From: US Dept of the Interior, Fish and Wildlife Service, Charles J. Kulp
May 11, 1987
To Colonel Daniel J. Clark

Dear Colonel Clark:

A biologist from this office met with Mr. James Pabody of your staff: Mr. Tom Delfonso, PA Dept. Of Environmental Resources: Mr. Andy Martin, PA Game commission: Mr. James Carter, PA Fish Commission: and Mr. Robert Brace, at Mr. Brace's property on the headwaters of Elk Creek in Waterford Township on May 6, 1987. The purpose of the meeting was to discuss unauthorized filling activities conducted by Mr. Brace that we reported to your office via "compuserve" on May 5, 1987.

Mr. Brace explained what he had done and stated that he was trying to "clean up" the area and "restore it to it's former condition." He had previously stated to Mr. Martin that he intended to turn the area into a golf course.

The project involves excavation of trenches in wetland and deposition of dredged materials in wetlands along the trenches , as well as deposition of fill and waste materials at a separate site within the wetlands. The fill materials had not been stabilized at the time of our visit and were eroding into the waterway. The wetland area that has been adversely impacted is over 130 acres in size. It is predominately a palustrine scrub-shrub wetland dominated by alders and willows. Emergent wetlands dominated by rushes, cabbage, red osier, and silky dogwoods, northern arrowwood, reed canary grass, swamp rose and steeplebush can be found throughout much of the area.

The enclosed map prepared by our National Weland Inventory (NWI) Team shows the distribution of wetlands within the project area. Based on our field observation and review of the Erie County Soil Survey, the NWI map appears to be conservative and the wetlands are actually more extensive than shown on the NWI map. We have ordered aerial photography for the site and will prepare a site map as soon as it arrives.

This wetland is providing most of the important functions attributed to wetlands. It is particularly valuable to fish and wildlife resources because of its size, diversity and location. Elk Creek is an important salmonid fishery and its headwater wetlands help to stabilize flows and remove nutrients and sediments in runoff waters from the surrounding agricultural operations. Destruction of this wetland could cause significant degradation to the water quality of Elk Creek.

An examination of the soils indicated that most of the sit is in a saturated state for most of the time. The gleyed soils and heavy organic layer has leas us to conclude that this area has been a wetland for a very long period of time. The Soil Survey for Erie County (map enclosed), published by the Soil Conservation Service, USDA< indicates that most of the site is in Sloan silty clay loam and is described as follows:

"The Sloan series consists of deep, very poorly drained soils of the bottom land. The soils occur on part of the flood plains of streams where the water table is near or slightly above the surface. In places, they are permanently covered with water.

The parent material consisted of silt and clay deposited in still, or slack, water. These sediments were washed down from the upland by streams and deposited on the floodplains. They were derived from acid shale bedrock and from sandstone, granite, and limestone of glacial origin.

These soils are in the same catena as the well drained Chagrin soils, the moderately well drained Lobdell soils, and the somewhat poorly drained to poorly drained Wayland soils.

Tamarack and hemlock grow in wooded areas. Alder, aspen, cattails, and sedges grow in idle areas and in areas that are permanently wet.

Typical profile of Sloan silty clay loam:
0 to 10 inches, very dark grayish-brown silty clay loam: weak, medium, granular structure; friable when moist: ph 6.6: clear, smooth lower boundry

10 to 16 inches, light brownish-gray silty clay loam with common, medium distinct mottles of yellowish brown; weak, medium granular structure; firm when moist; ph 6.4; diffuse, smooth lower boundry.

16 to 36 inches, light brownish-gray silty clay loam with common, medium distinct mottles of brownish yellow; moderated, medium, granular structure; hard when dry, very firm when moist, and slightly plastic when wet; ph7.0

The height of the permanent water table in these soils ranges from 12 to 18 inches above the surface to 6 to 12 inches below the surface.

The Sloan series is mapped in two distinct units. They are described in the soil survey as:

"Sloan silty clay loam, 0 to 3 percent slopes (SbA).—The profile of this soils is the same as the profile described for the series. The soil is level to nearly level. It has poor surface drainage and poor to very poor internal drainage. After floods, water remains on the surface. This soils is suited to permanent pasture. Chose pasture mixtures that tolerate restricted drainage. Keep the natural drainageways open. Because of restricted drainage, this soil is in capability unit VIw-1.

