



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

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APRIL 1994

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)

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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?"

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.

Will the "Real Radicals" Please Stand Up

Editor's note: This letter was purportedly sent to leaders of environmental organizations in Pennsylvania to impede the efforts of the "Wise Use" movement of which PLA is considered a participant. The article on pages 4 and 5 of this newsletter provide more information relevant to this *secret* meeting.

December 21, 1993

To: Leaders of the Pennsylvania Environmental/Conservation Community

From: Brian Hill
PA Environmental Council

Jeff Schmidt
Sierra Club

Ric Hazard
PA Organization for Watersheds and Rivers

Bonita Hoke
PA Federation of Sportsmens Clubs

Jan Jarrett
Chesapeake Bay Foundation

Ed Perry

Brian Hagenbuch
PA Environmental Network

Marcie Mowery
Audubon Society

On behalf of our organizations, we invite you to participate in a special program focusing on the "Wise Use Movement" in Pennsylvania. The day long program will be held at the Days Inn in State College, PA on Saturday January 22, 1994 from 9:00 a.m. to 4:30 p.m.

Due to the nature and tactics employed by "wise use" groups, we must ask that you keep your knowledge of this program to yourself; "wise guys" would be more than happy to try to disrupt our presentations and discussions. It would be greatly appreciated if you would not pass this letter on. Invitations to the program are limited to those personally made by the sponsors.

The Wise Use Movement has emerged both nationally and in Pennsylvania as a force which must be recognized as threatening advances made in environmental regulation and public perception over the last twenty-five years. While these groups have not made extensive in-roads to the Commonwealth's population centers and remain unknown to most residents, "wise use" thinking is taking hold in several rural areas of the state.

"Wise guys" have been successful in these areas because they have crafted a message that appears to include mainstream values. It is also a message that plays upon the fears of property owners and farmers about government regulation. Although those who preach this message purport to support conservation, they are in fact committed to rolling back environmental regulations and eliminating public control of state parks, forests and gamelands.

The environmental community must recognize that the "wise use" message is getting out and is being accepted by many citizens. In order to combat the "wise use" message it is imperative for us to get our message out to the very people who the "wise guys" are targeting.

In order to facilitate the development of a Pennsylvania-wide effort to counter the rhetoric and grassroots momentum of groups like the Pennsylvania Landowners' Association, we have organized a program on issues surrounding "wise use." We invite you to participate. We are asking that participants pay \$10.00 each to cover some of the expenses incurred in putting on the program.

We hope that you will be able to attend this important and timely gathering on Saturday January 22, 1994 at 9:00 a.m. at State College. Rooms are available for Friday night (January 21) at the Days Inn. The cost for a room is \$54.00- single or double occupancy. Please let us know if you plan on being in State College Friday night as a get together is being planned for that evening at 7:00 p.m. in the Edwards Room at the Days Inn.

Final details will be mailed to you in early January.

RSVP to the Pennsylvania Environmental Council
239 Fourth Avenue, Suite 1808
Pittsburgh, PA 15222
(412) 471-1770

Something's Wrong Here

By Henry Ingram, Esq.

In this issue of the *Landowner*, readers will see a letter purported to have been sent to the "Leaders" of the so called "Pennsylvania Environmental/Conservation Community" about a closed door meeting apparently organized and coordinated by a group of environmental organizations and Ed Perry of the U.S. Fish and Wildlife Service. The purpose of the meeting was to discuss a program to counter the grass roots momentum of groups in the "Wise Use" movement like PLA. Now it can truly be said that PLA has arrived. This relatively small, underfunded volunteer organization has captured the attention of the somewhat pompously self-declared "Leaders" of the Pennsylvania Environmental/Conservation Community and obviously aroused their ire.

When you think about some of what the sponsors of the closed door meeting said in their letter (i.e. "PLA wants to eliminate public control of state parks, forests and gamelands"), you begin to sense that these "leaders" have about as much commitment to accuracy in speech as they seem to have for private property rights, — almost none. At least PLA opens its meetings to the public and encourages discussion and debate on the issues. You wonder why these "leaders" need to meet behind closed doors. This secrecy stuff sounds just a bit juvenile, maybe even paranoid. Do

they really think PLA will try to "disrupt" their discussions? I doubt it but it seems obvious that the PLA message is getting through to the people, touching sensitive chords and making some groups nervous.

