

Received certified mail, return receipt requested, signed July 15, 1987

To Robert Brace
From: US Environmental Protection Agency

RE: EPA Docket No. III-87-026-/DW
Findings of Violation and Order for Compliance

Dear Mr. Brace:

Region III of the Environmental Protection Agency (hereinafter "EPA") has learned that fill material, consisting primarily of dredged material, rock, sand, and agricultural waste has been discharged into wetlands adjacent to Elk Creek. A May 6, 1987 site inspection by the US Army Corps. Of Engineers, US Fish and Wildlife Service, Pa. Dept. of Environmental Resources, PA Fish Commission, and Pa. Game Commission verified that Elk Creek and the wetland area in question constitute "waters of the United States" and are therefore subject to regulation under provisions of the Clean Water Act, 33 U.S.C. §1251 et seq.

As you may be aware, EPA is responsible for the administration of certain provisions of the Clean Water Act. Pursuant to Section 301(a) of the Act, 33 U.S.C. § 1311(a), the discharge of any dredged or fill material into waters of the United States by any person is unlawful, except as in compliance with a lawfully issued Clean Water Act permit. Information available to EPA indicates that you are responsible for the unauthorized discharge of fill material into wetlands adjacent to Elk Creek. This filling constitutes a discharge of pollutants into the Nation's waters in violation of Section 301(a) of the Act, 33 U.S.C. § 1319, and the enclosed FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE require you to cease and desist your violative activities immediately.

EPA prefers to see the violations resolved administratively, and urges your cooperation. You are hereby advised that EPA seeks mitigation of the environmental harm caused by your unlawful filling activities by removal of the fill material and restoration of the filled wetlands. At this time, EPA solicits your voluntary compliance with the enclosed ORDER.

Under section 308 of the Clean Water Act, 33 U.S.C. §1318, EPA may require you to provide whatever information is necessary in carrying out the objectives of the Act. The information sought by EPA is necessary for the development of a restoration plan.

Accordingly, pursuant to Section 308 of the Clean Water Act, 33 USC § 1318, you are hereby required to provide the information set forth below no later than ten working days from your receipt of this letter to:

Barbara D'Angelo, Chief
Wetlands and Marine Policy Section (3ES42)
US Environmental Protection Agency
841 Chestnut Street
Philadelphia, PA 19107

Information to be submitted to EPA:

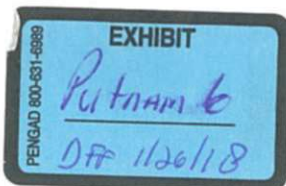
1. Provide a narrative description of the wetland filling activities. This description should provide details on the nature, extent and purpose of these activities and a chronology of events.
2. Provide plans, specifications, maps and documents of a technical nature associated with the planning and implementation of the filling activities.
3. Provide copies of contracts, agreements, leases, or documents of a legal nature associated with the filling activities.
4. Provide a narrative description of your restoration plan. This description should provide details on the nature and extent of the fill to be removed and chronology of events in the planning and implementation of the restoration.
5. A projected date for the completion of the removal of the unauthorized material.

EPA and the other involved State and Federal resource agencies are prepared to discuss the matter with you and to help formulate and/or review any plan or schedule for restoration of the affected area and mitigation of the environmental harm which has occurred. Mr. James R. Butch is assigned to this matter and may be reached at (215)597-7816.

Please note that the ORDER requires a written response within five working day of its receipt.

Sincerely,

Greene A. Jones, Director
Environmental Services Division



Environmental Protection Agency, Region III

In the Matter of :

Robert Brace, Waterford, Pa.

Proceedings under section 309(a) of the Clean Water Act, 33 USC & 1319(a)

Docket No. III-87-026-DW

Findings of Violation

and

Order for Compliance

The following FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (hereinafter "EPA") under Section 309 of the Clean Water Act, 33 USC & 1319, which authority has been delegated by the Administrator to the Regional Administrator, EPA Region III, and by the Regional Administrator further delegated to the Regional Division Directors.

