

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

In the Matter of

Condor Land Company

Docket No. CWA-404-95-106

Respondent

ORDER DENYING DEMAND FOR JURY TRIAL

Condor Land Company ("Condor") has filed a demand for a jury trial in this case which arises under the Clean Water Act. 33 U.S.C. § 1251 *et seq.*<sup>1</sup> Condor cites *Tull v. United States*, 481 U.S. 412 (1987), and *Granfinanciera v. Nordberg*, 492 U.S. 33 (1989), in support of its demand. For the reasons that follow, respondent's request for a jury trial in this administrative proceeding is denied.

The United States Supreme Court's decision in *Atlas Roofing Company v. Occupational Safety and Health Review Commission*, 430 U.S. 442, 454 (1977), is dispositive of the jury trial question presented here. In *Atlas Roofing*, the Court held that the Seventh Amendment right to a jury trial does not extend to administrative proceedings.<sup>2</sup>

Condor's reliance upon *Tull v. United States* and *Granfinanciera v. Nordberg* as providing for such a jury trial is misplaced. Indeed, in *Tull*, *supra*, the Court cited its *Atlas Roofing* decision for the proposition that the Seventh Amendment right to a jury trial "is not applicable to administrative proceedings." 481 U.S. at 418 n. 4. Likewise, in *Granfinanciera*, *supra*, the Court observed: "In certain situations... Congress may fashion causes of action that are closely analogous to common-law claims and place them beyond the ambit of the Seventh Amendment by assigning their resolution to a forum in which jury trials are unavailable. *See, e.g., Atlas Roofing*,... at 450-461 (workplace safety regulations)." 492 U.S. at 52 (Court's emphasis).

In addition, the availability of a jury trial in an administrative proceeding also was addressed by the Chief Judicial Officer in *Dr. Marshall C. Sasser*, CWA

Appeal No. 91-1, (November 21, 1991), at pp. 13-14, *affd Sasser v. Administrator, EPA*, 900 F.2d 127 (4th Cir. 1993). In that Clean Water Act case, the Chief Judicial Officer stated that neither *Tull*, nor *Granfinanciera*, altered the Supreme Court's holding in *Atlas Roofing* that the Seventh Amendment right to a jury trial is not applicable in administrative proceedings.

Accordingly, Condor Land Company's demand for a jury trial is denied.

Carl C. Charneski  
Administrative Law Judge

Issued: December 5, 1996  
Washington, D.C.

**In the Matter of CONDOR LAND COMPANY,** Respondent

Docket No. CWA-404-95-106

**Certificate of Service**

I certify that the foregoing ORDER, dated December 5, 1996, was sent this day in the following manner to the addressees listed below.

Original by Regular Mail to:

Ms. Julia P. Mooney  
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Dated: December 5, 1996

<sup>1</sup> The record contains no response from complainant U.S. Environmental Protection Agency.

<sup>2</sup> The case of *Atlas Roofing Company v. Occupational Safety and Health Review Commission, supra*, involved an administrative civil penalty proceeding for alleged violations of the Occupational Safety and Health Act of 1970. This Clean Water Act case involves a similar regulatory enforcement scheme.