

COPY

1

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

UNITED STATES OF AMERICA, CIVIL ACTION

Plaintiff

vs.

ROBERT BRACE and ROBERT BRACE  
FARMS, INC., a Pennsylvania  
Corporation,

Defendant

NO. 90-229

- - -  
Thursday, March 5, 1992  
- - -

Continued oral examination of JAMES  
BUTCH, held at the offices of Buchanan Ingersoll,  
P.C., 1200 Logan Square, 18th and Arch Streets,  
Philadelphia, Pennsylvania 19103 commencing at 1:35  
p.m., on the above date, before Mickey Dinter,  
Registered Professional Reporter and Commissioner of  
Deeds of the Commonwealth of Pennsylvania.

- - -

HATCHER & BRUSILOW  
Computer Litigation Support  
260 South Broad Street - Suite 200  
Philadelphia, Pennsylvania 19102  
(215) 985-2333

HATCHER & BRUSILOW

CD-FRC0003913

EXHIBIT

2

A P P E A R A N C E S :

U.S. Department of Justice  
BY: DAVID M. THOMPSON, ESQUIRE  
Environment and Natural Resources Division  
Room 7117  
Washington, D.C. 20530  
Counsel for Plaintiff

BUCHANAN INGERSOLL, P.C.  
BY: JOHN D. WARD, ESQUIRE  
Vartan Parc  
30 North Third Street, Eighth Floor  
Harrisburg PA 17101  
Counsel for Defendants

- - -

HATCHER & BRUSILOW

CD-FRC0003914

James Butch

21

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q. I have a copy of a letter dated May 4 from the Fish and Wildlife Service of 1987 from a Charles Kulp. Do you know who he is?

A. Yes.

Q. What is his title?

A. Field Supervisor, Fish and Wildlife Service, State College Field Office.

Q. It is to Colonel Clark, the District Engineer.

There is also a notation down there. Near the top, it says "Source."

A. Yes.

Q. What does it say?

A. "Source: Butch."

Q. Was a copy of that letter received by you?

A. I don't recall specifically whether we received a copy of this letter. We may have.

Q. Let me show you another letter from Charles Kulp to Daniel Clark and ask you since you just stated you had received some kind of a letter requesting more information from the Fish and Wildlife Service --

A. I think we did receive this letter

HATCHER & BRUSILOV

CD-FRC0003933

James Butch

22

1  
2 or a letter very similar to this that may have  
3 been addressed to us or we received a copy of a  
4 letter containing the types of information that I  
5 had requested from Fish and Wildlife Service be  
6 forwarded to our office; it may have been a copy  
7 of the letter sent to the Corps or it may have  
8 been another letter very similar.

9 Q. Why don't you take a moment to  
10 refresh your memory and see if, in fact, that came  
11 to your attention, although it is not shown that  
12 you were copied on it, to my knowledge, if that  
13 became part of your records of this particular  
14 case.

15 A. This is part of our record, yes.

16 Q. There is a great deal of information  
17 in there describing vegetation and soils. I will  
18 hand this to you in a moment.

19 Would you deem it to be just a  
20 general description of conditions in the area  
21 without showing any specific information as to the  
22 soils or vegetation of the Brace property?

23 MR. THOMPSON: I would object  
24 to the question. The document speaks for  
25 itself. You can go ahead and answer.

HATCHER &amp; BRUSILOW

CD-FRC0003934



James Butch

23

1  
2 A. I would say the answer to your  
3 question is, there is some site specific  
4 information and some general information.

5 Q. Okay.

6 You do recall this coming to  
7 your desk as a result of your request?

8 A. That letter or something very  
9 similar.

10 Q. And did Mr. Putnam provide you with  
11 that information ultimately?

12 A. Yes.

13 Q. Other than what we have just looked  
14 at, did you receive from him specific evidence of  
15 any kind pertaining to wetland existence, their  
16 violations?

17 A. The accompanying information that  
18 came with the letter, yes.

19 Q. Do you recall what that was?

20 A. No.

21 Is the information that  
22 accompanied the letter available?

23 Q. This is all I have.

24 If you want to take a look at  
25 that and what was on the other letter that I

HATCHER & BRUSILOV

CD-FRC0003935

James Butch

24

1 showed you that you could not recall seeing, it  
2 does have some maps on it and that's all it has.  
3 I will not get into those, although there is an  
4 enforcement investigation referral form.  
5

6 Do you know what that is?

7 A. Yes.

8 Q. Is that your form?

9 A. That is an Army Corps of  
10 Engineers-originated form.

11 It is used by the state,  
12 various state and federal wetlands regulatory  
13 programs in Pennsylvania. And EPA accepts that  
14 type of thing.

15 Q. To your recollection, though, were  
16 you given any, as to the Brace site, were you  
17 given, what we will call, hard evidence resulting  
18 from soil samples taken on the property,  
19 vegetation samples taken on the property, on-site  
20 sampling work?

21 MR. THOMPSON: Initially?

22 MR. WARD: What he got from

23 Putnam.

24 A. The documentation of that work  
25 having been done, yes.

HATCHER & BRUSILOW

CD-FRC0003936

James Butch

25

4

I think if you look in the May 11 letter to Colonel Clark, there is -- let me read one statement. It says, "An examination of the soils indicate that most of the site is in a saturated state. The grade soils and heavy organic soils" -- does that address your question to evidence that there had been examinations?

