



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
PITTSBURGH DISTRICT, CORPS OF ENGINEERS
WILLIAM S. MOORHEAD FEDERAL BUILDING
1000 LIBERTY AVENUE
PITTSBURGH, PA 15222-4186

December 19, 2012

Operations Division
Regulatory Branch
1998-2000

Robert Brace
Robert Brace & Sons, Inc.
1131 Route 97
P.O. Box 338
Waterford, Pennsylvania 16441

Dear Mr. Brace:

Reference is made to your request for a Jurisdictional Determination of an unnamed tributary to Elk Creek and Elk Creek on your farm in Waterford, Erie County, Pennsylvania. A field view was conducted on July 24, 2012 with Robert Brace and Sons, Ron Bosworth of Senator Mary Jo White's office, Todd Lutte of the United States Environmental Protection Agency (USEPA), and Michael Fodse of this office.

The Corps of Engineers' authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328. Navigable waters, their tributaries, and surrounding wetlands are waters of the United States subject to the provisions of Section 404 of the Clean Water Act (CWA). As discussed with you during the recent field view, CWA Section 404(f) provides exemptions for some agricultural activities. The USEPA has the ultimate authority for interpreting the scope of the CWA exemptions, but note that these exemptions do not apply to conversion of non-agricultural areas into active agricultural production.

Following the July 24, 2012 site visit, it was confirmed that approximately 4,750 linear feet of an unnamed tributary (unt) to Elk Creek and Elk Creek are jurisdictional waters of the United States. The unt to Elk Creek is, located south of the active agricultural field and Lane Road then empties into Elk Creek. After consulting the mapping and other relevant documents, it was determined that a portion of the channel in question is located within the 30-acre wetland area subject to the September 23, 1996 Consent Decree (Civil Action No. 90-229) filed in the matter of U.S. v. Brace, 41 F.3d 117 (3d. Cir. 1995). Therefore, the approximately 4,750 feet section of that channel is not eligible for the Section 404(f) exemption, and a permit is required for any maintenance or other activities in the channel. USACE is aware that maintenance dredging and clearing may have already occurred.

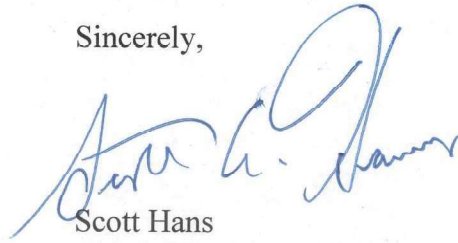
EXHIBIT

Additionally, USACE received information indicating that approximately 32 acres of your property acquired by you in May 2012 were recently cleared without a permit, including, but not necessarily limited to: approximately 2,200 linear feet of Elk Creek, an estimated 8 acres of Palustrine Emergent Wetlands (PEM) wetlands and 6 acres of Palustrine Scrub-Shrub (PSS) wetlands. These unauthorized activities were conducted from Elk Creek and Lane Road north and west to the intersections of State Route 86. Activities in these areas were never discussed at the July 24, 2012 site visit.

Accordingly, upon receipt of this letter, immediately Cease and Desist any discharge of dredged or fill material into the waters of the United States identified herein. An additional site visit with USEPA is requested to clarify jurisdiction and review unauthorized activities. To facilitate such a site visit, a map, along with drawings depicting all limits of the proposed activities, a delineation of existing streams and wetlands, and a description of any other potential activities in or near waters of the United States on your property should be provided to the USEPA and this office within 30 days of this letter.

Please contact Michael Fodse at (412)395-7575 or via email at Michael.M.Fodse@usace.army.mil, and reference project No. 1998-2000, to set up a meeting to discuss unauthorized activities, permit requirements, or applicable exemptions for the activities described herein. All questions regarding the application of the Consent Decree should be referred to USEPA or the US District Court for the Western District of Pennsylvania for resolution.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Hans", is written over a horizontal line.

Scott Hans
Chief, Regulatory Branch

Copies furnished:

Ron Bosworth (Sen. Mary Jo White)
Lori Boughton (PADEP NWRO)
Karl Gross (PADEP NWRO)
Earl J. Brown (ECCD)
Joseph Hudson (ECCD)
Gene Clement (ECCD)
Dana M. Adipietro, Esq. (LRP)
Pamela J. Lazos, Esq. (USEPA Region 3)
Todd Lutte (USEPA Region 3)
Jeff Lapp (USEPA Region 3)
Bob Nester (PA F&BC)