Judicial Review of EPA Compliance Orders

*Sackett v. Environmental Protection Agency* 566 U.S. ____ (2012)

Justice Antonin Scalia delivered the opinion of a unanimous United States Supreme Court reversing the Ninth Circuit Court of Appeals decision that the Clean Water Act precluded Environmental Protection Agency (EPA) pre-enforcement judicial review of compliance orders and that such preclusion did not violate due process.

**Facts:** Michael and Chantell Sackett own a small residential lot lying just north of Priest Lake in Idaho, with their property separated from the Lake by several lots containing permanent structures. In preparation for constructing a house, the Sacketts filled in part of their lot with dirt and rock. Some months later, they received from the EPA a compliance order. EPA had determined that the Sacketts had filled a jurisdictional wetland, thereby discharging into a water of the United States and violating the Clean Water Act (CWA). The compliance order required the Sacketts to restore their property to the original condition according to an EPA plan and to give EPA access to their records and documentation.

**Procedings Below.** The Sacketts do not believe that their property has a wetland under CWA jurisdiction and requested a hearing from EPA, which denied the hearing request. The Sacketts sued in federal district court, seeking declaratory and injunctive relief. The complaint alleged that the EPA’s issuance of the compliance order was “arbitrary [and] capricious” under the Administrative Procedure Act (APA) and deprived them of due process. The District Court dismissed the claims for want of subject matter jurisdiction, and the Ninth Circuit affirmed.

**Supreme Court Finds Jurisdiction under Administrative Procedures Act.** The Supreme Court rejected the EPA’s long-standing CWA interpretation that compliance orders could not be reviewed by a court. The Federal Government argued that the Clean Water Act precluded judicial review because Congress had given EPA the choice between an administrative order and a civil action. Allowing judicial review of an administrative order would defeat Congress’ intent to give EPA broad authority “in large part to respond to the inefficiency of then-existing remedies for water pollution.”

In concluding that the Sacketts had a right to judicial review of the EPA compliance order, the Supreme Court found:

- The compliance order was “final agency action” as defined in the APA.
- The Sacketts had no other adequate remedy in court for review of the EPA compliance order.
- The Clean Water Act does not preclude judicial review of compliance orders. The Court remanded the case for further proceedings consistent with its decision.

Submitted by Alf W. Brandt