

Farmer takes wetlands case to Supreme Court

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Erie County farmer Robert Brace has filed his appeal asking the U.S. Supreme Court to review a federal appeals court decision in a long-standing wetlands case involving his family's farm land.

The appeals court last year reversed an earlier decision by the U.S. District Court in Erie. The district court found Brace's work to maintain an agricultural drainage system on his land "normal farming activity."

U.S. Environmental Protection Agency officials in 1990 sued Brace for discharging fill material from the drainage work into navigable waters without a permit from the U.S. Army Corps of Engineers.

Under the federal Clean Water Act the permit would not have been required for discharging fill material as a result of "normal farming activity."

Definition of that term is one of the principal issues the Supreme Court is being asked to address, and whether it applies to Brace trying to convert his pasture land into crop-

bearing fields.

Judge Glenn Mencer, who hails from a rural part of Pennsylvania and who visited the Brace farm as part of his decision making, ruled that Brace's activity constituted normal farming.

The drainage system on the farm land needed cleared because it was blocked by beaver dams, and it was the government that repopulated the area with beavers decades before, as part of special program.

As for discharge of "fill material," Brace said, "The only discharge involved was removing sediment from my drainage ditches and sidecasting it back onto the adjacent fields from where it came in the first place."

The Brace case is being watched closely by farmers and property rights groups.

Friend of the court briefs are expected to be filed by groups that include the American Farm Bureau Federation, Pennsylvania Farm Bureau, the Pacific Legal Foundation on behalf of the California Farm Bureau, National Cattlemen's Association and California Cattlemen's Association, and the Washington, D.C.-based Defenders of Property Rights.