The anti-development/preservationist movement has grown accustomed to getting its way and receiving generally favorable

agenda. The combative, "closed door," tone of its letter signals that this new coalition is really seeking to foreclose public discourse on the issues and stifle the advocates of private property and landowners' rights. These people have had it pretty much all their way for a long time and, understandably, they want that to continue.

"Big corporate dollars continue to find their way into the coffers of the anti-growth, anti-development, anti-private property, environmental advocacy organizations who turn around and pressure government at all levels to take control of, or simply take, your land."

You might think to yourself: "That's OK, they're entitled to their views and we're entitled to ours. What's the big deal if they get together in State College for a day to discuss the Wise Use movement?" I'll tell you what it is. The big deal is that these people can truly put a lot of money where their mouths are! In simple terms, if they want to clamp down groups like PLA, they probably have the power to do it.

The power comes from two sources. First, the preservationist message is, at the moment, politically correct. Until groups like PLA mobilized and began to get their message out to the people, the anti-development/preservationists had a free ride and rein with legislators, politicians and the media. This is precisely why these people are trying to "counter" the PLA message and momentum at the grass roots level.

The second source of the power is money. The "green machine" has the "green!"¹ Three of the sponsors of the closed door meeting are giant, national

responses to most of its agenda from the general public and certainly from the media. They want to keep it that way. The formation of what appears to be a new "coalition" with a secret agenda does, however, raise serious issues for Pennsylvania landowners. Apparently the Environmental/Conservation Community now wants to try to restrict the flow of information to the public and foreclose open debate on its regulatory and legislative

1. It is really laughable when PLA opponents suggest that PLA is a front for and funded by anti-environment, big business. As many of PLA's members know, PLA survives (just barely) because of the truly remarkable, volunteer efforts of its members, directors and staff and the generosity of certain individuals. Would that PLA had the financial support from the business community that some anti-development/preservationist organizations do!
2. See, *Trashing the Economy - How Runaway Environmentalism Is Wrecking America*, Free Enterprise Press, 1993. This new book by Ron Arnold and Allan Gottlieb describes how corporate America either directly or through foundations has funneled approximately \$5.9 Billion to environmental organizations, many of them extremist. This flow of money is the principal source of funding for the anti-development/preservationist movement!

preservationist organizations or their state chapters. These organizations have huge budgets, highly paid staffs, with lawyers, media "spin doctors" and "scientists" who crank out the preservationist message and local chapters who deliver it.² The chart listed below shows what you're up against.

Readers of the *Landowner* should be familiar with these large, national environmental organizations and their resources and influence. These organizations are clearly aligned against the interests of most individual landowners and private property rights in general.

The involvement of Pennsylvania Environmental Council ("PEC") in this enterprise is quite another story. Like the national sponsors of the meeting, PEC is financially powerful and politically influential. It is also a tax advantaged, 501(c)(3) organization. PEC has a staff of 16, three offices in Pennsylvania and revenues of over \$845,000 last year. PEC's Board and list of benefactors, patrons and sponsors reads like a Who's Who of prominent Pennsylvanians. The roster of PEC's financial contributors is truly an Honor Roll of Pennsylvania business and commerce. What really makes this story different is that unlike some of the other sponsoring organizations, PEC, since its formation and deservedly, has always been perceived as a voice of reason and balance in environmental and land use policy issues in Pennsylvania. For that reason, the Council is highly respected and influential throughout the state. As noted, as a result of its efforts, PEC has attracted impressive support from the corporate community.³ As an example of

its evenhandedness, PEC co-sponsored with PLA a constructive public education program on Wetlands where all viewpoints on the issues were freely presented and openly discussed.

