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*Towards Reviving the Efficacy of Administrative Compliance Orders: Balancing Due Process Concerns and the Need for Enforcement Flexibility in Environmental Law*

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Abstract by Melissa Sutton

The article describes the current procedural and constitutional issues that place the Environmental Protection Agency's (EPA) Clean Air Act Administrative Compliance Orders (ACO) in a state of uncertain validity. ACOs are statutory enforcement mechanisms used to enforce the EPA's interpretation of the Clean Air Act. The author explores the Supreme Court's mixed messages on the propriety of ACOs as enforcement instruments.

The author offers a solution that both addresses legal concerns and preserves the ACO as a valid enforcement tool. Part I of the article provides a background discussion of the use of ACOs as one of several enforcement mechanisms available to the EPA to ensure compliance with the Clean Air Act. Part II explores the recent judicial interpretation of the Clean Air Act's ACO provisions. Part III assesses the impact of the Court's decision to avoid the procedural and constitutional issues concerning the EPA's enforcement program, noting specifically that the Supreme Court's actions have confused the regulated community and the EPA. Part IV of the article proposes a solution to the unsettled nature of the EPA's ACO program in the wake of the 2003 Supreme Court term. The article concludes with an interpretation of the Clean Air Act that should be implemented in future cases dealing with the assessment of civil and criminal penalties for failure to follow an EPA order.