FINDINGS OF VIOLATION

1. Robert Brace, a person, as defined in subsection 502(5) of the Clean Water Act, 33 USC & 1362(5), owns or controls real property located adjacent to Elk Creek, Waterford Township, Erie County, Pennsylvania.
2. Elk Creek and its adjacent wetlands are waters of the United States as defined by Federal regulation, 33 CFR & 323.2(a), and navigable waters as defined by Section 502(7) of the Clean Water Act, 33 USC & 1362(7).
3. At specific times best known to Mr. Robert Brace, fill material, consistin primarily of dredged material, rock, sand, and agricultural waste, was discharged into wetlands adjacent to Elk Creek, Erie County, Pennsylvania, from backhoes, bulldozers, and/or other heavy equipment operated by Mr. Robert Brace or persons acting under the direction of Mr. Robert Brace for purposes of draining and filling the wetland and converting the area to upland uses.
4. The activities described in Paragraph three (3) above were discharges of fill material, a pollutant, from point sources as defined by subsection 502(6), (12) and (14) of the Clean Water Act, 33 USC & 1362(6), (12) and (14), and Federal regulation, 33 CFR & 323.2(1986).
5. Section 404 of the Clean Water Act, 33 USC & 1344, authorizes the Secretary of the Army to issue permits for the discharge of fill material into navigable waters.
6. The discharge of fill material into the navigable waters without authorization from the Secretary of the Army as provided by Section 404 of the Clean Water Act, 33 USC & 1344, in violation of Section 301(a) of the Clean Water Act, 33 USC 71311(a), subjects the discharger to the federal enforcement provisions of the Act set forth in Section 309, 33 USC & 1319.
7. The Secretary of the Army has not issued a permit pursuant to Section 404 of the Clean Water Act, 33 USC & 1344, for the filling activities described in Paragraph three (3) above.
8. Mr. Robert Brace has violated Section 301(a) of the Clean Water Act, 33 USC & 1311(a), as specified in Paragraphs on(1) through seven (7) above, by discharging fill material without authorization.
9. On July 15, 1987 pursuant to Section 309(a) of the Act, 33 USC & 1319(a), EPA issued FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE, Docket No. III-87-026 DW, requiring Robert Brace to cease and desisit immediately all discharges of dredged (of fill) material into wetlands adjacent to Elk Creek, Erie County, Pa, and to submit a plan for restoration of the wetland area and for mitigation of the environmental harm caused to the wetland. To dat, no such plan has been submitted to EPA in further violation of Section 309(a) of the Act. 33 USC & 1319(a).
10. On July 22, 1987, Andrew Connor, an attorney representing Robert Brace contacted EPA by telephone to request a meeting in Philadelphia to present relevent information and to discuss the violation with EPA.
11. On August 19, 1987, Andrew J. Conner and Robert Brace met in Philadelphia with EPA and US Fish and Wildlife Service representatives and after discussing the violation agreed to submit information to EPA as required in EPA's July 15, 1987 ORDER to Robert Brace.
12. On September 4, 1987, Conner and Associates, attorneys for Robert Brace, provided information to EPA describing the nature and extent of the filling activities along with certain invoices revealing a general chronology of the filling activities.
13. On March 24, 1988, EPA and other state and Federal agencies met at the sit of the violation with Andrew J. Conner and Robert Brace to review a plan for restoration of the wetlands and mitigation of environmental harm caused to the wetland.

ORDER FOR COMPLIANCE

And now, this 3rd day of May, 1988, Mr. Robert Brace is hereby ordered, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. & 1319(a) to:

1. Cease and desist immediately all filling activities in the wetlands adjacent to Elk Creek, Erie County, Pa.
2. Submit, within 20 working days from receipt of this ORDER, a plan for restoration of the wetland area and for mitigation of the environmental harm caused to the wetland, that incorporates the following requirements.