At least until now, PEC has been entitled to its reputation among landowners as a neutral organization which follows its

"If we don't allow reasonable use and development of our land and resources, how are we going to keep the economic machine in Pennsylvania running?"

stated philosophy: "to listen to and involve all interests in developing environmental policy recommendations." PEC certainly qualifies as a leader of the environmental community but it came as a real surprise to see it assume such a clearly adversarial posture. It would be unfortunate indeed for Pennsylvania if PEC's participation in this new statewide "effort to counter the . . . momentum of groups like the PLA" signals an end to its pivotal role in Pennsylvania as a leading mediator of environmental policy issues and consensus builder and announces the beginning of a new advocacy role in alliance with the rest of the environmental advocacy organizations, many of which are viewed by large segments of the public as

radical. Landowners and ordinary citizens in Pennsylvania simply don't have the resources to match up against well bankrolled and politically powerful organizations like those that sponsored the meeting, let alone a real powerhouse like PEC.

This leads me to a final thought. I can understand why the business community has supported organizations like PEC. Can someone explain to me why the business community generously supports some of these environmental advocacy organizations? It bothers me that many organizations which receive significant corporate support subscribe enthusiastically to the anti-development/preservationist philosophy. If we don't allow reasonable use and development of our land and resources, how are we going to keep the economic machine in Pennsylvania running? To be sure, there are tax breaks.⁴ There is a recognition by business of the need for clean air and water and a healthy environment. A "go along to get along" philosophy often makes "practical" sense in dealings with environmental regulators. Maybe the "pro-growth" and "balance in environmental regulation" message is just not getting through. Whatever the reason, the simple fact of the matter is that big corporate dollars continue to find their way into the coffers of the anti-growth, anti-development, anti-private property, environmental advocacy organizations who turn around and pressure government at all levels to take control of, or simply take, your land. To me, it's as plain as the nose on your face and just plain wrong.

Henry Ingram is Chairman of the Natural Resources & Environmental Law Section of Buchanan Ingersoll, P.C. and has practiced law for over 20 years. Mr. Ingram and his associate, John Ward, also serve as legal counsel for PLA. Questions or comments regarding this article or any other legal issue may be directed to Mr. Ingram in Pittsburgh at (412) 562-1695 or Mr. Ward in Harrisburg at (717) 237-4815.

	Sierra Club	National Wildlife Federation	Audubon Society
Annual Budget	\$40 Million+	\$75 Million+	\$37 Million+
Paid Staff	325 total	608 total	315 Total
Members	650,000	6,200,000	600,000
Tax Status	501(c)(4)	501(c)(3)	501(c)(3)

3. These companies are among those listed as "Contributors" in PEC's 1993 Activity Report: Air Products & Chemicals, Allegheny Ludlum, ARCO Chemical, Aristech Chemical, AT&T, Bell of Pennsylvania, Chevron USA, CONRAIL, Corestates Bank, Duquesne Light, Equitable Resources, Giant Eagle, Inc., Hershey Foods, Lord Corporation, Lukens Steel, Mellon Bank, N.A., Merck, Sharp & Dohme, Inc., PA Power & Light, Pennsylvania Electric Company, Peoples Natural Gas, PNC Bank, PPG, Proctor & Gamble, Rockwell International, Rohm & Haas, Scott Paper Company, Sun Refining, UGI Corporation, Unisys Corporation, United Penn Bank, USX Corporation, Washington Steel, Westinghouse Electric.

4. The anti-development/preservationist organizations we're talking about typically are tax exempt, and operate, themselves or through affiliates, as 501(c)(3) organizations within the meaning of the tax laws so that contributions to them are deductible just as if you were giving to your Church, the Red Cross or the Little Sisters of the Poor. That's right, large corporations, either by directly or through controlled, tax-exempt foundations can generously support these tax exempt organizations, take charitable contribution tax deductions and you, the landowner take it on the chin!

On Monday, February 21, 1994, over 250 individuals made time to attend the 7th annual Pennsylvania Landowners' Association Membership meeting held in Meadville, Pennsylvania. Gubernatorial candidate, State Senator D. Michael Fisher (R-37) was the guest speaker with his topic being "WHAT TO DO ABOUT THE DER: THE PROBLEMS AND THE SOLUTIONS."

