

U.S. Supreme Court Sides with Property Owners Over U.S. EPA on Wetlands Compliance Order

March 22, 2012

[Full text of the Court's opinion](#)

The U.S. Supreme Court ruled unanimously on March 21, 2012 that property owners have the right to prompt review by a federal judge of a compliance order issued by the U.S. Environmental Protection Agency that blocked construction of a couple's home in an alleged wetland. The result is surprising in that every federal circuit court to previously consider the issue determined that individuals were not entitled to judicial review of compliance orders issued pursuant to the Clean Water Act by the U.S. EPA.

In *Sackett v. EPA*, 566 U.S. ____ (2012), Idaho couple Mike and Chantell Sackett sought to build a home on a 2/3 acre lot. In preparation for construction, the Sacketts filled part of the lot with dirt and rock. Shortly thereafter, the Sacketts received a compliance order from the U.S. EPA under 33 U. S. C. §1319 ordering a halt to construction of the couple's home because U.S. EPA identified the Sackett's property as a wetlands subject to federal jurisdiction. In addition, U.S. EPA threatened the Sacketts with a penalty of \$37,500 per day for failure to comply with the order.

In an effort to challenge the EPA's determination that their plot was a wetland, the Sacketts sought an administrative hearing with the EPA, which was rebuffed. Without any other recourse, the Sacketts brought suit in federal court asserting that the compliance order was "arbitrary and capricious" because their property did not constitute a wetland.

Both the trial court and an appellate court determined that the Sacketts' suit should be dismissed based on their reading of the Clean Water Act. According to the lower courts, the Clean Water Act precluded judicial review, and only allowed property owners to challenge the propriety of compliance orders and wetlands determinations when the U.S. EPA filed a lawsuit against landowners.

The U.S. Supreme Court disagreed, and the Court — with a 9-0 vote — reversed the lower courts. While not addressing the substantive merits of the Sacketts' claim, the Court held that the EPA compliance orders issued under the Clean Water Act are subject to immediate judicial review under the Administrative Procedure Act. As stated in the opinion of the court by Justice Antonin Scalia, "there is no reason to think that the Clean Water Act was uniquely designed to enable the strong-arming of regulated parties into 'voluntary compliance' without the opportunity for judicial review — even judicial review of the question whether the regulated party is within the EPA's jurisdiction."

While this decision addressed the alleged filling of wetlands for residential purposes, the Court's instruction clearly has implications for commercial and industrial development as well. Significantly, if a business receives a compliance order from the U.S. EPA, business owners have a new opportunity to challenge the U.S. EPA and may be able to immediately address legal uncertainty, speeding development.

However, as the U.S. EPA noted in its arguments to the court, permitting immediate judicial review of compliance orders may lead U.S. EPA to issuing fewer compliance orders for which there will not be voluntary compliance, and instead seeking judicial intervention more often.

Individuals and business owners faced with issues involving the development of property that may impact wetlands should consider retaining competent counsel to address any perceived problems by federal and state governments. The decision of the U.S. Supreme Court provides new tools to individuals and businesses that may help garner more favorable solutions with the government, particularly when issues are addressed early.

Bricker & Eckler's environmental lawyers have a wealth of experience in helping clients comply with state and federal environmental regulations. For more information, please contact [Frank Merrill](#) or [Robert James](#).

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