

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)
Plaintiff,	)
v.	)
ROBERT BRACE,	)
ROBERT BRACE FARMS, Inc.	)
Defendants.	)

Civil Action No. 90-229 (Erie)

**UNITED STATES' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
ENFORCE CONSENT DECREE AND FOR STIPULATED PENALTIES**

The United States of America, by its attorneys on behalf of the United States

Environmental Protection Agency ("EPA"), submits this Memorandum of Law in support of its Motion to Enforce the Consent Decree entered in this case on September 23, 1996. As explained in detail below, Defendants have cleared, ditched, drained, plowed, and planted wetlands that were required to be restored pursuant to the Consent Decree, violating both the Consent Decree and the Clean Water Act. Unless restored, Defendants' activities – undertaken in defiance of the Consent Decree's permanent injunction against discharging any pollutants (including dredged or fill material) into the protected wetlands – will continue to damage the wetland hydrology, cause long-term harm to the affected wetlands, and reverse the restoration work this Court ordered under the Consent Decree.

Accordingly, the United States respectfully requests that the Court issue an Order enforcing the Consent Decree by requiring Defendants to: (1) restore the wetlands; (2) comply with the permanent injunction; (3) pay the stipulated penalties required by the Consent Decree;

(4) reimburse the United States for fees and costs incurred by the United States in seeking enforcement of the Consent Decree; and (5) grant any other monetary and injunctive relief the Court deems appropriate. Further, the United States requests that the Court modify the Consent Decree to increase stipulated penalties to deter Defendants from violating the Consent Decree in the future.

BACKGROUND

I. STATUTORY AND REGULATORY BACKGROUND

The Clean Water Act (“CWA”) is intended to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To achieve this goal, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant, including dredged or fill material, by any person into waters of the United States, unless authorized by a Department of the Army permit under Section 404, 33 U.S.C. § 1344. *See United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 132-33 (1985) (“Protection of aquatic ecosystems, Congress recognized, demanded broad federal authority to control pollution, for [w]ater moves in hydrologic cycles and it is essential that discharge of pollutants be controlled at the source.” (quoting S. Rep. No. 92-414, at 77 (1972))).

Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes EPA to bring suit for injunctive relief for violations of Section 301(a), including the unauthorized discharge of fill into waters of the United States. Under Section 309(d), 33 U.S.C. § 1319(d), such violations subject the responsible parties to civil penalties of up to \$37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and up to \$51,570 per day for violations occurring after November 2, 2015. 40 C.F.R. § 19.4; 81 Fed. Reg. 43,091 (July 1, 2016).

II. FACTUAL BACKGROUND

A. The Parties and the Site

Defendant Robert Brace owns approximately 137 acres on four contiguous parcels located in Waterford and McKean Townships, Erie County, Pennsylvania.¹ Mr. Brace serves as the corporate President of Defendant Robert Brace Farms, Inc., a Pennsylvania corporation and commercial farming operation. Mr. Brace describes his contiguous Erie County property as three farms: the Homestead Farm (north of Lane Road and east of Elk Creek); the Murphy Farm (south of Lane Road); and the Marsh Farm (north of Lane Road, west of Elk Creek). The Homestead Farm and the Murphy Farm were purchased by Mr. Brace from his father in 1975. Available information suggests that the majority of the Marsh Farm was purchased by Mr. Brace in May 2012.²

The area of the Erie County property that is the subject of the Consent Decree consists of 30 acres of wetlands in a “U” shaped formation south of Lane Road, bordered on the east by Greenlee Road in Waterford, Pennsylvania (the “Site”). See Ex. 1, Declaration of Todd Lutte (“Lutte Decl.”) ¶ 6); Ex. 2, Consent Decree at Exhibit A. The Site contains four unnamed tributaries that all flow into Elk Creek within the Site. Lutte Decl. ¶ 6. From the Site, Elk Creek flows approximately 29.47 miles northwest to Lake Erie. *Id.*

¹ The Erie County property consists of four contiguous tax parcels, identified as parcel numbers 47-012-028.0-001.00, 47-011-004.0-002.00, 47-011-004-0-003.00, and 31-016-063.0-002.00 by the Erie County Bureau of Assessment.

² Independent of this action, Mr. Brace and the other Defendants unlawfully discharged pollutants within federally-regulated wetlands located on the Marsh property, in violation of CWA Sections 301 and 404, 33 U.S.C. §§ 1311 and 1344, for which the United States will bring a separate enforcement action in this court.

B. Litigation History

1. Defendants' Original Violations of the CWA

On October 4, 1990, the United States filed a Complaint against Defendants Robert Brace and Robert Brace Farms, Inc., for violations of CWA Sections 301 and 404, 33 U.S.C. §§ 1311 and 1344, for the unpermitted discharge of pollutants caused by their dredging, filling, leveling, and draining waters of the United States, specifically the 30-acre Site. *See* Ex. 3, Complaint ¶¶ 7, 18-22. The United States sought injunctive relief and civil penalties. *Id.* at 5. After trial, on December 22, 1993, the Court dismissed the Complaint finding that Defendants' activities were exempt from the permitting requirements under CWA Section 404, 33 U.S.C. § 1344. On November 22, 1994, the Third Circuit Court of Appeals reversed the District Court's decision and held that Defendants were liable for CWA violations and remanded the case to this Court to assess penalties. *United States v. Brace*, 41 F.3d 117, 120 (3d Cir. 1994). The United States Supreme Court denied Defendants' petition for certiorari. *Brace v. United States*, 515 U.S. 1158 (1995). Thereafter, on September 23, 1996, the parties entered into the Consent Decree to

resolve Defendants' liability. Ex. 2, Consent Decree.

2. The Consent Decree and Wetland Restoration Plan

The Court-ordered Consent Decree, which remains in place today, permanently enjoined Defendants from discharging any pollutants, including dredged and fill material, into the approximately 30-acre Site unless such a discharge complies with the CWA. *Id.* ¶ 3. The Consent Decree also required that Defendants pay a civil penalty, and restore the disturbed wetlands pursuant to an approved restoration plan attached to and incorporated by reference into the Consent Decree. *Id.* ¶¶ 4-5, Exhibit A to Consent Decree ("Wetland Restoration Plan"). The primary objective of the restoration plan was to "restore the hydrologic regime" to the Site, and

the plan specified a series of required tasks to accomplish that objective. *Id.* at Wetland Restoration Plan p. 1. In particular, the restoration plan comprised three distinct obligations: (1) Defendants were obligated to remove drainage tiles they had illegally installed; (2) Defendants were obligated to fill two surface drainage ditches they had illegally excavated; and (3) Defendants were obligated to install a check dam aimed at restoring the wetland hydrology they had disturbed. *Id.* at Wetland Restoration Plan ¶¶ 1-3.