Sloan silty clay loam, permanently wet, 0 to 3 % slopes. (ScA).—The profile of this soil resembles the profile described for the series, but the surface layer is darker and consists of 6 to 12 inches of partly decomposed plants or peat. The soil is covered with 12 to 18 inches of water.

This soil is suitable as a habitat for wildlife. Because it is permanently wet, it is in capability unit VIIIw-1."

These soils are in capability class VIw-1 and VIIIw-1 which are described in the soil survey as:

Capability unit VIw-1

"This capability unit consists of level to nearly level, mainly poorly drained to very poorly drained silty clay loams and silt loams of the flood plains. The soils are flooded very frequently. They are ponded longer than the other soils of the flood plains, remaining under water for long periods during and following the flood season. The depth of the root zone is limited by a seasonably high water table. The water table is at the surface or at depths of as much as 12 inches. Above the water table the soil material is slowly permeable to water and air. The soils have a high water-supplying capacity. Their natural fertility is high. The following soils are in capability unit VIw-1:

Sloan silty clay loam, 0 to 3% slopes.
Wayland silt loam, 0 to 3 percent slopes.

Use suitabilit and management needs. -Because of frequent flooding and poor surface drainage, these soils ar best used for permanent pasture or woodland. Maintain a vigorous stand of plants to control erosion by floodwaters. Keep the natural drainageways open.

Capability unit VIIIw-1

"This capability unit consists of soils in which water is at or above the surface of the soil. The following mapping units are in capability unit VIIIw-1:

Fresh water marsh.
Sloan silty clay loam, permanently wet, 0 to 3 % slopes.

Use suitability and management needs. --Because their root zones are permanently saturated with water, these soils can be used only as habitats for waterfowl or other wildlife.

The soil survey further describes these areas as not suitable for any type of crop production and only fair suitability for permanent pasture in the areas that are not permanently wet.

Beavers have been found throughout the sit in the past. However, Mr. Brace has admitted to destroying their dams and houses illegally. We observed one active colony during the on-site visit. Several species of fish were observed in the channelized stream, as well as amphibians, reptiles, freshwater mussels, and numerous birds, including waterfowl and other migratory birds.

Tracks of muskrats, raccoon, white-tailed deer and great-blue heron were observed. A Canada goose nest that had apparently been abandoned as a result of the unauthorized work was also observed. A red tailed hawk is nesting on the edge of the wetland.

Areas such as these provide valuable habiat for a wide variety of resident and migratory birds as well as providing important habitat for mammals that are not regarded as wetland species. In this area, species such as eastern cottontail and white tailed deer use these wetlands for year-around habitat.

Based on our field visi and the information that wh have received, the unauthorized work does not comply with EPA's 404(b)(1) guidelines. It also appears, based on Mr. Brace's statements, that a number of other environmental statutes have been violated by this project; blasting in a stream without a permit, disturbance of aquatic habitats without a permit and pollution (sedimentation) of a stream which violates of the PA Fish and Boat Code: Destruction of beaver dams and a lodge without a permit, which is a violation of the PA Game Law: violation of the Solid Waste Management Regulations administered by the Erie County Dept. Of Health, and modification of a stream and wetlands without a Section 105 permit from the DER.

In view of the above, we recommend that your office coordinate a resolution to this activity between appropriate State and federal agencies. We recommend that a cease and desist order be issued immediately to prevent further damages and that Mr. Brace be required to restore the wetlands to preproject conditions. This activity is the most serious wetland violation

that we have seen in PA in recent years, and we are fully prepared to assist you to the extent necessary to assure a satisfactory resolution of this case.

We will forward a revised wetlands map to you once we have received new aerial photographs. By copy of this letter, we are advising the EPA of this matter and requesting their participation in the resolution of this case.

If we can be of further assistance, please contact David Putnam of my staff.

Sincerely,

Charles J. Kulp
Field Supervisor
cc:
PFC Miller, Lazusky, Carter
PGC-Sitlinger, Andy Martin
EPA-Kline, Butch
DER Smith Delfonso
WPC- Weigman
COE- Pabody