- a) Restore, in accordance with the attached plan, all wetlands disturbed since October 5, 1984 by plugging with concrete all main drainage tiles at an excavated break in the pipe. The break shall be aluminum distance of 15 feet from Elk Creek and at a maximum distance of 50 feet from Elk Creek.
- b) Provide to EPA a restoration drawing(s) drawn to scale and certified by a Professional Engineer (P.E.) or licensed Surveyor (L.S.) showing: 1-General locations of the 8150 feet of ditches excavated in 1986 as indicated on the September 19, 1986 invoice #2897 from Bob Sheldon Trenching Company. 2-General locations of the 6500 feet of 4 inch plastic tubing placed in 1986 as indicated on the September 19, 1986 invoice #2897 from Bob Sheldon Trenching Company. 3-General locations of the 11,500 feet of excavated trenches and 4 inch and 6 inch plastic tubing placed in 1987 as indicated on the April 18, 1987 invoice #003182 from Bob Sheldon Trenching Co. 4-Specific locations verifiable for post restoration inspection purposes, where concrete plugs will be placed on all main drain tiles. 5-Surveyed elevations, locations, plans and specifications for rock check dams to be placed in the drainage ditch at the southern end of the property as shown on the attached restoration plan. The elevations and locations of these dams shall be determined by establishing the pre-1986/87 excavation elevation of the ditch at the upstream end of the excavated portion of the ditch and placing on rock check dam at the location where excavation began, one check dam where the excavation ended, and additional dams at each point along the ditch where the drop in stream elevation reaches one foot. Standard design and specifications of the PA Fish Commission shall be used in designing the check dams.
3. Refrain from any further disturbance of the areas that were naturally vegetated/federally regulated wetlands on or subsequent to October 5, 1984 in order to enable the wetlands to naturally revegetate with the indigenous wetland plant species.
4. Incorporate a provision within the restoration plan referenced in Paragraph 2 of this ORDER FOR COMPLIANCE, specifying measures to be followed to seed or plant with indigenous wetland species, those areas that were naturally vegetated wetlands on or subsequent to October 5, 1984, that do not naturally revegetate by the end of the 1988 growing season.
5. Complete within 90 days of the date of this ORDER all restoration and mitigation requirements incorporated in the restoration plan required by paragraph two of this ORDER.
6. Notify EPA when restoration work is started and when it is completed.
7. Allow representatives of EPA, the Corps. And the US Fish and Wildlife Service access to the site to inspect the restoration work in order to assure that the plugged drainage tiles and rock check dams function over a continued period of time to restore the wetland hydrology and vegetation.
8. Upon completion of work, a professional engineer or similar professional shall certify to EPA that restoration measures set forth in this ORDER have been fully and satisfactorily completed.
9. Submit, within five working days from receipt of this ORDER, written notice of intent to comply with the requirements of this ORDER, written notice of intent to comply with the requirements of this ORDER. The notice should be sent to:

Barbara D'Angelo, Chief
Wetlands and Marine Policy Section (3ES42)
United States Environmental Protection Agency
841 Chestnut Building
Philadelphia, Pennsylvania 19107

Issuance of this ORDER FOR COMPLIANCE supercedes ORDER Docket No. III-87-026-DW. Issued on July 15, 1987/. Mr. Robert Brace's liability under the Clean Water Act, 33 USC & 1251 et seq., or any other Federal, State or Local law or regulation shall not be excused by compliance with the terms of this ORDER. Violation of the terms of this ORDER may result in EPA taking further enforcement action including an administrative civil penalty, 33 USC & 1319(g), or a civil action for appropriate relief, 33 USC & 1319 (b) and civil penalties of up to \$25,000 per day of violation, 33 USC & 1319(d). In addition, Section 309(c) of the Clean Water Act, 33 USC & 1319(c), provides for criminal sanctions for willful and negligent violations of the Clean Water Act, including imprisonment and fines of up to \$50,000 per day of violation. Further, the Criminal Fines Enforcement Act of 1984 provides for fines in excess of the amount specified in the Clean Water Act under certain circumstances.

Dated: _____ (date written in as July 15, 1987)

Greene A. Jones, Director
Environmental Services Division
United States Environmental Protection Agency-Region III

US Environmental Protection Agency, Region III
Certified Mail-return receipt requested.

RE: EPA Docket No. III-88-014-DW
FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE

Dear Mr. Brace: