

Exhibit 7

Ronald Brace

January 11, 2018

Page 1

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

3 - - -
4 UNITED STATES OF AMERICA,)
5 Plaintiff,)
6 vs.)No.
7 ROBERT BRACE, ROBERT BRACE)1:17-cv-00006-BR
8 FARMS, INC., et al.,)
9 Defendants.)

10 - - -
11 Deposition of RONALD BRACE
12 Thursday, January 11, 2018
13 - - -

14 The deposition of RONALD BRACE, called as a
15 witness by the plaintiff, pursuant to notice and the
16 Federal Rules of Civil Procedure pertaining to the
17 taking of depositions, taken before me, the
18 undersigned, Lance E. Hannaford, Notary Public in and
19 for the Commonwealth of Pennsylvania, at the offices
20 of U.S. Attorney's Office, 17 South Park Row, Erie,
21 Pennsylvania 16501, commencing at 9:00 o'clock a.m.,
22 the day and date above set forth.
23
24
25

1 this through here.

2 Q And the contour field?

3 A And the contour.

4 Q Since 1996 have any of the Murphy site
5 areas been planted with crops?

6 A I guess I can't answer. If I knew the date
7 when he got stopped. When the Federal government and
8 put a cease and desist on his property.

9 Q Do you know when that was?

10 A '87 Andy Martin came out. I believe -- I
11 know Andy Martin came out in '87.

12 Q Right now I'm just asking since 1996.
13 Since 1996 has anything been planted on the Murphy
14 site?

15 A There wasn't, if he had a cease and desist
16 on it.

17 Q I guess what I'm asking, from what I
18 understand, if there is planting to be done, it's
19 usually you that does it?

20 A Right.

21 Q Do you recall planting anything on the
22 Murphy site since 1996? From 1996 until today, have
23 you planted corn or any other thing?

24 A Yes. We planted corn on it when Todd Lutte
25 and Army Corps Michael Fodse came out. I believe that

1 was in 2012. That is when they came out and declared
2 all the ditches ag ditches.

3 Actually, we met on Lane Road. We walked
4 back to where there is check dams from when dad had to
5 put them in the previous time. We walked back,
6 approximately, in here somewhere.

7 Q You can just write "CD" approximately --

8 A This is approximately.

9 Q Yes, approximately.

10 Thank you, sir.

11 When you say we walked back, who is we?

12 A Randy, my brother.

13 Q You and Randy.

14 A Yes.

15 Q It was you, Randy, Todd Lutte and Michael
16 Fodse?

17 A Yes.

18 Q Just as I asked you to do before, can you
19 write "corn" wherever it is -- hold on.

20 Does the time for that meeting -- does July
21 2012 sound right for that meeting?

22 A July 2012 for Mike Fodse and EPA when Todd
23 Lutte came out, yes.

24 Q When after July 2012 did you plant?

25 A Well, we did work on it after they gave us

1 permission. We started shortly after. That would
2 have been in July. We either planted it -- we would
3 have probably planted it in '13.

4 Q Did you plant it in '14?

5 A I believe it was '13, '14. We planted up
6 until this go around here when they stopped us again.

7 Q You believe you planted it in the spring of
8 2013 and the spring of 2014?

9 A Yes. Up until we got the cease and desist
10 again.

11 Q Who did the planting?

12 A I did.

13 Q Would you have the same type of GPS maps
14 for the Murphy site that you would for the Homestead
15 site?

16 A Should have. Yes.

17 Q Did you harvest from the Murphy site?

18 A We harvested.

19 Q In 2013 and 2014?

20 A If that was the years we had corn there,
21 yes.

22 Q Do you know if those crops were sold?

23 A Yes. They were sold.

24 Q If you planted in 2013 and 2014, do you
25 know if you planted in 2015?

1 around the Lane Road culvert. And we are on EPA
2 0000458, which is a photo taken by James Smolko.

3 So if you can look at this photo, this
4 photo was -- I will read the caption of the photo.
5 "Photograph IMGP370 taken September 10th, 2012 at,
6 approximately, 1723 hours. Headwaters of Elk Creek
7 south of Lane Road culvert pipe dredging and tile
8 operation underway."