Senator Fisher unveiled his plan for the "break-up" of the state Department of Environmental Resources (DER), an organization which he believes must learn to balance the needs of business and the environment and which needs to respect the rights of private landowners. In describing his plan, the Senator talked about "some dramatic changes in attitude by DER," stating "We need to get government off our backs and off our land."

He indicated control of state parks and forests should be removed from DER jurisdiction and placed under the supervision of the Pennsylvania Department of Agriculture. He also stated he supports removing DER regulatory powers pertaining to gas and oil operations and coal and deep mine safety and establish guidelines within the Department of Commerce.

He talked of the Environmental Quality Board which consists of state cabinet heads and DER officials and whose purpose is to promulgate new environmental regulations. Fisher believes the EQB should be eliminated and that the responsibility for enacting any new environmental guidelines rest with our elected officials, a measure greatly supported by PLA members. Fisher went on to state that the "remaining" DER would be solely concerned with air, water quality, and radiation and wastes regulation and that if elected, he would propose a "sunset date" on all existing environmental regulations.

NHI Studies Discussed

Executive Director, Rhonda McAtee updated members on the current status of Natural Heritage Inventory Studies throughout the state, focusing on the threats such studies pose to property rights and land usage. Of particular interest was the study recently completed for Erie County by the Western Pennsylvania Conservancy on behalf of the Erie County Department of Planning. In 1992, \$40,000 was collectively appropriated by Erie County Council, the PA Department of Community Affairs and the Western Pennsylvania Conservancy. The Department of Planning previously contended that the study was mandatory for

Issues and Candidates Discussed At Annual Meeting

updating the counties Municipalities Planning Code, even though legal sources indicated otherwise.

A map released by the Planning Department depicts "areas worthy of protection" and was displayed for members' review. Thousands of acres of privately owned land have been targeted. Initially, the Department of Planning indicated the study would need to be adopted by County Council to be officially used within Erie County, but a recent letter from David Skellie, Director of Planning, to former County Council Chairman Paul Foust, stated "Please note that the Municipal Planning Code does not require formal action on the part of a governing body for most studies prepared by planning agencies. No further action is required by the County of Erie pertaining to the NHI."

Judy Lynch, County Executive and candidate for the 21st Congressional District, attended the Meadville meeting and stated she would not support adoption of the NHI study as part of the comprehensive plan. She further indicated she was "enlightened" by the issues being discussed and of the concerns of private property owners.

McAtee urged landowners to be aware of such studies and indicated that even without adoption by individual counties, NHI studies pose serious threats to property rights. Once funds are appropriated and a study completed, land areas have essentially been targeted and other state and federal agencies can use these studies for enacting their own land use restrictions. In fact, a publication of the Department of Community Affairs states "Information obtained from local inventories is also supplied to the state Department of Environmental Resources, which places it on the PA Natural Diversity Inventory."

McAtee indicated 23 of the 67 counties within Pennsylvania have either completed an NHI study or are currently in the process of one. A list of those counties may be obtained by calling the PLA office.

Wetlands, Endangered Species and the National Biological Survey

Members received information regarding three of the most important legislative issues to PLA. Both wetlands and endangered species legislation are to be considered this year with the reauthorization of the federal Clean Water Act and the ESA. McAtee stated that the most comprehensive federal wetland bill supported by PLA remains H.R. 1330, The Wetlands Conservation & Management Act of 1993 co-sponsored by Rep. Jimmy Hayes (D-LA) and Rep. Tom Ridge (R-PA). The House Committee on the Environment and Public Works, as well as the Merchant Marines Committee, have both stated no further hearings will be held regarding wetlands and Clean Water Act reauthorization. This leaves any further action up to either committee to release a "marked up" version of a Clean Water bill, which will then proceed to the House floor for debate and the ultimate passage of any new legislation. To date, no mark up has occurred, but sources indicate that action is expected this summer.

