

Environmental Law Update

03/22/2012

US Supreme Court Rules Property Owners May Sue the EPA Over a Wetlands Restoration Order

In a unanimous decision, the U.S. Supreme Court has ruled that two Idaho property owners may bring a legal challenge to the U.S. Environmental Protection Agency's ("EPA") issuance of an administrative order that required the owners to restore what EPA claimed was an illegally filled wetland. The case, *Sackett v. EPA*, constitutes a big win for property owners who previously had been stymied in their ability to contest EPA administrative orders until after they complied with an order.

The Sacketts own less than an acre of property near Priest Lake, Idaho. To prepare their property for building a house, the Sacketts filled in part of the lot with dirt and rock. The EPA concluded that (a) the property contained wetlands that were "waters of the United States" under the Clean Water Act, (b) the fill violated the Clean Water Act, and (c) the Sacketts should be required immediately to restore the site. The Sacketts did not believe their property had wetlands, and they tried to contest the EPA's order. The EPA denied them a hearing, the U.S. District Court in Idaho dismissed their lawsuit, and the Ninth Circuit Court of Appeals agreed, ruling that the Clean Water Act precludes pre-enforcement judicial review of a compliance order and that there was no violation of due process.

The Supreme Court's decision reverses that determination, but did so on narrow grounds. The Court held that the EPA's action was final for purposes of bringing a challenge under the Administrative Procedure Act and that nothing in the Clean Water Act expressly precludes judicial review. Justice Scalia, writing for the Court, said that the decision should not undermine the effectiveness of compliance orders to resolve most water pollution violations. However, where a party does not choose voluntary compliance, the Court said: "[T]here 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."

The Sacketts have won a largely procedural argument and still will have to prove that their property does not contain "wetlands." Nor does the decision address the question of whether the terms and conditions of the compliance order are proper. Nevertheless, the ruling marks a turning point for property owners who have long been frustrated in their ability to challenge the jurisdictional basis for an EPA administrative order. It's also not clear whether the decision would apply to EPA administrative decisions under other statutes, although the Court's treatment of "finality" for court review could provide a future opening.

In a concurring opinion, Justice Alito pointed out a larger, as yet-undecided issue (and one that will be crucial to the Sacketts' jurisdictional claims) — what exactly constitutes “waters of the United States” subject to the Clean Water Act. The ambiguous term has left the courts and the EPA to “feel their way on a case-by-case basis” about the scope of jurisdiction over wetlands. According to Justice Alito: “Allowing aggrieved property owners to sue under the Administrative Procedure Act is better than nothing, but only clarification of the reach of the Clean Water Act can rectify the underlying problem.”

**For more information, please contact the Environmental Practice Group at
Lane Powell: environs@lanepowell.com**

1.800.426.5801 ■ Your Pacific Northwest Law Firm® ■ www.lanepowell.com

This is intended to be a source of general information, not an opinion or legal advice on any specific situation, and does not create an attorney-client relationship with our readers. If you would like more information regarding whether we may assist you in any particular matter, please contact one of our lawyers, using care not to provide us any confidential information until we have notified you in writing that there are no conflicts of interest and that we have agreed to represent you on the specific matter that is the subject of your inquiry.

Copyright © 2012 [Lane Powell PC](http://www.lanepowell.com)
Seattle | Portland | Anchorage | Olympia | Tacoma | London