If Defendants failed to comply with any of the Consent Decree's requirements, including the restoration plan, Defendants stipulated to pay a penalty of \$250 per day. *Id.* ¶ 8; *see id.* ¶ 4. Pursuant to the Consent Decree, the United States did "not waive any rights or remedies available to it for any violations by Defendants of laws, regulations, rules, and permits other than the violations alleged in the Complaint." *Id.* ¶ 10. Additionally, the Consent Decree did "not relieve Defendants of responsibility to comply with any federal, state and local laws, regulations, rules, and permits, except that this Consent Decree provides all necessary federal authority to implement paragraph 4 [the restoration plan]." *Id.* The Consent Decree also makes Defendants responsible for any expenses and costs the United States incurs in enforcing it. *Id.* ¶ 8. The Consent Decree remains in effect and the Court retains jurisdiction over any action to enforce it. *Id.* ¶ 12. Defendants have never sought to modify the Consent Decree.

3. Defendants' Actions After Entry of the Consent Decree

After entry of the Consent Decree, Defendants paid the civil penalty and restored the property as required. In 1998, Mr. Brace filed suit under the Takings Clause of the Fifth Amendment in the United States Court of Federal Claims, seeking compensation for the alleged deprivation of his property rights as a result of EPA's enforcement action. Specifically, Mr. Brace alleged that the restoration required by the Consent Decree was overreaching and caused

areas outside the impacted wetlands to become inundated with water and unusable. After hearing the evidence at trial, the Court determined that the restoration of the Site did not constitute a regulatory or physical taking and entered judgment on behalf of the United States, which was affirmed by the Court of Appeals for the Federal Circuit. *Brace v. United States*, 72 Fed. Cl. 337, 358, 362 (2006), *aff'd*, 250 Fed. Appx. 359 (Fed. Cir. 2007). In 2008, the Supreme Court denied Mr. Brace's petition for certiorari. *Brace v. United States*, 552 U.S. 1258 (2008). In 2011, Mr. Brace contacted EPA on multiple occasions inquiring about the boundaries of the area covered by the Consent Decree and expressing a desire to remove beaver dams and clean "ditches" at various locations on his Erie County property to eliminate excess water that he claimed had accumulated on the uplands. *See* Ex. 1, Lutte Decl. ¶¶ 13-14. In response, EPA provided Mr. Brace with copies of the maps that were attached to the Consent Decree as well as an aerial photograph on which EPA regulatory staff had drawn a polygon outlining the area subject to the Consent Decree. *Id.* ¶¶ 13, 15. In July 2012, representatives from EPA and the Corps visited Mr. Brace's property to see the "ditches" he wished to clear. *Id.* ¶ 17. Mr. Brace stated that the "ditches" he wished to clear were created by his grandfather decades ago. *Id.* During the Site visit, the regulators indicated to Mr. Brace that if the channels were agricultural ditches, then maintaining the channels might qualify for a CWA exemption, but that the Corps would need to make a final determination. *Id.* During that visit, the EPA regulator repeatedly told Mr. Brace that he could not perform work within the 30-acre wetland area subject to the Consent Decree. *Id.* In a follow-up letter, Mr. Brace assured EPA that no work would be done within the 30-acre wetland area in accordance with EPA's instructions at the July 2012 Site visit. Ex. 4, letter from Robert Brace to Todd Lutte (Jan. 17, 2013) at 1-2 (highlighting added and attachments excluded).

In December 2012, the Corps issued a jurisdictional determination that both Elk Creek and 4,750 linear feet of an unnamed tributary to Elk Creek were jurisdictional waters of the United States and were not exempt from CWA regulation, including the channels observed during the July 2012 Site visit. Ex. 5, letter from Scott Hans to Robert Brace (Dec. 19, 2012) at 1. The Corps further determined that portions of those channels were located within the 30-acre Site covered by the Consent Decree. *Id.* The Corps directed Mr. Brace to cease and desist from any discharges to those waters. *Id.* at 2. By joint letter dated August 29, 2013, EPA and the Corps again notified Mr. Brace that maintenance activities in Elk Creek and its tributaries located on his property south of Lane Road were not exempt from CWA regulation and that portions of those channels are within the 30-acre Site covered by the Consent Decree. Ex. 6, letter from Jeffery Lapp and Scott Hans to Robert Brace (Aug. 29, 2013) at 3-4. In that letter, EPA and the Corps also advised Mr. Brace that, although the agencies were aware that sediment had been removed from those channels, the government was exercising its discretion and foregoing an enforcement action for the sediment removal that had occurred prior to the date of the letter. *Id.* at 3. However, EPA and the Corps advised Mr. Brace that any additional work in the 30-acre Site would require a Section 404 permit. *Id.* They also advised Mr. Brace that portions of the 30-acre wetland Site appeared to have been converted to agricultural use without a permit, which was a violation of the CWA and the Consent Decree, and required further investigation. *Id.* at 4.

4. Defendants' Violations of the Consent Decree

In November 2013, the Corps participated in a flyover of the Site, which revealed that Defendants had re-installed the tile drains that the Consent Decree required them to remove, re-excavated several surface ditches that the Consent Decree required them to fill, and "sidecasted" 7

the excavated material in the area protected under the Consent Decree. Ex. 1, Lutte Decl. ¶ 22. The aerial photographs taken during the flyover showed that a large portion of the Site had been cleared of vegetative cover and plowed for planting. *Id.* During a May 20, 2015 Site visit, EPA confirmed the discharge of dredged and/or fill material into approximately 18 acres of wetlands within the 30-acre Site covered by the Consent Decree. *Id.* ¶ 29. These wetlands had been cleared, drained, plowed, and planted. *Id.* The inspectors observed ten drain outlets in and along the channel of Elk Creek and its associated tributaries, all within the limits of the 30-acre Site, in contravention of the Consent Decree's requirement that the drainage tile in the wetlands be disabled. *Id.*; Ex. 2, Consent Decree at Wetland Restoration Plan ¶ 1. In addition, two surface ditches had been re-excavated in the wetlands, in contravention of the Consent Decree's requirement regarding the filling of surface ditches. Ex. 1, Lutte Decl. ¶ 30; Ex. 2, Consent Decree at Wetland Restoration Plan ¶ 2. Furthermore, the check dam required by the Consent Decree (see Ex. 2, Consent Decree at Wetland Restoration Plan ¶ 3) had been removed from Elk Creek. Ex. 1, Lutte Decl. at ¶ 31. These actions violate CWA Section 301(a) and the permanent injunction set forth in the Consent Decree, and have reversed the restoration required by the Consent Decree.

