

regulations. When unemployment is high, people are much more reluctant to accept regulations that they believe might cause workers to lose their jobs and/or cause the prices of products to rise.

Adjudication

In addition to rule making by state and federal administrative agencies, adjudication of individual cases is another important agency activity. The number of cases heard by ALJs is extremely high: in 1983, one-third more cases were referred to ALJs than were filed in the federal district courts. From the beginning of 2001 to the end of 2002, the EPA's Office of ALJs made more than 160 decisions and orders.¹ The APA again sets forth the steps for adjudication, which can be modified by an agency's enabling statute. APA Sections 554, 556, and 557 set out the minimum standards for adjudication whenever an agency's adjudication is "required by statute to be determined on the record after opportunity for an agency hearing."

Agency adjudication is generally preceded by an investigation and the filing of a complaint with an ALJ by the agency staff. The party against which the agency is taking the action is entitled to notice the time and place of the hearing, the authority the agency is relying on, and the "matters of fact and law asserted." A hearing is then conducted by the ALJ, after which an initial decision is issued. An appeal to the full commission or the head of an agency may then be filed. That decision may then be appealed to the circuit court of appeals. Figure 3-2 illustrates the steps of this administrative adjudication process.

The EPA (and approximately eight other federal agencies) has so many appeals that a special board has been set up within the agency to handle certain types of appeals. On March 1, 1992, the Environmental Appeals Board (EAB), a special three-person board, began operation to handle appeals of penalty decisions made by EPA ALJs and appeals of permit decisions and civil penalty decisions in the EPA's ten regions. Today, the EAB's caseload consists primarily of appeals from permit decisions and civil penalty decisions. A substantial additional portion of the EAB's caseload consists of petitions for reimbursement of costs incurred in complying with cleanup orders issued under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980.²

The administrative adjudication process is extremely important because most agencies rely primarily on administrative actions to enforce their regulations. This enforcement strategy is especially true in the environmental arena. Administrative actions are often preferred to taking a violator to trial because administrative actions are generally quicker, less expensive, and less resource-intensive than a trial. An administrative proceeding may be handled by an agency employee, whereas to prosecute a violator in court, a federal agency must turn the case over to the Justice Department and a state agency must refer the case to the state attorney general.

As a result of an administrative action, an agency can issue a compliance order, which may require immediate action by a violator, or a timetable that must be followed in moving toward compliance. The order may contain daily penalties for noncompliance or include provisions for suspension or revocation of a violator's operating permit under appropriate circumstances.

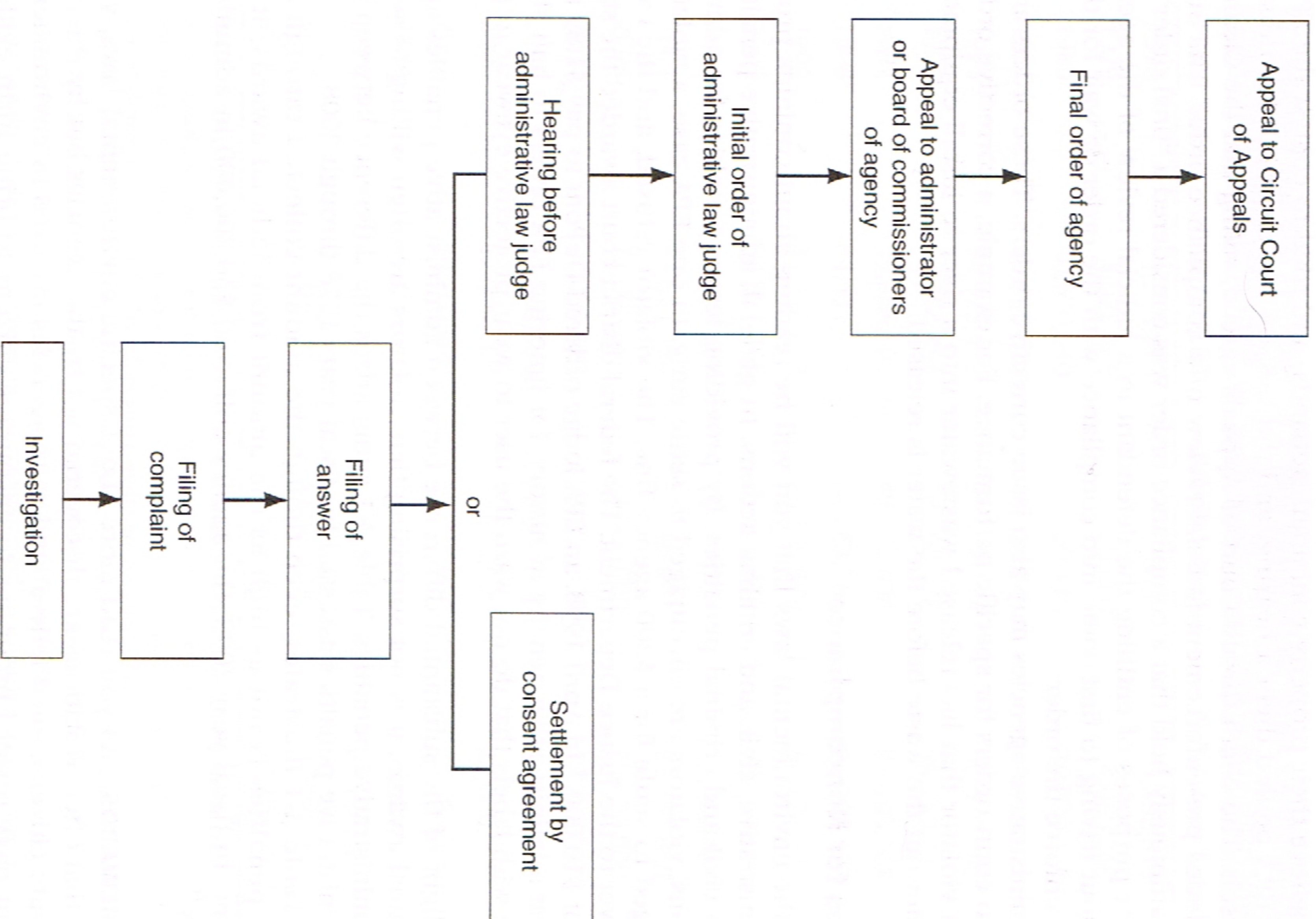


FIGURE 3-2 Steps in Administrative Adjudication

In 2011, the U.S. Supreme Court held that these compliance orders are immediately appealable to the courts. In the case of *Sackett v. EPA*,³ the Sacketts filled in a portion of their land with dirt and rock in preparation for their building a house on their lakeside property. However, they received a compliance order from the EPA, which stated that their property contained wetlands, the filling of which violated the Clean Water Act, and thus they were to immediately restore the filled wetlands to their original condition or face penalties of roughly \$75,000 per day. The Sacketts