

Sackett v. EPA – Supreme Court to Decide Whether Pre-Enforcement Review of Compliance Orders Allowed

January 10, 2012 By Sedina L. Banks



Environmental Litigation

On Monday, the [United States Supreme Court](#) heard oral argument on [Sackett v. Environmental Protection Agency](#) (docket no. 10-1062). At issue is whether a party who was issued a pre-enforcement compliance order from the [Environmental Protection Agency \(EPA\)](#) has the right to have the order judicially reviewed before EPA initiates an enforcement action.

The Sacketts own about a half-acre vacant parcel of land in Idaho. In early 2007, they filled the parcel with dirt and rock in preparation for building a house. Later that year, EPA issued an administrative compliance order against the Sacketts alleging that the parcel of land is a wetland subject to the [Clean Water Act \(CWA\)](#) and that the Sacketts violated the CWA by filling in the land without obtaining a permit. EPA ordered the Sacketts to return the land to its former condition or face over \$30,000 in penalties per day for failure to comply.

After EPA refused to hear the Sacketts' challenge to the order, the Sacketts brought an action against EPA in the [United States District Court for the District of Idaho](#) seeking an injunction against EPA and declaratory relief. However, the district court dismissed the action on the grounds that it did not have subject-matter jurisdiction (i.e., the right to consider that type of case). The court concluded that the CWA precludes judicial review of compliance orders before EPA has initiated an enforcement action in federal court. The [Ninth Circuit](#) agreed.

The Ninth Circuit found that allowing pre-enforcement review would require EPA to litigate all compliance orders in court, even though Congress gave them the choice of either issuing a compliance order or bringing a civil action. Additionally, the court found that because no sanctions can be imposed for non-compliance until EPA brings an enforcement action in court, a party would have an opportunity to challenge EPA's action. The court found that its ruling did not violate the Sacketts' right to due process, especially given that any penalties are subject to judicial review and may only be imposed for violation of the CWA and not the compliance order per se.

Fundamentally, the Supreme Court will decide whether a party has a right to challenge EPA compliance orders before EPA brings an enforcement action against the party. If not, parties like the Sacketts may be required to incur thousands of dollars complying with an order without ever having their day in court or have to wait until they are sued by EPA for non-compliance.

The Sacketts are represented by the [Pacific Legal Foundation \(PLF\)](#) (click [here](#) for information from PLF on the case and click [here](#) for the transcript of the oral argument). A decision is expected by June – we'll keep you posted.

