

COPY

1 U.S. OF AMERICA, : IN THE U.S. DISTRICT COURT
 2 PLAINTIFF : FOR THE WESTERN DISTRICT
 3 : OF PENNSYLVANIA
 4 :
 5 VS : NO. 1990-229
 6 :
 7 :
 8 ROBERT BRACE AND ROBERT BRACE :
 9 FARMS, INC. A PENNSYLVANIA :
 10 CORPORATION, :
 11 DEFENDANTS :
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DEPOSITION OF: DAVID J. PUTNAM

TAKEN BY: DEFENDANTS

BEFORE: BETH KRUPA, REPORTER
 NOTARY PUBLIC

DATE: APRIL 7, 1992, 11:12 A.M.

PLACE: BEST WESTERN
 SOUTH ATHERTON & BRANCH ROAD
 STATE COLLEGE, PENNSYLVANIA

APPEARANCES :

U.S. DEPARTMENT OF JUSTICE
 BY: DAVID A. DANA, ESQUIRE

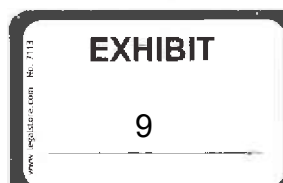
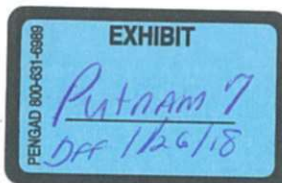
FOR - PLAINTIFF

BUCHANAN INGERSOLL
 BY: JOHN D. WARD, ESQUIRE

FOR - DEFENDANTS

ALSO PRESENT:
 RHONDA MCATEE
 ROBERT BRACE

GEIGER & LORIA REPORTING SERVICE, INC., 1000 KING BLVD., HBG. PA 17101 717-234-2109 OR 1-800-222-GLRS



CD-FRC0013821

1 Q Over on Page 4 of that letter at the very top, the
2 second full paragraph there's reference to beavers and Mr.
3 Brace admitted to destroying dams and houses illegally?

4 A Yes.

5 Q What's the basis of that information?

6 A The Pennsylvania Game Commission requires that
7 before a land owner remove beavers that they have permission
8 from the Game Commission. Mr. Martin -- Mr. Brace indicated
9 that he had removed the structures, and Mr. Martin indicated
10 that Mr. Brace did not have permission from him to remove the
11 structures.

12 Q Do you know Wayne Lugilia?

13 A Yes, I do.

14 Q Do you know whether or not he had been contacted by
15 Mr. Brace to deal with the beaver problems?

16 MR. DANA: If you know.

17 A I believe that he was contacted, but Mr. Lugilia
18 was on vacation during this time period.

19 BY MR. WARD:

20 Q Do you know of any other circumstances where Mr.
21 Brace requested the Pennsylvania Game Commission to remove
22 dams and beavers?

23 A I really can't answer that directly. I've heard
24 references or discussions regarding that particular issue, but
25 Mr. Brace never told me that directly. And I don't recall if

1 I even got that directly from the Pennsylvania Game
2 Commission.

3 Q Did Mr. Martin ever tell you why he was on the
4 property in the first place?

5 A He was requested to go there by Mr. Brace to remove
6 the beavers.

7 Q Mr. Lugilia was with him. Was Mr. Lugilia with him
8 on the day that Mr. Martin --

9 A I do not know that. I believe Mr. Martin was by
10 himself, but I do not know if Mr. Lugilia was there or not. I
11 believe Mr. Lugilia was on vacation, and Mr. Martin went in
12 Mr. Lugilia's place.

13 MR. DANA: Do you know that?

14 A No, that's just my assumption. I do not know that
15 for sure.

16 BY MR. WARD:

17 Q You have no reason for that assumption.

18 A I can't state what the basis is. This has gone on
19 for so long, some of these things, it's difficult to remember
20 exactly what I knew at what particular time.

21 Q Down there in the fourth paragraph, the large
22 paragraph, you talk about the field visit and the unauthorized
23 work does not comply with certain guidelines and it also
24 appears that based upon Mr. Brace's statements that a number
25 of other environmental statutes may have been violated by that

1 A No, it was not.

2 Q It was fast, high energy water flow?

3 A Moderately fast water flow.

4 MR. DANA: Obviously with the terms fast and slow
5 you're not getting a technical --

6 A I have photographs of the site that would indicate
7 the vegetation fluttering in the current.

8 BY MR. WARD:

9 Q Again, were there any dead fish in the channel?

10 A On that particular visit, I did not see any dead
11 fish in the channel.

12 Q On any particular visit?

13 A I don't believe I ever saw any dead fish on the
14 property.

15 Q Very, very quickly I'll just ask you about what has
16 been marked as Exhibit D in Charles Kulp's deposition and ask
17 if you helped in the preparation of that document.