9 If you can look in the left portion, there
10 is a piece of yellow equipment there. What is that?

11 A Referring to the John Deere?

12 Q Yes. What is the John Deere?

13 A It's a John Deere dozer.

14 Q It's a bulldozer?

15 A Yes.

16 Q Above the John Deere dozer, is that the
17 contour field?

18 A Yes.

19 Q It appears the contour field has been
20 planted with something.

21 A It appears. Yes.

22 Q What does that -- what would that be?

23 A It looks like corn.

24 Q If this photo is accurate, you would have
25 planted corn on the contour field at least in spring

1 to do that. However, you can't ask me to do
2 that.

3 MR. KOGAN: I'm objecting based on the fact
4 you are not doing it.

5 MR. UHOLIK: I appreciate that.

6 Q If the date on this photo is accurate, it
7 would have meant at the absolute latest you would have
8 planted the contour field in June of 2012. Is that
9 correct?

10 A Yes. If this is September of 2012. Yes.

11 Q Can you see the southwest field?

12 A Not from this picture.

13 Q Can you tell me, the piece of equipment in
14 the foreground closest to us on the right, just next
15 to what we call a creek and you call an agricultural
16 ditch, what is that called?

17 A Case excavator.

18 Q Is that similar to a track hoe?

19 A Track hoe. Another word for a track hoe.

20 Q Thank you, sir.

21 I will go back to the consent decree for a
22 moment. If you can flip to the last few pages, there
23 is something called the restoration plan.

24 Are you familiar with this restoration
25 plan, sir?

1 actually did it?

2 A Because he's the one that runs the
3 excavator.

4 Q Did he tell you he did it?

5 A Yes. You could see it, if you drove up
6 there.

7 Q You weren't involved in the cleaning out or
8 excavating of what you refer to as ditches. What work
9 did you do, personally?

10 A I ran the tile machine.

11 Q Is that called a tile plow?

12 A It's a Liebrecht tile --

13 Q Is Liebrecht the manufacturer?

14 A Liebrecht is the manufacturer.

15 Q Do you know the make and model?

16 A Not offhand, no.

17 Q By you, you can specify what entity, if you
18 know, do you know -- do you own that tile machine?

19 A I believe Robert Brace & Sons.

20 Q Is that the same -- how long have you owned
21 it? Do you have any idea?

22 A I would have to look back to see what date
23 we bought that. I don't know off the top of my head.

24 Q Has it been the same tile machine since
25 2010?

1 A I don't know without going back to look.

2 Q Is the tile machine you have now the same
3 tile machine you used to lay tile --

4 A Lay tile when?

5 Q Since 2012.

6 A Since after Lutte. Yes.

7 Q Is that tiling machine equipped with global
8 positioning system, GPS?

9 A Yes. It is.

10 Q Is the GPS a part of the machine itself?
11 Or do you install that?

12 A No. It's -- you have to put the globe on
13 the tile machine. There is a wire going to your Pro
14 1,000.

15 Q So what is a Pro 1,000?

16 A That's the monitor in the tractor.

17 Q The Pro 1,000 is the monitor in the tile
18 machine?

19 A Not in the tile machine. It's in the
20 tractor. The globe, your positioning globe, your
21 receiver is on, if I recall, it's on the machine.

22 Q You have to bear with me, because I don't
23 understand any of this. Is the tile plow something
24 you hook to a tractor?

25 A Yes.

1 decree area?

2 A I can't say it's the same tractor offhand.
3 I can't say it's the same tractor. It was a quad
4 track we pulled it with. It could have been a
5 different model the previous year.

6 Q I'm trying to figure out if you have the
7 Pro 1,000 -- the same Pro 1,000 you had in 2012.

8 A Yes. That tractor had the Pro 1,000, and I
9 believe it had it, even if we would have switched
10 tractors, it would have been in the same tractor that
11 pulled the tile plow. What I'm saying is if we switch
12 tractors, that Pro 1,000, I believe, was in either
13 tractor.

14 Q When you performed -- you said you did the
15 tiling?

16 A Yes.

17 Q Would you, please, do me a favor and take
18 this yellow highlighter and please draw -- it's
19 approximate, where you recall laying tile in the
20 consent decree area. I know you testified you didn't
21 lay tile before the meeting with Fodse and Lutte.
22 Correct?