Meanwhile, in the U.S. Senate, action has begun as the Senate Environment & Public Works Committee released its marked-up Clean Water bill on February 25, 1994. However, the bill signals BAD NEWS for landowners. The mark up reflects many amendments sought by environ-



mental and preservation interests, while containing virtually no amendments sought by landowners and the regulated community. This is due in part to Senators John Chaffee (R-RI), ranking republican and Max Baucus (D-MT) committee chairman, who both serve on the Senate Public Works Committee and who both side with environmental extremists. **MEMBER ACTION IS NEEDED** if property rights are to be salvaged and incorporated into Senate legislation. Members **MUST** contact U.S. Senators Arlen Specter and Harris Wofford with their concerns and are urged to see the special insert in this publication for further direction and details.

Meanwhile, the favored bill for property rights protection relating to the Endangered Species Act remains H.R. 1490 sponsored by Rep. Billy Tauzin (D-LA). Like H.R. 1330, this bill calls for compensation to landowners when protection of a threatened or endangered species deprives a property owner of land usage. No word to date on when the House Subcommittee on Environment and Natural Resources may mark up legislation for the ESA reauthorization.

As reported in the December 1993 issue of the *Landowner*, property rights activists were able to secure several amendments to the National Biological Survey (H.R. 1845) which passed the House of Representatives late last year. As described, the bill was designed to "map, assess, protect and manage all public and private resources of the United States." In its unamended status, the bill was a vehicle to trespass and steal private property by implementing restrictions on any land deemed worthy of protection by federal bureaucrats and preservationists. Action on this bill, however, is still pending in the U.S. Senate and S.1008 contains none of the property rights amendments secured in the House during floor debate. Again, members are urged to contact U.S. Senators urging their support of

the House amendments by writing to:

Honorable _____
U. S. Senate
Washington, D.C. 20010
or

Members may contact their Senators by calling:
(202) 224-4254 (Senator Specter)
(202) 224-6324 (Senator Wofford)

Many legislative offices, political candidates, and correspondents for several publications attended or reported on the evening's events including:

Don Hopey, Pittsburgh Post Gazette
John Yates, Oil City Derrick
Meadville Tribune
Pennsylvania Farmer Magazine
Jody Bruckner, Legislative Asst. to Congressman Tom Ridge
Kevin Shivers, Executive Director of the N.W. Legislative
Republican Delegation attending for Rep. Teresa Brown, Rep.
Karl Boyes, Rep. Jim Lynch, & Rep. Scott Hutchinson
Mary Fiolek, Legislative Asst. to U.S. Senator Harris Wofford
Judy Lynch, Erie County Executive & Democratic Candidate
/ 21st Congressional District
Dave DiCarlo, Democratic Candidate / 21st Congressional
District
Phil English, Republican Candidate / 21st Congressional District
Mary Ann McConnell, Republican Candidate / 21st
Congressional District
Ray Beichner, Republican Candidate / 64th District

Coming to Harrisburg in 1994

Pennsylvania Land Use Summit

"PLUS"

Sponsored by: *the Pennsylvania Landowners' Association and other organizations interested in restoring balance and reason in land use regulation.*

Featuring: *Nationally known speakers, serious candidates for statewide office, panel discussions and workshops on critical issues.*

Proposed Summit Objective

1. To convene leaders and opinion makers representing all segments of the Pennsylvania private sector whose business activities and economic well being are dependent on the use and development of land and natural resources.
2. To discuss and become better informed about Government regulatory initiatives which severely limit or entirely preclude such use and development.
3. To form a consensus regarding the nature and extent of the problem and to assess and debate the prospects for restoring balance and reason in environmental regulation.
4. To develop a strategy, and begin to implement it, perhaps through a coalition formation of interested organizations, to combat the severe erosion of the right to use and enjoy privately owned land and to eliminate or roll-back excessive Government imposed impediments to land use and development.

Watch For Additional Information Soon!!!

PLA Responds to DER "Invitation"

Pennsylvania Landowners' Association, Inc.

Post Office Box 391
Waterford, Pennsylvania 16441

January 31, 1994

Arthur A. Davis, Secretary
Department of Environmental Resources
P.O. Box 2063
Harrisburg, PA 17105-2063

Dear Secretary Davis:

The Pennsylvania Landowners' Association (PLA) received a letter from your office (dated January 10 and postmarked January 12) on Saturday, January 15 inviting us to participate (and presumably prepare for) a roundtable discussion at meetings scheduled to begin in Harrisburg on January 19. Your letter does apologize for the short notice and appears to blame it on the "project team" which apparently is on a "very tight schedule" and the fact that your office wants "to get stakeholder input as early in the process as possible."

