

# Wetlands ruling could empower property owners

Premium content from Portland Business Journal by Andy Giegerich ,  
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A U.S. Supreme Court decision could open the doors for Oregon landowners and property developers to battle government land-use decisions.

The court unanimously ruled March 21 that the [Environmental Protection Agency](#) can face judicial challenges on certain land-use decisions. The court ruled in favor of Idaho property owners who faced fines of up to \$32,500 a day. The landowners had filled in parts of their property that EPA said was protected by wetlands rules.

Supreme Court justices overturned several lower court decisions ruling that EPA's compliance order, on specific wetlands issues, aren't subject to judicial review.

While the decision won't necessarily bring a cascade of new lawsuits, it could comfort property owners who want to develop their land.

"Private property owners now have the right to appeal a decision by a government regulator," said [Paul Agrimis](#), vice president and a wetland scientist with Portland-based environmental consulting firm Vigil-Agrimis Inc. "If people feel there's a bad decision, they can have it revisited by the courts."

The National Federation of Independent Business claimed a big victory in the ruling. The group, which represents 7,500 Oregon businesses, said that

hundreds of thousands of small business owners nationwide rely on their land-use rights to operate their companies.

Many have gotten on EPA's bad side because of property issues, said [Jan Meekoms](#), Oregon's NFIB director.

"A door is now opened that was closed because of the EPA's strong-arming tactics," said Meekoms, whose national chapter filed an amicus brief in the case. "It's nice to have a win against the tremendous onslaught of regulation."

Mike and [Chantell Sackett](#), the couple that battled the agency, faced fines after the EPA ruled they improperly added dirt and rocks to their property near an Idaho lake.

"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 review — even judicial review of the question whether the regulated party is within the EPA's jurisdiction," wrote [Justice Antonin Scalia](#).

The ruling isn't expected to apply to property issues stemming from the EPA's Superfund program, which is intended to clean large bodies of water. Last week, large companies affected by the program unveiled long-awaited recommendations on the Willamette River's clean-up plan.

Environmental attorney [Donald Haagensen](#), a partner in Portland law firm Cable Huston Benedict Haagensen & Lloyd LLP, said the ruling does raise issues about developing wetlands in general. He advises clients to have consultants study their property before filling or modifying any part that might be considered wetlands.

"I wouldn't want to get into that situation, where it's already been filled, and then figure out whether it's subject" to EPA regulations, Haagensen said.

Land use experts also noted that Oregon landowners need state approval before developing any property that may contain wetlands.

The extra oversight tends to eliminate surprise EPA decisions.

"We haven't dealt with clients who've gotten sideways with the agencies on issues," said [Matt Kuziinsky](#), a senior wetland scientist with Airfax, Va., environmental consulting firm ICF International's Portland office. "But we have state wetlands (oversight) here as well as federal. Typically, the process in place here is pretty good."

Others maintain that the ruling will only help those who have enough money to fight EPA.

"I guess there's a gain here, but it's so dinky that it doesn't have a lot of effect," said [Jim Wilcox](#), the mayor of The Dalles and a veteran of several city land-use battles. "You can spend yourself into poverty suing a federal agency with unlimited funds to defend themselves with tax dollars."

Andy Giegerich covers government, law, health care and sports business.