18 MR. DANA: Just for the record, not to be
19 repetitive, the United States has a standing objection on
20 relevance grounds to questions regarding the commenced
21 determination of the swamp bustor provision since it's
22 entirely separate program unrelated in this case as to whether
23 a violation occurred of the Clean Water Act.

24 A Yes, I prepared this document.

25 BY MR. WARD:

1 Q The purport of your letters is that Mr. Brace
2 allegedly violated the Clean Water Act, he affected 200 acres
3 of wetlands period; is that correct?

4 A I don't know if the 200 acre figure is used any
5 place but on that map, but I would say that is a correct
6 statement that the activities that were done could affect up
7 to 200 acres of wetland.

8 Q Fine. Mr. Putnam, I hand you -- and I'm not going
9 to enter this as an exhibit, but simply for reference in your
10 testimony -- findings of violation and order for compliance
11 issued by the EPA to Mr. Brace, and I'm not asking you to
12 testify as to the content of that. However, attached to the
13 order is a map which appears to be a restoration plan, was
14 that prepared by you?

15 A Yes, it was.

16 MR. DANA: If you want to take a look at the entire
17 document, feel free.

18 MR. WARD: Yes.

19 BY MR. WARD:

20 Q Who asked you to prepare that?

21 A I believe it was James Butch of the Environmental
22 Protection Agency.

23 Q He asked you to prepare a restoration map or a
24 plan?

25 A I believe he did.

1 Q To your knowledge, was Mr. Brace required to submit
2 a restoration plan with those perimeters under the EPA to your
3 knowledge?

4 A This is a substitute for a plan that Mr. Brace was
5 requested to prepare. Mr. Brace did not prepare a plan to my
6 knowledge, and this was prepared as a point of discussion.
7 Mr. Brace was requested to prepare a plan and did not submit
8 one. This was prepared to facilitate discussion.

9 Q It does require him to submit a restoration plan,
10 that's correct, right?

11 A Yes.

12 Q If you know, why was that plan attached to the
13 order?

14 MR. DANA: Can I take a look at the document?

15 MR. WARD: Yes, that's why I wanted to look at it.

16 A Again, it was prepared to facilitate discussion.
17 The government to my knowledge never had any single
18 restoration plan that had to be completed. The government was
19 interested in seeing the wetlands restored.

20 We had discussed conceptual restorations during
21 several site visits. This is a depiction of the conceptual
22 restoration that was presented during several site visits.

23 MR. DANA: You testified it was to facilitate
24 discussion?

25 A Yes.

1 BY MR. WARD:

2 Q Is this to scale of any particular kind, do you
3 recall?

4 A It is not to scale. It's a tracing -- that was
5 made on an acetate overlay that would lay over top of an
6 aerial photograph. It loses much of its utility when it's
7 been xeroxed.

8 Q Can you explain in the legend there the requirement
9 of a plan at least proposed by your office would be to plug
10 the drainage tiles, plug ditches to restore wetlands, and then
11 there's an annotation there of "wetlands drained prior to
12 1984"; is that correct?

13 A Yes.

14 Q Is the design and the intent of that proposed
15 restoration plan to restore all lands that were wet back to
16 1984?

17 MR. DANA: Could you try and restate that?

18 BY MR. WARD:

19 Q It has in there wetlands restored --

20 A Wetlands drained prior to 1984.

21 Q Yes.

22 A The intent was to restore the site to the
23 conditions that existed prior to the violation. The intent
24 was to allow any areas that were drained prior to the
25 violation or drained prior to the need for permits to remain

1 in production. It was an important part of this plan not to
2 affect any areas that were in production prior to the
3 violation.

4 Q Have you had experience in designing drainage
5 systems for farms?

6 A I have a fair amount of experience with working
7 with systems that have been drained not specifically -- I
8 understand the principles involved in drainage. I don't
9 design drainage systems.

10 Q When did you next go back to the site after you
11 visited on the May 5th?

12 A November of the same year, 1987.

13 Q Among the materials supplied to us by the U.S.
14 attorney, copies of a chronology of events pertaining to the
15 Robert Brace matter apparently filed or prepared by you?

16 A Yes.

17 MR. WARD: The ones that I've looked at there's
18 some variations -- no, I guess this one. I will ask that this
19 version be marked as Exhibit 2.

20 (Document marked as Exhibit No. 2.)

21 BY MR. WARD:

22 Q Do you recognize that document?

23 A I do not. I did not prepare it.

24 Q Who would have, if you know?

25 A It says at the bottom of this J. Butch's disk