It appears that the "tight schedule" will have to slip because the State shut down during the bad weather (a luxury that rural Pennsylvanians did not enjoy). PLA assumes that the roundtable discussions will be rescheduled, hopefully with more notice. I assume that you, as Secretary, can tell your project team to slow down so as to allow meaningful stakeholder input, free of the almost breathless atmosphere in which it was requested.

Your exercise in reaching out to the regulated community compels us to make two points about the way the Department does business.

First, the Department does not hesitate to impose very short turnaround deadlines on permit applicants for responses to review letters and other requests for information. These deadlines are often imposed without any consideration of the applicant's situation, particularly the fact that now many applicants are likely to be employed full-time, earning a living. The Department seems unable or unwilling to distinguish between large organizations with technical resources, such as mining companies or large real estate developers, and the ordinary citizen, the so-called "little guy." On the other side of that coin, the Department often takes months and, in many instances, years to deal with a permit application. This disparity is truly remarkable. Not only is it unfair, it destroys public confidence in the Department.

Second, ordinary citizens who are part of the regulated community suspect that this kind of outreach and call for stakeholder input is little more than lip service intended to give the appearance that the Department is doing something about its obvious problems. For example, PLA responded, again on an almost insultingly short deadline, to a request from the Division of Waterways Management regarding the Chapter 105 permitting process. I enclose copies of the correspondence involved.

Not unexpectedly, in our view, we have had no response whatsoever. It may well be that Mr. Council turned our comments over to your project team and Barry and Associates, but apparently we'll never know. Without any feed-back many in the regulated community conclude that our comments disappear into a black hole, Department outreach is perisflage and public confidence is further eroded.

Mr. Secretary, and we think you know, all is not well with the Department and real reform is needed. Please take these comments as positive criticism. Thank you for your consideration.

Very truly yours,
Lorraine Bucklin
Asst. Executive Director

/kn
Enclosures

DER Response

COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Resources

Post Office Box 2063
Harrisburg, Pennsylvania 17105-2063

March 4, 1994

Office of Field Operations

Telephone: 717-787-5028

Ms. Lorraine Bucklin
Assistant Executive Director
PA Landowners' Association, Inc.
P.O. Box 391
Waterford, PA 16441-0391

Dear Ms. Bucklin:

Secretary Davis has asked me to respond to your letter of January 31, 1993 regarding the Department's Process Improvement Team (PIT) activities.

As we discussed last week on the phone, the purpose of the Process Improvement Team is to make recommendations to DER management on possible ways to improve the manner in which the agency performs its regulatory responsibilities. An earlier initiative undertaken by the Bureau of Dams, Waterways and Wetlands and described in Mr. Council's November 15, 1993 letter, was folded into the Department's Process Improvement Team Project to provide more consistency in the overall project.

I appreciate your concern over the short time frames provided to outside groups to comment or participate in the process. It was the intent of this team to seek public input or comment at three points in the process - during data gathering in January, during recommendation development in February, and after the report was drafted in March. Unfortunately, January's severe cold weather resulted in the cancellation of the first round of public input roundtables. I made the decision not to reschedule those roundtables because I knew we already had a second opportunity for input scheduled just two weeks later. In fact, as I recall, a member of your organization participated in those discussions on February 7, 1994.