On January 11, 2016, the United States provided Defendants with written notice that they were in violation of the Consent Decree. *See* Ex. 7, letter from Laura Brown to Neal Devlin (Jan. 11, 2016). Efforts to reach a negotiated resolution have made no progress. Accordingly, the United States now moves this Court to enforce the Consent Decree by requiring Defendants to restore the wetlands, pay stipulated penalties for each violation of the Consent Decree's requirements, and reimburse the United States for costs associated with this Motion. In addition, given Defendants' brazen violations of the Consent Decree and the likelihood that they may

commit future violations if undeterred, the Court should exercise its discretion and increase the stipulated penalties required by the Consent Decree.

ARGUMENT

I. DEFENDANTS MUST COMPLY WITH THEIR CLEARLY-STATED OBLIGATIONS UNDER THE CONSENT DECREE AND RESTORATION PLAN.

A consent decree is a form of a contract entered between the parties which, when court-approved, becomes a judgment of the court. *See Local 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 519 (1986) (citing *United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 235-37 (1975)); *see also Washington Hosp. v. White*, 889 F.2d 1294, 1300 (3d Cir. 1989) (“Although consent decrees are judicial acts, they have many of the attributes of contracts

voluntarily undertaken . . . [and are] construed according consistently with fundamental precepts of contract construction.”) (internal citations omitted). “A defendant who has obtained the benefits of a consent decree – not the least of which is the termination of the litigation – cannot then be permitted to ignore such affirmative obligations as were imposed by the decree.” *Berger v. Heckler*, 771 F.2d 1556, 1568 (2d Cir. 1985).

In exchange for resolving their CWA liability, Defendants entered into the Consent Decree and agreed to restore the wetland hydrology at the Site by removing the tile drainage system, filling surface drainage ditches, and installing a check dam. The Consent Decree also permanently enjoined Defendants, and parties acting on their behalf, from discharging any pollutants into the Site, unless in compliance with the CWA. These obligations are clear.

However, Defendants have brazenly violated them. They reversed the required restoration and violated the permanent injunction by installing new tile drains, digging ditches, and removing the check dam, all of which resulted in discharging pollutants into the 30-acre wetland. Moreover, Defendants’ unlawful actions, which replicate those that caused the United States to bring the

first enforcement action resulting in the Consent Decree, have defeated the Consent Decree's objective "to restore the hydrologic regime" to the Site's wetlands, requiring the wetlands to be restored yet again.

II. THE COURT SHOULD ORDER IMMEDIATE COMPLIANCE WITH THE CONSENT DECREE AND HOLD DEFENDANTS LIABLE FOR STIPULATED PENALTIES AND ATTORNEYS' FEES.

Pursuant to Paragraph 12 of the Consent Decree, this Court retains jurisdiction to enforce Defendants' obligations under the Consent Decree. *See Frew v. Hawkins*, 540 U.S. 431, 440

(2004) (finding that "[f]ederal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, a consent decree may be enforced"). "In enforcing its orders, a district court may take such steps as are appropriate given the resistance of the noncompliant party." *Berger v. Heckler* 771 F.3d at 1569 (citing *Madden v. Grain Elevator, Flour & Feed Mill Workers Local 418*, 334 F.2d 1014, 1020 (7th Cir. 1964)). Thus, it is well within this

Court's authority, and consonant with the Court's initial injunction, to require Defendants to once again restore the wetlands, consistent with the Consent Decree's original restoration plan. The United States requests that the Court order such restoration, to be approved by EPA and completed as soon as practicable after entry of an order on this Motion, with stipulated penalties attached to any avoidable delay.

Additionally, Defendants are presently liable for stipulated penalties for their multiple distinct violations of the Consent Decree. As the Third Circuit has held, "a consent decree may contain a provision for liquidated damages for breach of the decree in the same manner as a contract which sets the damages at an amount that is reasonable in light of the anticipated or actual loss caused by the breach" *Harris v. City of Philadelphia*, 47 F.3d 1311, 1323 (3d Cir. 1995). Because they are self-executing, stipulated penalties clauses "save[] the time of the courts, juries, parties and witnesses and reduce[] the expense of litigation." *Id.* (citation

omitted); *see also United States v. Moore Am. Graphics, Inc.*, No. 84-C-6547, 1989 WL 81779, *5 (N.D. Ill. July 5, 1989) (stipulated penalties in Clean Air Act consent decree not affected by defendant's claim of financial hardship); *United States v. Kelley*, 145 F.R.D. 432 (E.D. Mich. 1993) (defendant's violations of Clean Air Act consent decree required payment of stipulated penalties to which it subjected itself for the choice of polluting rather than complying).

Here, Paragraph 8 of the Consent Decree provides that "if Defendants fail to perform *any* requirement in [P]aragraph 4, 5, and 6 . . . Defendants will pay a stipulated penalty of \$250 for each day of failure." Ex. 2, Consent Decree ¶ 8 (emphasis added). Paragraph 4 subjects Defendants to the requirements embodied in the attached wetlands restoration plan, and specifically incorporates those requirements into the Consent Decree. *Id.* ¶ 4 ("Defendants will perform restoration in accordance with the wetlands restoration plan, which is attached hereto as Exhibit A and *made a part hereof*." (emphasis added)). Defendants have violated not one, but all three restoration plan requirements incorporated into the Consent Decree. *See* Ex. 1, Lutte Decl. ¶ 29-32. That plan specifies that "[i]n order to restore the hydrology to the area, the drainage tile system currently located in the wetlands is to be disabled, the surface ditches filled in, and a

check dam constructed." Ex. 2, Consent Decree at Wetland Restoration Plan p. 1. It thereafter identifies specific tasks for accomplishing each of these three requirements, which are described in separate paragraphs of the plan. *Id.* at Wetland Restoration Plan ¶ 1 ("Excavation of trenches; removal of drainage tubing"), ¶ 2 ("Fill In Two Surface Ditches"), ¶ 3 ("Install Check Dam"). Importantly, each of these three requirements had a separate and distinct purpose in effectuating the aims of the restoration plan. Ex. 1, Lutte Decl. ¶ 12.