23 A Correct.

24 Q Take this marker, this highlighter, and
25 highlight where you laid tile after that meeting in

1 the Murphy site?

2 A This is all going to be approximate. You
3 want me to put an X where we tiled.

4 Q If you can just draw a line.

5 A I can't remember exactly how we ran it. If
6 you want to know where we tiled, I can put an X there.
7 I can't put every line in.

8 Q If you can approximate. If you can't do
9 that, an X is fine. Whatever you feel comfortable
10 putting.

11 A Okay.

12 Q Did you tile the areas outside of the
13 consent decree on the Murphy site at all after that
14 meeting? The contour field or that southwest corner.

15 A We may have tiled right here.

16 Q Let the record reflect the witness has
17 placed a number of yellow highlighted Xs within the
18 Murphy site, including within the consent decree area
19 to mark where tiling was laid.

20 We will turn back to the photos. So
21 turning back to Exhibit R04. We are on page EPA
22 0001109. I believe we talked briefly about this. The
23 white tube in the middle of the photo, do you
24 recognize that as a tile joint?

25 A Yes.

1 MR. KOGAN: He already testified it is an
2 outlet.

3 Q I'm trying to reorient ourselves.

4 Is this the sort of drain that you -- or
5 outlet -- is the tubing attached to the drain similar
6 to this outlet?

7 A Yes.

8 Q Does everything look like this sort of
9 white plastic tube?

10 A Through the field?

11 Q Yes, sir.

12 A Yes. It can be white, yellow, black.

13 Q Is this the sort of tile that you installed
14 where you marked the Xs on Exhibit R01?

15 A To the best of my knowledge, it was all the
16 four inch tile.

17 Q Would it look like this, this white tube?

18 A Yes. It could look white, yellow, black.

19 Q If you would please flip to page EPA
20 0001128.

21 Do you recognize what this photo shows?

22 A Looks like a drain tile in the center.

23 Q Is that similar to the sort of tile that
24 would have been laid?

25 A Yes. It's white. Looks like the other

1 one.

2 Q Do you recall, when you laid the tile, if
3 it was white, yellow or black?

4 A I believe most of ours were white.

5 Q Can you describe to me how does a tile plow
6 work? Do you have to -- does somebody -- forgive me
7 for not knowing this. Does someone have to come in
8 before you and sort of dig a trench?

9 A How we did it, once you run your main line,
10 then you run laterals off that main line. Randy would
11 come in, dig a hole over top the tile we just laid.
12 He would dig back three, four, five feet, just enough
13 to get my tile plow down in the hole.

14 Q The tile plow, you dig a hole, can you sort
15 of describe to me -- I'm trying to figure out how the
16 tile ends up underground. How does the tile plow end
17 up underground?

18 A Once the machine is in the hole, you go
19 forward. There is two rubber wheels that is pushing
20 the pipe down they call it a boot. It lays it.

21 Q It lays it underground without tearing up
22 the surface?

23 A Very little. I'm trying to explain how.
24 It doesn't tear the surface up hardly at all. It will
25 probably, right where the tile goes in, you will see

1 where the ground might be bowed up a little bit. It
2 is depending on conditions.

3 Q If you could just grab R03.

4 One question about one picture. If you
5 could flip on what is Exhibit R03 to EPA 00000457.
6 You should see some equipment in the photo.

7 A Yes.

8 Q Sir, is that thing there in the middle of
9 the photo, attached to the tractor, is that a tile
10 plow?

11 A Yes.

12 Q How many of those do you own?

13 A Just this one.

14 Q Have you had the same tile plow since 2012?

15 A We had the same tile machine. Like I say,
16 I have to look back at the records when we, actually,
17 bought it. I don't know the date we bought the
18 machine.

19 Q Do you recall buying the machine any time
20 recently?

21 A Not recently, no.

22 Q Is it flexible?

23 A The tile is flexible.

24 Q Could you please flip to on Exhibit R04,
25 page EPA 0001132? Is there a tile drain depicted in

1 Q So the meeting -- I think we sort of agreed
2 it was some time in July 2012. When did you lay the
3 tile in the consent decree area, to the best of your
4 recollection?

