



Insight

EPA's "Noncontroversial" Wage Garnishment Order

DAN GOLDBECK | JULY 10, 2014

On July 2, the Environmental Protection Agency (EPA) published a brief "[direct final rule](#)" that aims to confiscate the wages of certain Americans. Despite taking up only three pages of the Federal Register, it potentially brings precarious ramifications. The rule's preamble declares that the EPA now has the power "to garnish non-Federal wages to collect delinquent non-tax debts owed the United States without first obtaining a court order."

Even more alarming, there are the procedural acrobatics involved. Concurrent with the direct final rule, EPA published a [proposed version](#) to essentially legitimize it under standard rulemaking procedures. In this two page notice, they claim the ability to follow this path because EPA views the rulemaking "as a noncontroversial action and anticipates no adverse comment." Although they do concede, "If we receive adverse comment, we will withdraw the direct final rule and it will not take effect." Interested parties have until August 1 to comment.

EPA's dismissal of the order's controversy is rather galling. EPA has been among the most controversial agencies in the administrative state for some time. Now, using an obscure combination of Treasury law and rulemakings, they seek the controversial practice of wage garnishment – without a court order no less.

The practical implications could be more stark, yet unsurprising given EPA's recent record. For instance, consider the controversial [rulemaking](#) defining "the Waters of the United States." Many stakeholders worry about that rule's ambiguous parameters and non-transparent findings process. What if EPA were to utilize these powers to enforce citations under that regulation? The potential due process violations trip over themselves.

This order is certainly controversial, and is a strong reminder that even a few pages of the Federal Register can pack serious administrative consequences.