Despite initially complying with the Consent Decree's restoration requirements,

Plaintiffs, without any authorization, have since undone *all* the work required by the restoration

plan, and, thus, violated the Consent Decree by: (1) re-installing drainage tiles; (2) re-excavating two surface ditches; and (3) removing the check dam, thereby again disrupting the hydrologic regime of the 30-acre wetland.³

Accordingly, the United States seeks separate stipulated penalties for: (1) Defendants' violation of the requirement to disable tile drainage at the Site; (2) Defendants' violation of the requirement to fill in surface ditches at the Site; and (3) Defendants' violation of the requirement to install a check dam in the unnamed tributary adjoining the Site. The Consent Decree requires that when Defendants "fail to perform any requirement" of Paragraph 4, "then, upon written notice of such failure from [the United States], Defendants will pay a stipulated penalty of \$250 for each day of failure." Ex. 2, Consent Decree ¶ 8. The United States provided written notice on January 11, 2016, of Defendants' violations of the Consent Decree. As "any" failure of Paragraph 4 constitutes a violation warranting stipulated penalties of \$250 per day for "such violation," Defendants are therefore liable for daily stipulated penalties with respect to each of three requirements that they have violated.⁴ As of the filing of this Motion on January 9, 2017, stipulated penalties for these three violations total \$273,000. *Id.* ¶ 8.

³ That Defendants once complied with the Consent Decree is of no import. Paragraph 8 of the Consent Decree subjects Defendants to penalties for *any* failure to comply with Paragraph 4, which specifically incorporates the terms of the restoration plan. That plan states that its "primary objective . . . is to restore the hydrology regime to the U-shaped, approximately 30-acre wetlands adjacent to Elk Creek" through the three requirements it defines as necessary to accomplish that objective. Defendants have undone the work and knowingly flouted the intention of the restoration plan and of the Court's Decree, so they are in violation of its terms. ⁴ The United States believes the language of the Consent Decree provides for the application of stipulated penalties to each violation of the Consent Decree's restoration plan requirements. However, even if the stipulated penalty provision were "facially ambiguous," it would be properly read as providing penalties on a "per violation" basis. As the Seventh Circuit explained in *United States v. Rueth Development Corp.*, where a "stipulated-penalty provision is facially ambiguous . . . we must 'look at the evil which the decree was designed to rectify.'" 335 F.3d 598, 606 (7th Cir. 2003) (quoting language originally found in *United States v. Armour & Co.*, 402 U.S. 673, 686 (1971)). In *Rueth*, the consent decree required the defendant to "restore the

Such penalties are reasonable because they reflect the agreed-upon terms of the Consent Decree. “[A] consent decree may contain a provision for liquidated damages for breach of the

decree in the same manner as a contract.” *Harris v. City of Philadelphia*, 47 F.3d 1311, 1323 (3d Cir. 1995). Indeed, “[a]lthough a consent decree is a judicial act, it has many of the attributes of a contract voluntarily undertaken, and a party to a consent decree, having made a ‘free,

calculated and deliberate choice to submit to an agreed upon decree rather than seek a more

favorable litigated judgment,’ bears a burden which ‘is perhaps even more formidable than had

they litigated and lost.” *United States v. Wheeling-Pittsburgh Steel Corp.*, 818 F.2d 1077, 1088

(3d Cir. 1987) (internal citation omitted). As a consequence, courts have held that stipulated

penalties accrued under a consent decree are reasonable even where they “greatly exceed the

amount originally due under a consent decree.” *United States v. Alsol Corp.*, 620 Fed. App’x

133, 136 (3d Cir. 2015) (upholding an increase from \$200,000 to \$896,751.79 in stipulated

penalties), *citing Rueth*, 335 F.3d at 601-02 (upholding a judgment of over \$4 million in

stipulated penalties where the original penalty was \$23,000).

Moreover, the stipulated penalties sought here represent a significant discount from the

statutory liability Defendants would face had these violations been incorporated into a new

complaint, as would be allowed pursuant to Paragraph 10 of the Consent Decree. Ex. 2, Consent

wetlands by performing six discrete milestone tasks” and there, just as here, the defendant understood that he “had to comply with all six milestones in order to be in compliance with the CWA.” *Id.* Accordingly, the court held that stipulated penalties should not be read to “accrue only by day of violation rather than per violation,” as otherwise “there would be no incentive for [the defendant] to complete any of the other five tasks if he is in violation of one.” *Id.* This would “render the number of violations irrelevant,” which the court found would contravene the parties’ intent to remedy alleged violations of the CWA. *Id.* Just as in *Rueth*, the Consent Decree’s stipulated penalty provision is best read as applying to each violation, as the Consent Decree was intended to restore the hydrology of the 30 wetland acres damaged by Defendants and, otherwise, Defendants would face the same consequences for failing to remove a single tile drain as for forgoing wetland restoration altogether.

Decree ¶ 10 (“The United States does not waive any rights or remedies available to it for any violations by Defendants of laws, regulations, rules, and permits other than the violations alleged in the Complaint.”). Under the Clean Water Act’s penalty provisions, Defendants would be liable for between \$37,500 and \$51,570 per day per violation. *See* 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4; 81 Fed. Reg. at 43,095. Even assuming a *single* violation per day, and counting only those days of violation since EPA’s January 11, 2016 Notice to Defendants (which limitation would not be required under the Clean Water Act), Congress has authorized penalties here in excess of \$18 million. Courts considering similar facts have held that where accrued stipulated penalties are a fraction of the statutory penalties that could be imposed, such penalties are reasonable and enforceable. *See United States v. Alshabkhoun*, 277 F.3d 930, 933, 935 (7th Cir. 2002) (upholding over \$500,000 in CWA stipulated penalties and noting they were “less than 10% of the statutory authorized penalties”); *United States v. Rueth Der. Co.*, 189 F. Supp. 2d 874, 879 (imposing stipulated penalties of more than \$4 million for CWA violations on three acres of wetlands and finding such penalties enforceable because “the stipulated amounts represent a small fraction of the maximum penalty a court might impose under CWA”), *aff’d*, 335 F.3d at 598; *United States v. Krulich*, 948 F. Supp. 719, 726 (N.D. Ill. 1996) (explaining that a stipulated penalty judgment of \$1,257,500 was enforceable because, in part, the penalty per day of violation was “one-tenth of the maximum [statutory] penalty”), *aff’d*, 126 F.3d 1035 (7th Cir. 1997).

