nat'l Assoc. of Home Builders CA Co. for Enviro & Economic Balance American Petroleum Institute Nuclear Energy Institute AEI Center for Reg. & Market Studies *Briefs in Support of Respondent:* Environmental Law Professors OMB Watch CATF & Clean Water Action NE Environment America Center for Biological Diversity IL, IA, MD, MT, OH, OK, PA Puerto Rico National Wildlife Fed. (07-589, 07-597) Sierra Club (07-589, 07-597) Voices of the Wetlands Coastal Alliance on Plant Expansion Commercial Fisherman of America	Whether the Clean Water Act permits the EPA to undergo a cost-benefit analysis in determining the most environmentally friendly technology at cooling water intake structures, and to regulate such structures at existing as well as new facilities.	In 2001, EPA issued a rule governing cooling water intake structures at certain new power plant facilities, aimed at preventing harm to fish and other aquatic animals. EPA subsequently issued a rule governing intake structures at existing power plants. Since 1989, the Clean Water Act has allowed the EPA to consider the "costs of achieving" goals aimed at intake structures, but provides no guidelines for the kinds of factors EPA can rely upon in such a consideration. The 2nd Circuit held that EPA must not view economic costs as controlling factors when determining whether a company has complied with the intake structure rule. Economic considerations must be subordinated to analysis of the effectiveness of intake structures in preventing injury to aquatic life. **Entergy and PSEG argue in joint brief:** 1. The Court disregarded precedent and incorrectly interpreted the statute's silence as a prohibition on cost-benefit analysis. EPA has the same authority as other agencies to conduct a cost-benefit analysis to effectively implement its mandate. 2. The statutory language of § 316(b) requires a cost-benefit analysis, arguing the terms "best" and "available" do not refer solely to the reduction of harm, but also to the consideration of other factors, including costs. 3. Cross-references to § 301 and § 306 of the CWA confirm that the EPA is "at least authorized, and in some cases required" to weigh costs and benefits in setting standards. 4. The Court's interpretation is contradictory because it requires the least adverse environmental technology but precludes local and site-specific considerations. 5. The statute is ambiguous, so EPA's interpretation allowing the agency to conduct a cost-benefit analysis is entitled to deference.	1. 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 in take structures. 2. Whether Section 316(b) prohibits the use of restoration measures as a means of minimizing the adverse environmental impact associated with cooling water in take structures. 3. Whether Section 316(b) authorizes EPA to regulate cooling water intake structures at existing facilities, as well as at new facilities.	**Dec. 2, 2008 -** Oral Argument

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