



P E N N S Y L V A N I A LANDOWNER

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USA v. Robert Brace & Robert Brace Farms, Inc.

Farmer Emerges Victor In Federal Wetlands Case

A nearly seven year nightmare involving wetland enforcement may have ended for Robert Brace of Waterford, Pennsylvania. In a decision rendered December 16, 1993 following a four day non-jury trial in late November, federal district court judge Glenn Mencer exonerated Robert Brace and Robert Brace Farms, Inc. of all charges of Clean Water Act violations filed against him by the U.S. Department of Justice. Specifically, the charges involved allegations by federal agencies including the Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (COE), U.S. Fish & Wildlife Service (FWS), and the Pennsylvania Department of Environmental Resources (DER), claiming that the Waterford farmer had violated wetland provisions of the federal Clean Water Act applicable to wetlands.

In late 1975, upon the retirement of his father, Charles, who was a beef and dairy farmer, Bob hated to see the family farm sold to outsiders and made the decision to purchase his homestead farm. Having been a vegetable farmer for over 30 years at the time, Bob believed the pasture land, as well as the existing

cropland, could be utilized and improved for the production of row crops and roadside vegetables.

In May of 1987, two officials from the Pennsylvania Game Commission (PGC) visited Bob's farm to remove beaver. The animals had built a dam in a drainage ditch which was impairing the flow of water causing soil erosion and hindering crop production. The Commission's visit followed the near completion of a ten year conservation project by Bob in maintaining an existing drainage system on the farm. By 1987, the land was in nearly perfect condition for farming, with only a few minor improvements remaining,

But one of the PGC officials by the name of Andrew Martin¹ scanned Bob's property and stated to Bob that he believed the property would, in his words, "make a nice sanctuary." He proceeded to ask Bob where his permits were for cleaning his ditches. Bob explained that his work was covered under agricultural exemptions, but Mr. Martin was indifferent to what Bob had to say, which led to an exchange of words and a statement to Bob that "he didn't know what trouble could be." A few days later several federal, state, and local officials descended on Bob's land unannounced and began excavating soil and plant species.

Two months later, in July of 1987, Bob received letters from the E.P.A. Corps of Engineers, U.S. Fish & Wildlife Service and the PA D.E.R. stating he had filled wetlands by cleaning his ditches and was ordered to "restore" his property or face penalties collectively amounting to \$100,000 per day and possible imprisonment.

After nearly seven years of working his way through the administrative and judicial process, Bob's perseverance and belief in his innocence appears to have paid off. In his decision,



Robert Brace (center) and his sons Ronnie (left) and Randy (right)

(Continued on page 2)

(Continued from page 1)

Judge Mencer wrote:

"This certainly does not appear to be the type of case where a corporation or large farming enterprise takes control of a parcel of land and dramatically alters the composition of the land and runs roughshod over the requirements of the Clean Water Act."

He went on to state:

"...this Court finds that the Defendants' activities on the site constituted an integral part of long range upland soil and water conservation practices. The farming activities on the site were designed to enhance productivity in the upland areas by allowing water to flow to its natural courses with a consequential improvement of the soil. Such course of action, together with regularly cleaning of the drainage system on the site, constituted maintenance of the drainage system, and as such, is exempt from the requirements of the Clean Water Act."

Upon personally viewing the property, Judge Mencer also found that not more than 25% of the property in question even met the definition of a wetland.

Bob's seven year ordeal, however, is still not over. On February 14, 1994, the final day available, the U.S. Department of Justice filed its notice of appeal. The case now proceeds to the U.S. Court of Appeals which will be the last step in the judicial process prior to any appeal to the U.S. Supreme Court. The appeal came as no surprise to Bob. "They have all the time and money in the world," he said. "Why not appeal when you've got unlimited tax dollars to waste?"

"People talk about due process of law... there is no due process."

When summing up his thoughts about his bureaucratic battle, Bob said "It's changed the way I look at everything. Land use

regulations have become so over-burdensome and confiscatory that there's no longer any incentive for property owners and businesses to continue risking everything day after day. I guess one of the things, and there were alot, that surprised me and I'm sure very few people realize, is that the government didn't have to prove that what I did harmed the environment or caused harm to my neighbors. They tell me it's called 'strict liability' and just by doing something like turning over dirt or mowing hay in what may or may not be a wetland, is a violation, even if nothing or nobody is hurt. How do you fight something like that? I can't believe the injustices involved with current environmental laws and our judicial system. People talk about due process of law...there is no due process. When it takes seven years just to be heard in Court the first time around, something's wrong. And then you're not entitled to a prompt decision because there are no time frames for a verdict to be rendered. I'm just thankful Judge Mencer realized how long my family and I had been caught up in this nightmare and rendered a quick decision.

I also think it's about time Congress enacted safeguards to environmental laws that will protect landowners and their property rights. This includes compensation when laws or regulations take away a landowner's right to use his own land, like wetland laws,



A portion of the Brace farm deemed wetlands by federal bureaucrats.

endangered species, scenic areas and so forth. Why after two hundred years of a true democracy do the bureaucrats want to eliminate due process of law and property rights and create a centralized government that didn't work in the Soviet Union and other countries of the world? I hope it doesn't take us (United States) 70 years to realize we're headed down the wrong road like it did the Soviet Union. That's why I've been fighting so hard to educate people about the effects environmental laws are creating for property owners and businesses. Without private property ownership and a strong economy, everyone loses, including private citizens who depend upon the existence of the business community for their livelihoods. People need to realize that their voice *does* make a difference and that the days of thinking things will magically get better or that 'someone else will take care of it' are over. They need to contact their Congressman and Senators about the unfairness of it all...before it's too late."

¹ It is of interest to note that Andrew Martin "retired" shortly after initiating Bob's wetland incident. He has since become a "wetland and environmental specialist" as President of Andrew Martin & Associates. As stated by Mr. Martin in a recent Erie Times interview... "My business is driven by regulations."

EDITORS NOTE:

Robert Brace has been a farmer for over 40 years and has served as Vice-President for the Pennsylvania Landowners' Association since its inception in 1987. He has produced a 13 minute videotape regarding his wetland ordeal which is available for a \$15 donation to PLA. Interested individuals may phone the PLA office at (814)796-3578 for a copy, or return the order form on the back cover of this publication. Further information regarding this lawsuit may be obtained by contacting Hank Ingram, Buchanan Ingersoll, P.C., 600 Grant Street, 58th Floor, Pittsburgh, PA 15219 or by calling (412)562-1695.