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Supreme Court Affirms the Right to Judicial Review of EPA Compliance Orders

By [Leonard Dougal](#) and [Dudley McCalla](#)

On March 21, 2012, the Supreme Court of the United States issued its decision in *Sackett v. Environmental Protection Agency*, a major victory for persons subjected to administrative "compliance orders" of the EPA, which the EPA had asserted allowed no right to judicial review. In a unanimous decision, the Court ruled that property owners who had received, without prior hearing, a compliance order under § 309 of the Clean Water Act have the right to bring a civil action challenging the order in federal district court under the Administrative Procedure Act.

The case was brought by Michael and Chantell Sackett, owners of a residential lot in Bonner County, Idaho. In preparation for building a house, the landowners filled in part of their lot with dirt and rock. Some months later they received the compliance order from the EPA ordering them to immediately undertake activities to restore the homesite in accordance with a Restoration Work Plan created by the EPA, and further to provide access to the site and to documentation related to the site to EPA employees and their designated representatives. Violation of the compliance order potentially subjected the property owners to fines up to \$75,000 per day.

After their request to the EPA for a hearing was denied, the Sacketts filed suit in the United States District Court for the District of Idaho, which dismissed the claims for want of subject matter jurisdiction. The Court of Appeals for the Ninth Circuit affirmed, concluding that the Clean Water Act precludes pre-enforcement judicial review of compliance orders and that such preclusion does not violate the Fifth Amendment's due process guarantee.

The Supreme Court reversed the Ninth Circuit and held that the compliance order was a "final agency action for which there is no other adequate remedy in a court" and that judicial review was available under Chapter 7 of the APA. In a stinging rebuke of EPA's actions, the Court stated that 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 of whether the regulated party is within EPA's jurisdiction."

The case will have implications beyond the Clean Water Act, as EPA has issued controversial administrative compliance orders under other statutes, such as its action against Range Resources under the Safe Drinking Water Act related to hydraulic fracturing in the Barnett Shale. In that case, as in *Sackett*, EPA took the position that there was no right to judicial review of its compliance order.

[Sackett v. Environmental Protection Agency](#) is available here.

If you have any questions regarding this e-Alert, please contact **Leonard Dougal** at 512.236.2233 or ldougal@jw.com or **Dudley McCalla** at 512.236.2071 or dmccalla@jw.com.

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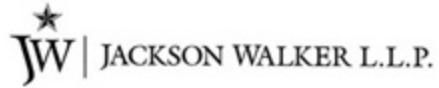
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