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Supreme Court Ruling in *Entergy v. EPA* Narrow Enough to Leave Obama Administration Leeway to Protect Waters, Says Center for Progressive Reform Scholar

(Washington) -- Amy Sinden, a Member Scholar of the Center for Progressive Reform (CPR) and a Professor of Law at Temple University's Beasley School of Law, issued the following statement today in response to the U.S. Supreme Court's decision in *Entergy v. EPA*. Professor Sinden filed an amicus brief in the case. Following are her remarks today:

"Today's Supreme Court decision is a significant loss for the protection of fish and river ecosystems, but it keeps the door open for the current and future administrations to protect our waters -- if they choose to.

"The saving grace today is that the Court left intact the technology-based standards in the Clean Water Act that protect our rivers and streams from the discharge of pollutants. This decision is narrow enough to leave the Obama administration the leeway to proactively protect our waters, and the EPA will have to step up to the task.

"The EPA's decision-making process in this case was a perfect example of why cost-benefit analysis is such an irrational way to make decisions about protecting the environment. The cost of upgrading a power plant is relatively clear; the benefit of not killing thousands of fish and severely damaging a river ecosystem is difficult to quantify -- and easy to lowball. When the EPA based its decision on a comparison of an incomplete estimate of benefits with a relatively complete estimate of costs, it demonstrated the absurdity of this kind of analysis. The formal "cost-benefit analysis" used here to justify continued pollution of rivers is not "common sense" -- it's a specific and controversial decision procedure that Congress rightly prohibited when it wrote the Clean Water Act.

"The court today gave EPA the discretion to use cost-benefit analysis in setting standards for power plant cooling systems, but did not require it to do so. Importantly, it said that the EPA's discretion to use cost-benefit analysis may not extend so far as to authorize 'a rigorous form of cost-benefit analysis.' The Court suggested that EPA's authority only extends to determining whether costs are "significantly disproportionate" to benefits. This ruling might preclude the kind of overly formalized, monetized cost-benefit analysis that absurdly tries to put a dollar figure on each fish."

Professor Sinden's amicus brief, on behalf of OMB Watch, is available at:
http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/07-588_RespondentAmCuOMBWatch.pdf

The Center for Progressive Reform (www.progressivereform.org) is a nonprofit research and educational organization dedicated to protecting health, safety, and the environment through analysis and commentary. For more information, media should contact Ben Somberg at 202-658-8129 or at bsomberg@progressivereform.org. Visit CPR on the web at www.progressivereform.org.

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