5 A We started shortly after Todd left. I
6 can't remember if it was a day or a week, but we
7 started shortly after that day.

8 Q Basically, immediately. Would that be a
9 fair characterization?

10 A Yes. Very close.

11 Q Why did you start immediately?

12 A So we can get the water off the property.

13 Q I guess my question is if you couldn't
14 plant it until the following spring, why did you do it
15 immediately?

16 A Because normally -- it was July, probably
17 one of the driest parts, it could be one of the driest
18 times of the year. It just made sense to do it then.

19 Q Okay.

20 Q What is the purpose of tile drain?

21 A It helps your crops grow.

22 Q How does it do that?

23 A It takes your submoisture, a lot of crops
24 don't like what we call wet feet.

25 Q When you say submoisture, some ground is --

1 Q Is that because the ground in Erie County
2 is maybe wetter than some other places?

3 A Yes. To get good productive crops, you
4 have to keep the water off.

5 Q Do you have any idea how much tile you laid
6 in the consent decree area?

7 A I don't know. I never kept track.

8 MR. KOGAN: I think that question has been
9 answered. If we could read that back.

10 MR. UHOLIK: I haven't asked him how much
11 tile he laid.

12 Q Was the -- let's go back to the time of the
13 meeting.

14 A 2012.

15 Q Let's go before that meeting. If you can
16 take yourself back to -- even the day of, whatever.
17 The consent decree area, how would you describe it?
18 Was there a lot of vegetation on it? Were there
19 shrubs? Were there trees?

20 A Yes. There were a few trees. Old Elm
21 trees. It was grassy. And prior to that, prior to
22 2011 when the beavers had the dams up through the
23 ditches, it was all flooded.

24 Q When you removed -- the beaver dams were
25 remewed; is that correct?

1 Q So in total -- by you I believe you said it
2 was Randy that did the removal of the beaver dams?

3 A Randy and the Game Commission with the one
4 dam, yes.

5 Q How many beaver dams were removed north of
6 Lane Road?

7 A We are on this side.

8 Q North of Lane Road.

9 A Approximately, two, maybe three.

10 Q And how many were removed south of Lane
11 Road?

12 A One, possibly two, that I can recall.

13 Q Back to the vegetation. You said it was
14 grassy. There were trees. Were there some shrubs?
15 I'm referring to in the consent decree area back
16 before the July 2012 meeting.

17 A I guess it could have been grown up to some
18 shrubs.

19 Q At that meeting did -- at that meeting, the
20 July 2012, did either Fodse or Mike Lutte tell you
21 to -- strike that.

22 After that meeting was the vegetation
23 cleared?

24 A Yes. Because we took the dead Elm trees
25 that were there out. And we tilled it after he cleaned

1 the ditches out.

2 Q And who cleared the vegetation?

3 A It would probably be -- I know I took some
4 out. Randy helped take a few trees out. I remember
5 we used them for firewood.

6 Q Was there any clearing of the grass or
7 anything like that?

8 A We didn't mow it. We may have ran a field
9 cultivator through it after it was tiled.

10 Q Would that be to prepare it for planting?

11 A Yes.

12 Q And at that 2012 meeting with Fodse and
13 Lutte, did either of them -- when you did your walk on
14 the contour field and came to that knoll, did either
15 of them say, "You can clear all this"?

16 A He just -- Lutte told us we can farm
17 approximately to where I drew that line.

18 Q Please correct me if I'm wrong. They said
19 you can clean the ditches, and you can farm up to this
20 point, basically?

21 A Correct. And he determined all these ag
22 ditches where I marked out, and he knew our intent to
23 farm it, and so did Fodse.

24 Q Did they say anything else?

25 A To my knowledge, no. Other than what I

1 A Yes. That shouldn't be a problem. Seeing
2 tile is part of agriculture. Normal farming
3 practices.

4 Q Have you had any similar problems on the
5 contour field?

6 A I remember we laid a tile, there is a gas
7 well right here. And this picture here --

8 Q When you say this picture here, let the
9 record reflect the witness is -- we are on Exhibit
10 R04. It is page EPA 00001132.

11 A This picture here with the gas well in it,
12 we did lay some tile and repair some tile that was in
13 this section here and up by the gas well.