As project manager, I had a number of reasons for wanting to complete this project on schedule:

- First, as you point out in your letter, all too often in DER reviews and decisions take months and even years. I wanted the team to understand the importance of schedules and meeting those schedules. So, while it is true we placed relatively short turn around times for comment on the public, those same aggressive schedules were adhered to by the PIT members. There was no double standard here.
- Second, the Department engaged an outside contractor to assist with training and project coordination. I was responsible for managing the allocation of consulting hours within the terms and conditions of the contract.
- Third, the decisions resulting from this effort had to be made early enough in this calendar year so as to be valuable to analysts designing the Department's new computer systems. One of these new systems, Applications Processing, is scheduled to be completed December, 1994.
- Finally, the 22 member Process Improvement Team members came to this project from seven different field offices and six different bureaus. The members were pulled away from their regularly assigned responsibilities to work temporarily on this special project. I had an obligation to their supervisors to complete this project on time so those employees could return to their normal duties. I also had an obligation to the employees, especially those who had long distances to travel each week to work on this project, to finish on schedule so they could regain some normalcy in their personal and professional lives.

Please be assured that despite our aggressive schedule, your input was considered. All of your comments, those submitted to Mr. Council in December, those in your letter of January 31, and those expressed by one of your members at the February 7 meeting, were factored into the Process Improvement Team deliberations. I appreciate your interest in our program and will be sending you a copy of the final report.

Kimberly T. Nelson
Special Assistant to the Secretary for Permitting

Wasting Money Chasing Zero

DR. RICHARD FAWCETT,
Farm Journal
Environment Specialist

We have made a lot of progress against pesticide problems since Rachel Carson's *Silent Spring* appeared in the '60s. Today, worries are often generated simply because we can detect pesticides, not because we can actually measure any real effect. Improvements in analytical equipment have made it possible to find traces of almost anything if you look hard enough, and a lot of people are looking. Combined with ever-improving techniques, the diffusion principle ensures that we will eventually find a little bit of everything everywhere. To illustrate: If you pour a pint of water into the ocean and allow it to mix completely with all the water on earth, over 5,000 molecules of the original sample will be present in any pint subsequently taken.

When I first started doing groundwater research, I was amazed by the large number of organic chemicals we could detect in shallow groundwater—all of them natural and often at 100 to 1,000 times the concentrations of the occasional herbicide we found.

All plants wage constant chemical warfare against insects and

chemicals to control weeds is Nature's way! Nothing is more foreign to natural systems than tillage, the major alternative to herbicides.

But Nature's herbicides are not necessarily safer than man-made ones. Some allelopathic chemicals come from chemical classes containing mutagens and carcinogens. Plant-produced chemicals can be readily found in the environment, even in groundwater. Certain natural organic acids produced from decaying plant materials have allelopathic activity. These chemicals have been measured in parts-per-million concentrations in shallow groundwater, or 1,000 times higher concentrations than for certain synthetic herbicides some-times detected.

Changing technology has given the analytical chemist more impact on policy than the health and environment specialists. The Delaney amendment prohibits food residues of additives or pesticides (in processed food) that have caused cancer in

any animal species at any dose. Thirty-five years ago, when detection limits were at the parts-per-thousand level and few chemicals were thought to cause cancer, the amendment made sense. Today, when we can detect at parts per trillion and about half of all chemicals ever tested—man-made or natural—have been shown to cause cancer in big doses, it doesn't make sense.

diseases—and other plants. The ability of plants to kill or inhibit competing plants with natural chemicals is called allelopathy. Allelopathy has been "rediscovered" and is now promoted by some who want to eliminate man-made inputs from agriculture, apparently unconcerned that the widespread occurrence of chemical warfare in nature might legitimize the use of man-made herbicides. Using

"Without a science-based system to evaluate risk, we will waste billions of dollars chasing after every last part per billion."

"Improvements in analytical equipment have made it possible to find traces of almost anything if you look hard enough, and a lot of people are looking"

Even organic food producers have had to fight the chemists. When organically produced food is tested for pesticides, sometimes minute residues are found even though the farmer never applied the product. The residues could come from spray drift, soil residues or even from dust blowing off neighboring fields. The National Organic Standards Board, appointed to help implement the Organic Foods Production Act of 1990, recently recommended that food still be labeled organic as long as pesticide residues were only 5% or 10% of EPA residue tolerances. The Crops Committee of the Board stated: "[A] zero residue standard for organic food would be impractical, expensive and difficult to achieve. It is impossible to prove a negative, particularly when residue testing levels of detection are lowered each time the analytical technology improves."