Pursuant to the stated terms of this Decree and consistent with the case law above, the United States requests that the Court issue an order requiring Defendants to pay stipulated penalties for each of the three restoration requirements breached by Defendants, for each day since the United States provided notice of such violations on January 11, 2016, totaling – as of

the date of this Motion –\$273,000. In addition, the United States requests, consistent with the terms of Paragraph 8 of the Decree, that Defendants be ordered to pay for “any expenses and costs incurred by the United States in enforcing this Consent Decree.” Ex. 2, Decree ¶ 8. If the Court so orders, the United States requests the opportunity to provide evidence of such costs and expenses, including attorneys’ fees, within a reasonable time after the Court issues its order.

III. THE COURT SHOULD MODIFY THE CONSENT DECREE TO PROVIDE FOR INCREASED STIPULATED PENALTIES AS A DETERRENT TO ADDITIONAL VIOLATIONS.

As the Supreme Court held in *United States v. United Shoe Machinery Corp.*, a court may grant a plaintiff’s request to modify a consent decree where “time and experience have demonstrated” that the decree “has failed to accomplish [the] result” it was “specifically

designed to achieve.” 391 U.S. 244, 249 (1968); see *United States v. Local 560 (I.B.T.)*, 974 F.2d 315, 331 (3d Cir. 1992) (“The hornbook rule regarding plaintiff’s requests for modification of injunctive relief is that ‘modification is proper if the original purposes of the injunction are not being fulfilled in any material respect.’” (internal citation omitted)).⁵ Courts have thus modified consent decrees to impose additional requirements “when a change in circumstances thwarted the

basic purpose and intent of the decree, when there had been ‘pervasive violations’ of the decree

by one party, and when one party was in substantial non-compliance with the decree.” *Holland*

v. New Jersey Dep’t of Corr., 246 F.3d 267, 284 (3d Cir. 2001) (internal citations omitted)

(following *United Shoe* and elaborating on the findings of fact necessary for modification).

Several circuits, including the Third Circuit, have read *United Shoe* to allow for the

imposition of “new and substantial burdens on a defendant party to a consent decree” where

⁵ A different standard applies to requests for modification where defendants “[seek] relief not to achieve the purposes of the provisions of the decree, but to escape their impact.” *United Shoe*, 391 U.S. at 249 (referencing the modification standard under *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932), which requires a showing of “changed conditions”).

there has been “an adjudication or admission that the defendant violated the plaintiffs’ legal rights reflected in the consent decree” and the alleged violations were litigated. *Fox v. U.S. Dep’t of Hous. & Urban Dev.*, 680 F.2d 315, 323 (3d Cir. 1982); *David C. v. Leavitt*, 242 F.3d 1206, 1211 (10th Cir. 2001) (“It is ... settled that a court has the equitable power to impose additional obligations on a defendant party to a consent decree when the decree is entered into after an adjudication of wrongdoing on the part of the defendant.”); *Rajender v. Univ. of Minnesota*, 730 F.2d 1110, 1115 (8th Cir. 1984) (agreeing with the Third Circuit’s interpretation of *United Shoe* in *Fox*).

Here, Defendants litigated their claims and were held in violation of the CWA for unlawful discharges of dredged or fill material without a permit on 30 acres of wetland property, after admitting that their activities were unpermitted and that the area was a “wetland at the time of the discharges.” *Brace*, 41 F.3d at 120. The Consent Decree was negotiated after this “adjudication of wrongdoing”—prior to further district court proceedings regarding appropriate penalties—and was “specifically designed” to fully restore the 30-acre wetland and permanently enjoin discharges of pollutants, including dredged or fill material, into that wetland. Now, “time and experience” have shown that Defendants have controverted these aims – reversing the required restoration and undertaking the same actions already adjudged to violate the CWA – and so the Decree has failed to accomplish its purpose.

The United States therefore requests that this Court exercise its equitable power to modify the stipulated penalties provided in Paragraph 8 of the Consent Decree. The Decree’s existing stipulated penalty provision has failed to compel lasting restoration of the 30-acre wetland or deter Defendants from further discharges of pollutants in violation of the CWA.

Accordingly, the United States requests that the pertinent sentence of Paragraph 8 be modified as follows:

Defendants will pay a stipulated penalty of \$250 for each day of failure for one to thirty days of noncompliance, a stipulated penalty of \$500 for each day of failure for thirty-one to sixty days of noncompliance, and a stipulated penalty of \$1,000 for each day of failure for sixty-one or more days of noncompliance. Such stipulated penalties will be paid by FedWire Electronic Funds Transfer in accordance with the written instructions to be provided by the United States Department of Justice, referencing EPA Region 3 and the DOJ case number 90-5-1-I-3433.⁶

See Ex. 2, Consent Decree ¶ 8 (proposed modification in italics and underlined).

This modification would ensure that short-term (i.e., 30 days or fewer) compliance delays remain under the original stipulated penalty structure negotiated by the parties, but would more effectively deter persistent violations or enduring recalcitrance on Defendants' part going forward. The modification is thus consistent with this Court's authority to grant "additional injunctive relief ... necessary to advance [the] purposes" of the Consent Decree. *Local 560*, 974 F.2d at 332.

CONCLUSION

For the reasons set forth above, the United States respectfully requests that the Court enforce the Consent Decree; require Defendants to restore the wetlands and submit to the United States all stipulated penalties that have accrued as a result of Defendants' non-compliance as well as all costs, including attorneys' fees incurred by the United States in enforcing the Consent Decree, and modify the Consent Decree to increase stipulated penalties for future violations.

⁶ The Consent Decree calls for the stipulated penalties to be paid by certified or cashier's check payable to the Treasurer of the United States. *See Ex. 2, Decree ¶ 8*. However, since the entry of the Consent Decree the United States has changed its payment procedures and now requires that penalties be paid by electronic funds transfer, which is reflected in the above proposed modification.