14 Q Is that the only tile you have up in the
15 contour field that you know of?

16 A Unless he put some in where I don't know.

17 Q When you say he?

18 A My dad. I don't recall any other tile.
19 Other than I guess on this side of the contour right
20 here.

21 Q Since you started farming in the contour
22 field again, apart from that installation of tile, you
23 don't recall putting any others in?

24 A Just right on this section here.

25 Q Is that outside the contour field?

1 A Well, that is -- in this picture it is part
2 of the consent decree.

3 Q I'm just referring, for purposes of this,
4 we are calling the contour field the area in the
5 middle not in the consent decree.

6 A Right.

7 Q How is the moisture level there?

8 A That was decent. That's a real sandy
9 field.

10 Q What does that mean?

11 A Like going to the beach.

12 Q But you can still plant there?

13 A You can still plant there.

14 Q What grows well in sandy fields?

15 A We have had cabbage, corn, wheat, oats.
16 Let me rephrase. It's not beach sand. It's real fine
17 soil.

18 Q Grainy?

19 A Yes.

20 Q Let's discuss the Marsh site. Are you
21 familiar, sir, with what we are calling the Marsh site
22 today? It is marked on Exhibit RO1 north of Lane
23 Road.

24 A Yes.

25 Q Who owns it?

1 didn't. I know Randy did when we were tiling.

2 Q And the dozer is used for, basically,
3 moving vegetation?

4 A It's a dozer.

5 Q I sort of understand. We have to make it
6 clear.

7 A You can use a dozer for anything. You can
8 hook a piece of equipment to it and farm with it. You
9 can push a tree over with it. You can pull another
10 piece of equipment out. A dozer is multiple uses.

11 Q A utility vehicle.

12 A A utility.

13 Q So when did you add the tile drain in the
14 Marsh property?

15 A It was after the 2012 meeting with Lutte
16 and Fodse. Because I think I said this, Lutte asked
17 what dad was going to do with the Marsh property. And
18 he said he wanted to farm it. So it would have been
19 after that meeting.

20 Q And who directed you to install tile drain?

21 A My dad.

22 Q To your recollection, did Todd Lutte or
23 Mike Fodse say anything about tile drain in the Marsh
24 site?

25 A Not that I recall.

1 A He didn't -- no. He just used the
2 excavator.

3 Q So excavate it and then dump it on the
4 side?

5 A I believe that is how he did it.

6 MR. KOGAN: Referring to side casting,
7 counsel?

8 MR. UHOLIK: I'm just asking --

9 MR. KOGAN: Dumping on the side, are you
10 referring to that term of art?

11 MR. UHOLIK: I believe side casting is a
12 term of art.

13 MR. KOGAN: I just want to make sure.

14 Q So can you -- we will take this blue
15 highlighter. Can you show me in blue where -- you
16 said it was flooded and pointed to different areas.
17 When you say it was flooded, can you give me a time
18 period? Whatever it was, when was it flooded?

19 A I can't give you the dates, as far as the
20 specific years. I do remember -- Lane Road going up
21 there. And it was coming over the road here. Sharp
22 Road, I believe, was closed off. And then even after
23 the water receded, for a long time this water would be
24 up close to the road.

25 Q So how many times has the water overtopped

1 Q We are going step by step. All I'm asking
2 about is the 2011 site visit. Does the content of the
3 email match up with your recollection what the site
4 visit was about?

5 A To me my recollection of the site visit was
6 to get the water off to make the property pre'84.

7 Q What was discussed at that meeting that
8 would lead to that?

9 A When Lutte -- at the 2012 meeting?

10 Q 2011.

11 A 2011 we got the water off, the beaver dams
12 removed. And then was it a year later, 2012, Lutte
13 came back out with --

14 Q We are going to go meeting by meeting. My
15 question is -- correct me if I'm wrong, the 2011
16 meeting, was that about beaver dams?

17 A Yes. The 2011 meeting, that was about --
18 yes, that was about the beaver dams.

19 Q Do you recall where you walked at that
20 meeting? Did you walk on the Marsh?

21 A On the 2011 with the Game Commission and
22 EPA, we didn't walk, because it was all flooded. So I
23 don't recall walking. If we did, I don't remember
24 where it was.

25 Q Do you remember any meetings where it was