UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON COMMERCIAL & ADMINISTRATIVE LAW

May 2, 1996

Summary of testimony of Robert Brace

Bob Brace is a third-generation farmer in rural Erie County, Pennsylvania. Brace had worked for 10 years to develop his family's homestead farm before he became ensnared in 1987 in this wetlands nightmare which is now devastating his business and his personal life. Mr. Brace's dispute with the federal government stems from his clearing of an agricultural drainage system on his farm that had been blocked by beaver damns. Ironically, the beavers were introduced to the area by the Commonwealth of Pennsylvania. Moreover, Brace cleaned the drainage ditches using plans prepared specifically for him by the Agricultural Stabilization and Conservation Service (part of the U.S. Dept. of Agriculture).

Upon completion of his maintenance work, Brace panted hay and oats on a thirty-acre cow pasture service by the drainage system. State and federal agents subsequently determined that the farm contained "wetlands" and ordered Brace to cease all activity. Subsequent to his receiving a cease and desist order from the government, Brace applied for an after-the-fact permit, which has been denied. In 1990, the U.S. Environmental Protection Agency sued Brace for discharging fill material into wetlands without a permit. Section 404 of the Clean Water Act prohibits the discharge of fill material in "navigable waters of the United States" without a permit issued by the Army Corps of Engineers.

Brace argued before the district court that a permit is not required to discharge fill material resulting from "normal farming activity" under Section 404(f). The only discharge involved in the case was removing sediment from Brace's clogged drainage ditches and placing it back onto the adjacent fields from where it came in the first place.

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Testimony of Bob Brace

Mr. Chairman & Members of the Subcommittee:

My name is Bob Brace and I am a third generation farmer and for over forty years I have farmed my land. My story demonstrates that government agencies must be required to give fair warning about their rules before proceeding to destroy a productive citizen's way of life.

My 137 acre homestead farm is located in northwestern Pennsylvania. This farm was originally acquired by my grandfather in the early 1900's and has been farmed by each family generation since that time. In 1975 my father retired from running a dairy and beef operation on the farm. Even though interest rates were soaring at the time, I bought the

farm in order to keep it in the family and I began growing crops. However, in order to improve the farm's productivity for row crops, the existing drainage system needed to be renovated.

During the 1940s the Pennsylvania Game Commission had introduced beavers to the area. Over the course of 30 years those beavers multiplied and built dams in the farm's existing drainage system. This resulted in flooding part of the land. In order to grow crops the land had to be returned to its natural state.

In 1976 and 1977, I began working with the U.S. Agriculture Stabilization and ,Conservation Service in order to renovate the existing drainage system. This project was encouraged by the USDA because it promoted soil and water conservation. The ASCS drew up the original plan to repair the drainage system and I worked closely with them for the next eight years in repairing the drainage system. This restoration cost me thousands of dollars. Little did I dream, or have any reason to, that someday bureaucrats and appellate judges would declare my farm to be

waters of the United States and my normal farming activity to be unlawful dredge and fill of such waters.

The U.S. Department of Agriculture issued a wetlands commencement determination that stated that work such as mine, which was started before December 1985 could continue if completed by 1995. Also, they paid me to clean out the drainage ditches after a season of heavy rainfall. From 1977 until 1987 neither the Department of Agriculture nor any other agency ever indicated or stated that I needed a Clean Water Act (or Section 404) permit to pursue my farming activity.

During this time I also worked with the Pennsylvania Game Commission who gave me permission to remove the beaver dams. Furthermore, I consulted with the Pennsylvania Fish Commission and the Pennsylvania Department of Environmental Resources. Both of these agencies told me that my restoration activities did not need any wetland permits because the activity was covered by the applicable state agricultural exemption.

In May 1987 seven different agencies representing the federal, state, and local governments descended on my farm without notice or permission. They excavated soil and took a sampling of plants. Two months later I received notices from the EPA, the U.S. Army Corps of Engineers, the U.S. Fish & Wildlife Service, and the state Department of Environmental Resources stating that I had destroyed "wetlands" by cleaning my farm's drainage ditches. I was ordered to turn my farm back into a so-called "wetland" or face civil and criminal penalties as high as $50,000 per day as well as the possibility of imprisonment.

I applied for an after-the-fact permit but it was denied. I was not given an opportunity to apply for the agricultural exemption. For the next seven years I ,was forced, at great cost to my family, my farm, and my livelihood to prove that I was innocent. The only way I could assert my rights was to stop farming and wait for the government to sue me so I had a forum in which to assert my rights and challenge the government's actions. I won at the district court level but appellate courts turned deaf ears and now I am faced with the loss of my farm.

This disastrous situation could have been avoided if the government agencies involved would have given me fair notice and warning of the need for a wetland permit, or taken responsibility for the lack of information which they provided Additionally, I find it unfair that the Environmental Protection Agency can override decisions made by other federal, state, and local agencies, holding individuals like myself liable for information given to me by agencies which I thought I could rely upon. This is why the legislation that is before you is critical, just, and fair. In my case, the lack of fair warning has resulted in taking productive farm land permanently out of use.

I strongly urge you to vote in favor of this legislation. Thank you for allowing me to testify.