

EXHIBIT 4

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

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filed 10/14/90
1990

UNITED STATES OF AMERICA,
Plaintiff,
v.
ROBERT BRACE and ROBERT BRACE
FARMS, INC., a Pennsylvania
Corporation,
Defendants.

COURT
WESTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 90-229 Eue

COMPLAINT

The United States of America, through its undersigned attorneys and by authority of the Attorney General, alleges as follows:

1. This is a civil action under Section 309 of the Clean Water Act (the "CWA"), 33 U.S.C. § 1319, for injunctive relief and civil penalties against Defendants.
2. Authority to bring this action is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519 and 33 U.S.C. § 1366.
3. This Court has jurisdiction over this action pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1345 and 1355. Notice of commencement of this action has been given to the Commonwealth of Pennsylvania.
4. Defendant Robert Brace is an individual who is, and at all times pertinent to this action has been, a resident of the Western District of Pennsylvania. Defendant Robert Brace also is the controlling agent of Defendant Robert Brace Farms, Inc.

5. Defendant Robert Brace Farms, Inc., is a Pennsylvania corporation that does, and at all times pertinent to this action has done, business in the Western District of Pennsylvania. Defendant Robert Brace Farms, Inc., also is the alter ego of Defendant Robert Brace.

6. Defendant Robert Brace owns in fee a tract of real property of approximately 270 acres located in Waterford Township, Erie County in the Western District of Pennsylvania.

7. A portion [hereinafter "the site"] of approximately 30 acres of the said tract is the subject of this action.

LEGAL BACKGROUND

8. The CWA prohibits the unpermitted discharge of any pollutant, such as dredged or fill material, by any person from any point source into waters of the United States. 33 U.S.C. §§ 1311(a) & 1344(a).

9. The term "person" is defined in Section 502(5) of the CWA and means an individual or a corporation.

10. The term "point source" is defined in Section 502(14) of the CWA and includes earth-moving machinery.

11. The term "waters of the United States" includes: (i) all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all other waters such as lakes, rivers, streams, or wetlands, the use, degradation or destruction of which could affect interstate or foreign commerce; (iii) tributaries of such

waters; and (iv) wetlands adjacent to such waters or their tributaries. 33 C.F.R. § 328.3(a).

12. The term "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. 33 C.F.R. § 328.3(b).

13. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes appropriate relief, including a permanent or temporary injunction, for any violation of the CWA.

14. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates the CWA, or a CWA administrative compliance order, shall be subject to an appropriate civil penalty.

15. Each day that illegally discharged pollutants remain in place constitutes a continuing violation of the CWA.

COUNT I

16. The statements in paragraphs 1. through 15. are adopted by reference.

17. Defendants Robert Brace and Robert Brace Farms, Inc., are persons within the context of the CWA.

18. On numerous occasions between October 5, 1984, and May 1, 1987, and at times more fully known to them, Defendants discharged pollutants into the 30-acre site by dredging, filling, draining, and leveling with earth-moving machinery.

19. Defendants held no permit authorizing such discharges.

20. In May of 1987, the United States first became aware of such discharges.

21. At the time of said discharges, the site met the three criteria for wetlands (i.e., hydrology, vegetation, and soils) and was waters of the United States.

22. Defendants' described activities violate the CWA, and discharged pollutants remain on the site.

COUNT II

23. The statements in paragraphs 1. through 22. are adopted by reference.

24. On July 15, 1987, the United States Environmental Protection Agency issued an Administrative Order, which required that all filling activities into the site cease and which ordered the submittal of a restoration plan. On July 23, 1987, the United States Army Corps of Engineers issued a cease and desist Order. On May 3, 1988, the United States Environmental Protection Agency issued an Administrative Order, which again ordered that all filling activities into the site cease and which ordered the implementation of a restoration plan.

25. Despite further contacts by the United States, Defendants have failed and refused to comply with the Orders.

26. Said non-compliance violates the CWA, and the site remains unrestored.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that:

- A. Defendants be ordered to perform complete restoration of the site;
- B. Defendants be assessed a civil penalty pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d);
- C. Defendants be enjoined permanently from discharging any pollutants into the site in violation of the CWA;
- D. The United States be awarded its attorneys fees and costs in this action; and
- E. The United States be granted such other or further relief as may be just and proper.

Respectfully submitted,

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