Respectfully submitted,

SOO C. SONG

Acting United States Attorney
Western District of Pennsylvania

s/Paul E. Skirtich

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Region III
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Philadelphia, PA 19103
Dated: 1/9/17

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2017, I served the foregoing Memorandum of Law in Support of the United States' Motion to Enforce Consent Decree and for Stipulated Penalties and associated exhibits on the following counsel for Defendants via e-mail and regular mail:

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s/Laura J. Brown

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

)	UNITED STATES OF AMERICA,	)
)	Plaintiff,	)
)	v.	)
)	ROBERT BRACE,	)
)	ROBERT BRACE FARMS, Inc.	)
)	Defendants.	)

Civil Action No. 90-229
Erie

DECLARATION OF TODD M. LUTTE

Pursuant to 28 U.S.C. § 1746, I, TODD M. LUTTE, hereby declare as follows:

1. I am an Environmental Scientist and Enforcement Team Leader for the Clean Water Act ("CWA") Section 404 program in the Office of Environmental Programs, U.S. Environmental Protection Agency Region III ("EPA"). I have held my position for approximately seven years.

2. I hold a Bachelor's Degree in Environmental Science with a focus in biology from Kutztown University. I am a credentialed CWA Section 404 inspector and I have taken numerous training courses related to my work. A list of my training and work experience is set forth in my resume, which is attached hereto as Attachment A.

3. I submit this sworn Declaration in support of the United States' Motion to Enforce the Consent Decree in the matter of *United States v. Robert Brace Farms*, Civil Action No. 90-229 entered September 23, 1996 ("Consent Decree").

4. I was assigned to this matter in approximately 2011 and have extensive

knowledge of the facts and background.

5. The property that includes the area subject to the Consent Decree is identified as parcel number 47-012-028.0-001.00 by the Erie County Bureau of Assessment and is comprised of approximately 65.3 acres south of Lane Road (also known as South Hill Road) and bordered on the east by Greenlee Road in Erie County, Waterford, Pennsylvania, 41.977961, -80.043413. See Ex. 8 (12/30/1975 Indenture).¹ The property is located in Waterford Township and owned by Robert Brace. *Id.*

6. The area of the property that is the subject of the Consent Decree consists of 30 acres of wetland in a "U" shaped formation south of Lane Road and bordered on the east by Greenlee Road in Erie County, Waterford, Pennsylvania (the "Site"). See Ex. 2 (Consent Decree) at Exhibit A. The Site contains four unnamed tributaries (current locations identified as UT-1, UT-2, UT-2a, and UT-2b) which all flow into Elk Creek within the Site. See Ex. 9 (Map of Site). From the Site, Elk Creek flows approximately 29.47 miles northwest to Lake Erie, which has been formally identified by the U.S. Army Corps of Engineers ("Corps") as a Section 10 water under the Rivers and Harbors Act of 1899.

7. I have visited the Site on several separate occasions and have reviewed documentation regarding Site conditions, soil and stream mapping, and topography, among other things.

¹ All of the exhibits I cite in this Declaration refer to exhibits attached to the United States' Memorandum of Law in Support of the Motion to Enforce and for Stipulated Penalties.

8. According to EPA records, which include Mr. Brace's answers to information requests, notes of conversations, and deposition testimony, Mr. Brace originally cleared and grubbed the Site in the late 1970s and early 1980s. See Ex. 10 (Excerpted Transcript of

Deposition Testimony of Robert Brace, dated Nov. 12-13, 1991) at 69:23-70:21, 72:20-73:4;

98:18-100:16. Grubbing is the mechanized land-clearing of vegetative cover and the ripping of the top layer of soil typically in preparation for agricultural activities. After conducting

mechanized land-clearing to grade the Site, Mr. Brace installed "tile drains" with the expected

result of draining the property to prepare it for planting. *Id.* at 105:23-106:11. Tile drains, which historically were made of terra cotta and are now made of PVC and other materials and come in

various types and sizes, including perforated, flexible and straight pipe, were installed within the Site's wetlands several inches and up to several feet below the surface as a means of dewatering the area. While installing the tile drain, Mr. Brace side-casted the excavated material into

wetlands. *Id.* at 190:4-191:13. He also configured a series of interconnected tile drains that

discharged into Elk Creek. *Id.* at 106:20-107:5.

9. On October 4, 1990, the United States filed a complaint against Defendants

Robert Brace and Robert Brace Farms, Inc., for violations of the CWA Sections 301 and 404, 33 U.S.C. §§ 1311 and 1344, for the unpermitted discharge of pollutants into waters of the United

States at the Site. Ex. 3 (Complain).

10. The lawsuit was resolved when the parties entered into the Consent Decree on

September 23, 1996. The Consent Decree required that Defendants restore the Site to pre-

disturbance conditions in accordance with the wetlands restoration plan attached to the Consent Decree, and it permanently enjoined Defendants from discharging any pollutants into the

approximately 30-acre Site without a permit from the Corps. Ex. 2 (Consent Decree).

11. The primary objective of the restoration plan was to "restore the hydrologic regime" to the Site. See Ex. 2 (Consent Decree) at Exhibit A. To achieve that objective, the restoration plan required: (1) disabling the drainage tile system; (2) backfilling two surface ditches; and (3) installing a check dam. *Id.*

12. The restoration plan set forth instructions on how the three requirements were to be completed. Each of the three requirements had a separate and distinct purpose in effectuating the aims of the restoration plan. First, Defendants were required to "[e]xcavate a set of two parallel trenches to a depth of five (5) feet" at three specific locations parallel to Elk Creek, "intercept the drainage tubes located in the wetlands," and remove specific lengths of the tubes as they were intercepted. *Id.* at 1. Removal of the drainage tubes, also known as tile drains, prevents water from collecting in the tubes and discharging into Elk Creek and allows the water table to rise closer to the surface. Second, Defendants were required to fill in the two surface drainage ditches that they had dug that ran in a southwesterly direction in the Site. *Id.* at 1-2. Filling the surface ditches prevents the accumulation of water into the ditches, allowing the hydrology to evenly disperse and returning the water table to its previous level. Third, Defendants were required to install, at a specifically identified location, a check dam measuring 1.5 feet high, 4 feet long, and as wide as the tributary bottom, constructed from concrete, gabion (a wire cage filled with rock), or compacted rock. *Id.* at 2. The installation of the check dam provides an in-stream structure designed to back up water within the channel in an effort to raise hydrology closer to the surface in the area adjacent to the channel. Defendants completed the restoration work in or about the summer of 1996.

13. In early 2011, Mr. Brace wrote to EPA requesting assistance in identifying the boundaries of the Site. By letter dated March 14, 2011, EPA provided Mr. Brace with copies of

maps of the Site, including those that were attached to the Consent Decree, to assist him in identifying the boundary lines of the Site. Ex. 11 (March 14, 2011 letter).

14. In or around April 2011, Mr. Brace contacted me on several occasions by phone inquiring about the boundaries of the Site. He expressed a desire to remove beaver dams that were backing water up onto the property and to clean the ditches at various locations on the property in order to stop the water accumulation on the upland portions of the property.

15. In May 2011, I visited the Site to look at beaver dams and the clogged culvert east of Elk Creek traversing under Lane Road. I did not observe any beaver dams, but I did observe the clogged culvert. During that visit I provided Mr. Brace with an aerial photograph depicting a polygon outlining the approximate area that is subject to the Consent Decree.

16. After the May visit, I learned that Mr. Brace had contacted the Pennsylvania Game Commission about removing the beaver dams he claimed were backing up water on his property. *See* Ex. 12 (May 30, 2012 email from Brace to Corps). Mr. Brace also contacted the Corps about removing sediment from the clogged culvert and clearing "ditches," and about providing a jurisdictional determination. *Id.*

17. Mr. Brace's outreach resulted in a July 24, 2012 meeting with me, Mike Fodse of the Corps, and others to see the "ditches" that Mr. Brace had asked to clear. Prior to this visit, I was under the impression that Mr. Brace wanted to clear the channel east of Elk Creek where Mr. Brace had showed me the clogged culvert during the May 2011 Site visit. However, at the July 2012 meeting, Mr. Brace showed us the channels that he wished to clear in a different area of the property, which included an unnamed tributary to Elk Creek and Elk Creek itself, and asked if those channels could be maintained pursuant to a CWA exemption. Mr. Brace indicated

that the channels he wished to clear were not tributaries of Elk Creek but had been created by his grandfather decades ago. Mike Fodse informed Mr. Brace that if the channel was an agricultural ditch, maintenance activities might qualify for an exemption. It was determined at that meeting that the Corps would need to make a final determination as to whether channels could be maintained pursuant to a CWA exemption. During the Site visit, I repeatedly told Mr. Brace and his son, Randy Brace, that under no circumstances should work be done within that 30-acre wetland area subject to the Consent Decree.

18. On December 19, 2012, the Corps issued a jurisdictional determination that Elk Creek and 4,750 linear feet of the unnamed tributary to Elk Creek "located south of the active agricultural field and Lane Road [that] empties into Elk Creek" were jurisdictional waters of the United States and not eligible for a CWA exemption. Ex. 5 (Dec. 19, 2012 Jurisdictional Determination) at 1. At that time, the Corps also determined that portions of channels that EPA and the Corps had observed during the July 2012 Site visit were located in the area covered by the Consent Decree. *Id.* The letter explicitly advised Mr. Brace to cease and desist from any discharges to those waters. *Id.* at 2.

19. In a letter to me, dated January 17, 2013, and enclosing the Corps' jurisdictional determination letter, Mr. Brace stated that he had engaged in some ditch clearing and maintenance but "assured" me that no work had been done in the Site covered by the Consent Decree, in accordance with EPA's instructions in the field. Ex. 4 (Jan. 17, 2013 letter from Brace to Lurie at 2 (highlighting added). In that letter, Mr. Brace also explained that he had done work in an area north of the Site, which he had recently purchased ("the Marsh property") that had been the subject of recent inquiry by the Pennsylvania Fish and Boat Commission. *Id.*

20. On June 27, 2013, I visited the Marsh property with representatives from the

Corps, Pennsylvania Fish and Boat Commission ("PFBC"), Pennsylvania Department of

Environmental Protection ("PADEP"), and several representatives from legislative offices.

21. On August 29, 2013, EPA and the Corps issued a joint letter detailing our

conclusions regarding the applicability of CWA exemptions at the Marsh property and again

notifying Mr. Brace that Elk Creek and its tributaries located on Defendants' property south of

Lane Road were not exempt from regulation under the CWA and that portions of those channels

were within the Site covered by the Consent Decree. Ex. 6 (Aug. 29, 2013 letter to Brace) at 3-4.

In that same letter, the agencies advised Mr. Brace that the government was exercising its

enforcement discretion and would forgo an action for the removal of sediment from the channels

on the Site that Mr. Brace had undertaken prior to the date of the letter. *Id.* at 3. However, the

letter notified Mr. Brace that any additional work involving a discharge of dredged or fill

material at the Site would require a CWA Section 404 permit. *Id.* The agencies also informed

Mr. Brace that portions of the wetlands subject to the Consent Decree appeared to have been

converted to agricultural use without a permit and required further investigation. *Id.* at 4

22. In November 2013, the Corps participated in an aerial flyover, which revealed

that Mr. Brace had re-installed the tile drains he had been required to remove from the Site; re-

excavated several surface ditches that he had been required to fill in under the terms of the

Consent Decree's restoration plan; and side-casted the dredged material produced in digging the

surface ditches in the area protected under the Consent Decree. The aerial photographs showed

that a large portion of the Site had been cleared of vegetative cover and plowed for planting. Ex.

13 (aerial photos taken in Nov. 2013)

23. On March 18, 2015, EPA requested an additional Site visit that was arranged for

May 20, 2015. Ex. 14 (March 18, 2015 letter from Lazos to Devlin).

24. On May 20, 2015, representatives of EPA met with state and local representatives

as well as Mr. Brace and family members on the Site to conduct an inspection. We met at the intersection along Lane Road and Hill Road, where Hill Road crosses Elk Creek. In attendance were Mr. Brace and his sons, Randy and Ronnie Brace; Neal Devlin, Mr. Brace's attorney;

myself, Jeff Lapp, Katelyn Almeter, and Pam Lazos from U.S. EPA Region III; Officer Bob Smolko, and Officer Robert Nestor from the PFBC Mike Fodse and Nancy Mullen from the Corps; Laura Brown from the U.S. Department of Justice; Angela Erde and Scott Dudzic from PADEP; and Andrew Johnson from Ecstrategies, Mr. Brace's consultant.

25. After introductions, I began the Site visit on May 20, 2015, by asking Mr. Brace if

he could point out the area south of Lane Road that is covered under the 1996 Consent Decree.

Mr. Brace indicated that it was bordered by Lane Road and extended from the west at the tree line along the south side of Lane Road, to the southeast toward the beaver dams (which could not be seen by attendees), and straight across towards the east to a point along Greenlee Road, and back up to Lane Road along the north.

26. Mr. Brace advised me that he had placed tile drains in the "ditches" to the west of

Elk Creek on the Site, along the "ditches" within the eastern part of the Site, and along the

"ditches" that were cleaned to facilitate drainage of the Site. He also stated that he had plowed

the areas surrounding the "ditches" at the Site so he could plant crops. Mr. Brace stated that I,

along with Mike Fodse of the Corps, had told him that he could do this the last time we were at

the Site. Mr. Brace then left and we walked the Site, accompanied by Mr. Brace's sons, Randy

and Ronnie.

27. I asked Randy Brace to describe the activities that had occurred on the Site. He indicated that they had cleaned the "ditches" and placed drains in most of them so they could plant crops.

28. I took Photos 1 through 33 of the Site showing the condition of the channels and unnamed tributaries, UT-1, UT-2, UT-2a, and UT-2b, outfalls of tile drains, and an abandoned check dam at the time of that Site visit. Ex. 15 (Photo log of May 2015 Site visit).

29. Based on visual observations at the Site during the May 20, 2015 Site visit, EPA confirmed the discharge of dredged and/or fill material into approximately 18 acres of wetlands within the 30-acre wetland Site covered by the Consent Decree. The wetlands had been cleared, drained, plowed, and planted. See Ex. 15, photos 1-3, 19 and 20. Ten drainpipe outlets were observed in and along the channel of Elk Creek and its associated unnamed tributaries all within the limits of the 30-acre wetland Site covered by the Consent Decree. All of the unnamed tributaries drain directly to Elk Creek.

30. In addition, I observed two surface ditches that were cut into the south side of Elk Creek that discharged to the southern border of the Brace property within the Consent Decree area which traverses the southern border of the Brace property. See Ex. 15, photos 15-18.

31. Finally, the check dam, originally ordered and installed as part of the restoration under the Consent Decree, had been removed from Elk Creek, and an unauthorized earthen crossing was observed in Elk Creek. See Ex. 15, photo 12.

32. I have reviewed the original wetland restoration plan that was attached to and incorporated into the 1996 Consent Decree. Ex. 2 (Consent Decree) at Exhibit A. The purpose of that restoration plan was to "restore the hydrologic regime" of the Site. By clearing, ditching,

draining, plowing, and planting at least 18 acres of the Site, and by removing the check dam (which was designed to back up water and rehydrate the surrounding land), Defendants have again disrupted the hydrologic regime of the Site and reversed the restoration required by the Consent Decree.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Executed this 9th day of January, 2017.



Todd M. Lutte
Wetlands Enforcement Team Leader
U.S. Environmental Protection Agency
Region III

ATTACHMENT A

Todd Lutte
U.S. Environmental Protection Agency - Region III
1650 Arch Street, Philadelphia, PA
Lutte.todd@epa.gov

EPA WORK EXPERIENCE

1997 - Present

**Land and Chemicals Management Division
Pesticide Regulatory Branch**

1997 -2001

FIFRA Enforcement Coordinator

EPA CWA 404 WORK EXPERIENCE

**Environmental Assessment and Innovation Division
Office of Environmental Programs
CWA 404 Regulatory Team**

2001 – 2003

NEPA Transportation Review

Wetland and Aquatic Resource Team Enforcement Team Leader

2003 - Present

As team leader, I manage a three person enforcement team of EPA inspectors in assuring the reduction and prevention of unauthorized discharges to Waters of the United States in accordance with Section 404 of the Clean Water Act. The duty of the Wetland and Aquatic Resource Enforcement Team is to implement EPA's responsibilities of the CWA Section 404 program associated with unauthorized discharges of dredged or fill material to Waters of the United States including; the response to and dissemination of tips and complaints, the preparation and review of cases, review and preparation of enforcement actions, review and commenting on mitigation/restoration plans associated with enforcement actions, and providing technical assistance in the litigation of civil and judicial enforcement actions. In addition, the team members are engaged in communication and coordination with other 404 regulatory staff, the United States Army Corps of Engineers, the Office of Regional Counsel and the Department of Justice.

Duties and Responsibilities

- Enforcement Team Leader for the Wetlands Regulatory Program where I lead a team of three in enforcing Section 404 of the Clean Water Act.
- Conduct compliance inspections whereby investigating cases of potential violations of CWA Section 404.
- Train Federal and State regulatory officials in the Basic Wetland Identification.
- Utilize all information available to investigate potential violations including but not limited to: on-site photos, field inspections, topographic maps, historical and current aerial photos, soil maps, and reports and inspections from other agencies.
- Prepare recommended enforcement actions, including Administrative Orders, Penalties and Civil Judicial Referrals in a measured regulatory follow-up action to Section 404 violators.
- Analyze scientific and technical environmental issues pertaining to wetland systems including soils, hydrology, and hydrophytic vegetation.
- Train Federal and State regulatory officials as well as consultants in US Army Corps of Engineers Regulatory IV wetland delineation courses.
- Assist the senior members of the permit and enforcement team in the performance of analytical and scientific tasks relating to the implementation of court rulings, regulations, policies, and guidelines.
- Conduct and assist the US Army Corps of Engineers on jurisdictional determination of wetlands.
- Review, evaluate, and comment on State Program General Permit (SPGP) and Individual Permit (IP) applications for Corps of Engineers permits issued under the Clean Water Act Section 404 and Rivers and Harbors Act Section 10.

- Apply CWA Section 404(b)(1) Guidelines and related EPA regulations and policies when conducting reviews and ensure that the associated impacts to waters of the U.S. are in compliance with the guidelines for related policies and regulations.
- Trainer at the Advanced Wetland Identification Workshop Incorporating Chapter 5 Protocol for Enforcement Sites in Northern Pennsylvania.

CWA 404 TRAINING

- 40 hour Wetland Identification
- 40 hour Plant Identification Course
- 40 hour Hydric Soils Course
- 40 hour Advanced Wetland ID Course
- 40 hour Wetland/Stream Hydrology Course
- 8 hour Benthic Macro-invertebrate Stream Collection Methodology
- 40 Functional-Based Framework for Developing Stream Assessments, Restoration Goals, Performance Standards and SOPs course
- Hydrogeomorphic Classification Reference Wetlands and Functional Indices, HGM
- Selected to the workgroup to develop and actively participated in field testing for the Corps of Engineers wetland delineation manual regionalization update.

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EDUCATION

Kutztown University, Kutztown, PA

- Environmental Science with a concentration in biology.

BS May 1994