On March 12, 2012 the U.S. Supreme Court held that a landowner has the right to seek judicial review of a compliance order issued by the Environmental Protection Agency (EPA) under the federal Clean Water Act. The landowner wanted to build a home on his property near a lake. The lot consisted partly of wetlands, which he filled without securing a permit from the Corps of Engineers. The EPA investigated the fill and, contrary to the claims of the landowner, determined that the wetlands were "navigable waters" subject to the Clean Water Act. EPA found that the fill violated the Act and issued a compliance order requiring the landowner to restore the wetlands or risk a heavy civil penalty for every day of non-compliance. The landowner tried to challenge the compliance order in federal court, but the lower federal courts ruled that his challenge could be made only in defense of an EPA suit to enforce its order. The Supreme Court reversed and held that the Administrative Procedure Act authorized landowners to go to court immediately to test and seek injunctions against compliance orders. There is no deadline for the EPA in filing suits to enforce its compliance orders, but the penalty for non-compliance is a maximum of $37,500 per day until the EPA goes to court to enforce its order. Then it becomes a maximum of $75,000 per day. Thus a landowner who refuses to comply faces a potentially humongous aggregation of penalties if the court upholds the EPA order.

The decision does not bode well for protection of the remaining, invaluable wetlands. The extent of federal jurisdiction over and protection of isolated wetlands and vernal pools has long been uncertain. Determinations of the EPA and Corps of Engineers as to whether isolated wetlands are "navigable waters" under the Clean Water Act are now made on a case by case basis. By authorizing suits against EPA compliance orders the Supreme Court decision reduces the landowner's risk of accumulating heavy statutory penalties. That will tend to encourage landowners to take a chance on unpermitted fills of isolated wetlands and vernal pools.

Those who want to read the decision can Google "Sackett v. Environmental Protection Agency." It is relatively short (10 pages) and, unlike most Supreme Court decisions, easy reading.