

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

IN THE MATTER OF

Robert Brace
Waterford, Pennsylvania

PROCEEDINGS UNDER SECTION 309(a)
OF THE CLEAN WATER ACT,
33 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 C.F.R. § 323.2(a), and navigable waters as defined by Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7).
3. At specific times best known to Mr. Robert Brace, fill material, consisting 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 Bruce 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 U.S.C. § 1362(6), (12) and (14), and Federal regulation, 33 C.F.R. § 323.2(1986).
5. Section 404 of the Clean Water Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army to issue permits for the discharge of fill material into the navigable waters.

EXHIBIT

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 U.S.C. § 1344, in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), subjects the discharger to the federal enforcement provisions of the Act set forth in Section 309, 33 U.S.C. § 1319.
7. The Secretary of the Army has not issued a permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 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 U.S.C. § 1311(a), as specified in Paragraphs one (1) through seven (7) above, by discharging fill material without authorization.

ORDER FOR COMPLIANCE

And now, this 15TH day of July, 1987,
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, Pennsylvania.
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.
3. Submit, within five working days from receipt 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

Mr. Robert Brace's liability under the Clean Water Act, 33 U.S.C. § 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 U.S.C. § 1319(g), or a civil action for appropriate relief, 33 U.S.C. § 1319(b), and civil penalties of up to \$25,000 per day of violation, 33 U.S.C. § 1319(d). In addition, Section 309(c) of the Clean Water Act, 33 U.S.C. § 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: July 15, 1987


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