Q. To your recollection, though, were you given any working papers or documents that would support that statement?

A. Information from the soil survey supported that information; the national wetlands inventory map which we reviewed, I'm not sure whether it was contained in this packet or something we reviewed from our own file, could have been either or both of those. Site photographs that verified observations that were contained in this letter --

Q. Do you still maintain that material that you received from Putnam?

A. Yes; it would be in our file.

Q. How would that be designated just, generally? Under "Brace" or by year? Time?

MR. THOMPSON: My

HATCHER & BRUSILOW

CD-FRC0003937

James Butch

27

1  
2 of the second full paragraph. Would something  
3 like that have caught your attention as "major"?

4 A. Let me read it. It says, "The  
5 activity may violate the Pennsylvania Dam Safety  
6 Encroachment Act."

7 Q. No, up here.

8 A. I reported the activity to Mr.  
9 Pabody of your staff.

10 Q. No, the last sentence there.

11 A. Mr. Brace or his contractor dug a  
12 channel about a mile long to drain and fill an  
13 approximate 150-acre wetland to develop a golf  
14 course."

15 Q. As you described it earlier, that  
16 would be a major attention grabber?

17 A. Yes.

18 Q. You received this information from  
19 Mr. Putnam. What did you do next?

20 A. Reviewed the information.

21 Q. Okay.

22 Give me the sequence of events  
23 that you participated here.

24 A. I will try to recall as best I can.  
25 This was about five years ago.

HATCHER & BRUSILOV

CD-FRC0003939



James Butch

28

1  
2 I believe after the review of  
3 the information, I made additional phone calls to  
4 Dave Putnam, talked the matter over internally  
5 with my managers and counsel.

6 Q. The manager of various sections?

7 A. Section chief.

8 Q. Biologists?

9 A. Specifically, I don't know who I  
10 might have talked to, but it could have been one  
11 or two levels above my section chief.

12 Q. All right.

13 A. I would have talked to counsel. I  
14 don't recall specific details of the events but,  
15 eventually, it was decided that we would issue an  
16 administrative order on this particular project.

17 Q. In view of the letters we have just  
18 looked at that were addressed in bringing the  
19 circumstances to the attention of a district  
20 engineer, Colonel Clark, the Corps of Engineers,  
21 did you have contact with the Corps as to the  
22 procedures that you were going to follow and tell  
23 them that you would handle the case?

24 A. There was some coordination that  
25 took place. I just don't recall the details of

HATCHER &amp; BRUSILOW

CD-FRC0003940

James Butch

1 discussion led to the decision. Who actually made  
2 the decision to say we will issue a letter? What  
3 do you call it?  
4

5 A. An administrative order.

6 Q. Findings of Violation, an  
7 Administrative Order.

8 A. Correct.

9 Q. Who made the decision that that  
10 letter will go out?

11 A. Those decisions are made in  
12 discussions among myself, our counsel and EPA  
13 management.

14 Q. Would Greene Jones have taken a part  
15 in that discussion?

16 A. Yes, he would have.

17 Q. He would have?

18 A. Yes.

19 Q. I hand you a copy of a letter, this  
20 is 7/15/87, handwritten. Is this the letter to  
21 which you just alluded?

22 A. This is the cover letter of the  
23 Administrative Order or, at least, a draft of it.

24 Q. Let me ask you about the process of  
25 when you have an alleged violation. Let me list

HATCHER & BRUSILOW

CD-FRC0003943

James Butch

32

1  
2 them and you tell me if it is correct.

3 I will hand you a copy of a  
4 letter issued by Region III of the EPA signed by  
5 Greene Jones and ask you if that was part of the  
6 process to which you just described?

7 A. Yes, it was.

8 Q. You say, I believe, that that was a  
9 cover letter that accompanied this Findings of  
10 Violation and Order for Compliance --

11 A. Yes.

12 Q. naming Robert Brace --

13 A. Yes.

14 Q. Let me just take a look at that.

15 (Off the record.)

16 BY MR. WARD:

17 Q. Mr. Butch, have you had a chance to  
18 review the cover letter that I have given you --

19 A. Yes.

20 Q. -- and also the Findings of  
21 Violation and Order for Compliance which is dated  
22 May 3, 1988?

23 A. Do you want me to review this, too?

24 Q. Yes; if that is part of the  
25 procedures you followed.

HATCHER & BRUSILOW

CD-FRC0003944

James Butch

33

Mr. Butch, I have handed you an Administrative Order, I believe, along with that cover letter and we have since discovered that that Administrative Order is in May 1988.

A. May 3, 1988.

Q. That is the second Administrative Order because if you will just very quickly read paragraph designated nine there --

A. It reads: "On July 15, 1987, pursuant to Section 309 (a) of the act, EPA issued Findings of Violation Order for Compliance, docket number 87-026DW."

Q. For right now, Mr. Greene's letter went out and no EPA person, to your knowledge, had been on the property?

A. Correct.

This is after issuance of the first Administrative, July 15 Administrative Order.

Q. Yes.

A. Let me clarify that.

Representatives of the Army Corps of Engineers had been on-site. They verified federal jurisdiction that information

HATCHER & BRUSILOV

CD-FRC0003945