

The U.S. Supreme Court is obviously interested in environmental enforcement, or at least the legal issues arising out of environmental enforcement cases.

Today, the Supreme Court granted certiorari in a second environmental enforcement case it will hear and decide in its current Term. *Southern Union Co v. United States*, No. 11-94. This follows the justices' earlier cert grant in *Sackett v. USEPA*, a lawsuit challenging EPA's practice of issuing administrative enforcement orders to address Clean Water Act violations without providing alleged violators an opportunity to seek pre-enforcement judicial review. (The Supreme Court has scheduled oral arguments in *Sackett* for January 9th.)

The just-granted *Southern Union Co.* case arises out of a [criminal enforcement action](#) federal prosecutors brought under the Resource Conservation and Recovery Act (RCRA). The government sought criminal fines against Southern Union in response to a mercury spill at the company's Pawtucket, Rhode Island site, where the mercury had been illegally stored.

Following a jury verdict finding Southern Union criminally liable under RCRA, the federal judge presiding over the case assessed a \$6 million criminal fine, along with a \$12 million "community service fee." The specific issue in *Southern Union* is whether the judge could properly impose these fines and fees or, alternatively, if only the jury could do so.

Southern Union relies on the Supreme Court's landmark 2000 decision in [Apprendi v. New Jersey](#), which held that federal juries, rather than judges, must decide any facts leading to enhanced criminal penalties. The First Circuit Court of Appeals held in *Southern Union* that *Apprendi* doesn't apply to financial penalties. In its cert petition, Southern Union asserts that several other federal circuits disagree, and that Supreme Court review is required to resolve the inter-circuit split. The Supreme Court apparently agrees.

Southern Union Co. v. United States will likely be argued before the justices in March 2012, and a decision in the case is expected by late June.