

United States v. Brace (WDPA 2017) Summary of Facts & Filings of 30 Year “WOTUS” Case

On January 9, 2017, only 11 days prior to the inauguration of the 45th President of the United States of America, for apparent political reasons, the U.S. Environmental Protection Agency (“EPA”) filed two lawsuits alleging permitting violations under Sections 301 and 404 of the Federal Clean Water Act (“CWA”), against a third-generation northwestern Pennsylvania farming business (Brace Farms, Inc. et al.) for activities previously undertaken on two contiguous and adjacent farm fields/properties. One suit alleges violations had occurred in 2015 in violation of an ambiguous and ill-defined 1996 court-approved consent decree settling prior litigation over CWA 301/404 violations that had allegedly taken place during 1985-1987 on one such field/property. The other suit alleges new CWA Section 301/404 violations had been committed during 2015 on the other such field/property. In sum, during the past 30 years, the operations of this family farming business have been severely disrupted, largely ceased, and rendered practically valueless because of the continuing overzealous and exploitative EPA enforcement of these same CWA provisions against these same fields/properties. EPA CWA Section 301/404 enforcement in these cases was designed and implemented to preserve for “public use,” without payment of “just compensation,” considerable portions of “private farmlands” containing wetlands deemed “waters of the United States.” EPA’s assault has persisted even though these former wetlands, which had previously been converted to farmed and farmable drylands pursuant to the terms of a U.S. Department of Agriculture Soil Conservation Service (“USDA-SCS”)-authorized “Conservation Plan”/“Agreement” covering both such fields/properties, had no longer been considered by the U.S. Army Corps of Engineers or the USDA-SCS, and, ultimately by EPA, in 1992, as “waters of the United States” subject to CWA Section 404 jurisdiction, consistent with the “prior converted cropland” provisions of the Farm Security Act of 1985. These cases remain in litigation before the U.S. District Court for the Western District of Pennsylvania, having unsuccessfully passed through the first phase of Court-directed confidential Alternate Dispute Resolution in early March 2017. The following key court filings have been made to-date:

- Case # 1-90-cv-00229-SPB (United States v. Brace) ([Civil Docket](#))
 - United States' [Motion to Enforce Consent Decree](#) & For Stipulated Penalties (1/9/17)
 - United States' [Memorandum of Law in Support of Motion to Enforce Consent Decree](#) & For Stipulated Penalties (1/9/17)
 - [WDPA Order](#) Granting, in Part, Defendants' Motion to Continue Deadlines to Allow for Completion of ADR in Related Case, Including Request for Expedited Treatment of this Motion (2/8/17)
 - Brace Farms' [Initial Response to United States Motion to Enforce Consent Decree](#) & For Stipulated Penalties (2/21/17) (with Exhibits)
 - United States' [Reply to Brace Farm's Initial Response to USG Motion to Enforce](#) Consent Decree & For Stipulated Penalties (2/28/17)
 - [Exhibit 1](#) [Exhibit 2](#) [Exhibit 3](#) [Exhibit 4](#)
 - Brace Motion for Entry of a Stipulated Protective Order ([Filed](#) 3/7/17); [Granted](#) 3/7/17)
 - [Brace Motion for Sanctions](#) Regarding Plaintiffs' Failure to Comply with Court Order and Applicable ADR Policies and Procedures (Filed 3/13/17)
 - [Report of Neutral](#) (re Mediation 3/13/17)
 - [Joint Motion for Leave to File Under Seal](#) Certain Settlement Confidential Information (3-27-17)
 - [Proposed Order](#)

- [United States' Motion to Seal References to the Parties' Confidential Mediation Process Agreement from ECF No. 109 \(Motion for Sanctions\)](#) and Leave to File Portions of the Mediation Process Agreement Under Seal (3-28-17)
 - (Ex. [1](#); Ex. [2](#); Ex. [3](#); Ex. [4](#); Ex. [5](#); Ex. [6](#); Ex. [7](#)) and [Proposed Order](#)
- [United States' Opposition to Defendants' Motion for Sanctions](#) (3-28-17)
 - (Ex. [A](#); Ex. [B](#); Ex. [C](#))
- [Brace Reply to United States' Motion to Seal References](#) to the Parties' Confidential Mediation Process Agreement from ECF No. 109 and Leave to File Portions of the Mediation Process Agreement Under Seal (3-30-17)
- United States' Motion to Set Briefing Schedule and Proposed Order (4-3-17)
- Brace Correction of Errors in Reply to United States' Motion to Seal and Brace Motion to Unseal References to Non-Confidential Information About Parties Mediation Process Agreement and Proposed Order (4-3-17; 4-4-17; 4-5-17)
 - (Ex. A; Ex. B; Ex. C-1; Ex. C-2; Ex. D-1; Ex. D-2; Ex. E; Ex. F; Ex. G; Ex. H-1; Ex. H-2; Ex. I; Ex. J; Ex. K; Ex. L; Ex. M)
- Case # 1-17-cv-00006-BR (United States v. Brace) ([Civil Docket](#))
 - United States' [Complaint](#) (1/9/17)
 - Brace Farms' [Answer and Affirmative Defenses to United States' Complaint](#) (2/15/17)
 - United States' [Motion to Strike Affirmative Defenses](#) (3/17/17)
- Recent media discussing this case
 - Erie Times ([1-12-17](#); [3-2-17](#); [3-22-17](#))
 - Farmshine ([3-24-17](#)) (p. [4](#); p. [7](#))
- [Congressional Enactment of a Landowner Bill of Rights](#) Could Provide Much Needed Relief From U.S. EPA and Army Corps Regulatory Overreach