So how much of a chemical do we need before we worry about it? Concentrations we measure today defy comprehension—parts per trillion, parts per quadrillion. What comes next? Quintillion? Sextillion? I once heard someone try to impress upon an audience how small a part per billion was by comparing it to one person out of China's entire population. The quick comeback from a skeptic in the crowd was, "Yeah, but what if he has an atom bomb?" Risk does depend on both concentration and toxicity. Because zero is vanishing, we will have to make a judgment on the risk of chemicals, both man-made and natural. Without a science-based system to evaluate risk, we will waste billions of dollars chasing after every last part per billion.

Reprint courtesy of Farm Journal Magazine, February 1994

PLA ON THE MOVE

Working to Protect Your Property Rights

At the expense of their families, personal time, energy and monetary resources, PLA directors and staff continue to represent YOU and defend YOUR property rights! Here's where your message has been taken.

- Pennsylvania Land Improvement Contractors (PLICA), Williamsport, PA-guest speaker
- Pennsylvania Landowners' Association Annual Meeting, Meadville, PA-Gubernatorial Candidate Senator Michael Fisher (R-37) guest speaker
- Media Interviews - Pittsburgh Post Gazette, Meadville Tribune, Oil City Derrick, WMGW Radio
- Pennsylvania Department of Environmental Resources, mini-roundtable discussion regarding wetland permits, Harrisburg, PA-participant
- Congressman William Clinger's candidacy re-election luncheon, Clarion, PA-attended
- Greater Erie Board of Realtors membership meeting regarding Erie County Natural Heritage Study, Erie, PA-speaker
- Tyrone Rotary Club, Tyrone, PA-guest speaker
- Allegheny Hardwood Utilization Group, "Project Learning Tree" educational workshop, St. Mary's, PA-participant
- Legislative Breakfast for Gubernatorial Candidate Congressman Tom Ridge, Pittsburgh, PA-attended
- Pennsylvania Fish Commission Informational Exchange, Springville, PA-participant
- Pennsylvania Federation of Sportsmen's meeting, Wyoming County, PA-speaker
- State University of New York College of Environmental Science and Forestry, Proactive Public Relations for the Forest and Petroleum Industries Workshop, Salamanca, NY-participated
- Gannon University, Environmental Law Class, Erie, PA-speaker
- Pennsylvania Forest Association Annual Conservation Dinner, Boalsburg, PA-attended
- Department of Environmental Resources, roundtable discussion regarding sewage sludge, Meadville, PA-participant

Attention Members!

Monahan & Monahan Certified Public Accountants of Erie, PA have completed the PLA financial statement for 1993 which is available for membership review at the PLA office.

Please Note:

The Bureau of Elections unofficial returns for Key '93 which were reported in our last publication of the *Pennsylvania Landowner* have been updated with official results provided by the Bureau of Elections. Although many counties had minor differences in total figures, *McKean County* strongly opposed the referendum by a nearly 2 to 1 margin which was not indicated previously. 1,766 approved and 3,180 opposed.

Call of Duty... Promoting PLA

Since the primary source of funding for PLA is generated through membership and private donations, special gratification is extended to *Brookville Wood Products, Brookville, PA; Troyer Potato Products, Waterford, PA; and Forest Land Services, Inc., Ligonier, PA;* for their support in promoting PLA. These businesses are ardent supporters of private property rights and are advancing grassroots efforts by purchasing memberships for employees, clients, or associates, in an attempt to educate individuals about the grassroots private property rights movement.

As you may also be aware, PLA membership is often required by landowners from those accessing private property in order to promote education and public awareness regarding the many unjust land use policies being implemented by our government. When landowners favor this membership requirement policy, additional organizational support is enlisted and much needed revenue for the association is generated. Won't you join our list of fervent supporters by requesting PLA membership prior to individuals accessing your private property? As many participating members acknowledge, recreationalists and sportsmen, once educated about the plight of landowners, will not object to supporting YOUR worthy cause!

Don't Be Fooled

Recent reports by various agricultural publications and the U.S. Army Corp of Engineers have been stating that a new Memorandum of Agreement (MOA) will designate the Soil Conservation Service (SCS) as the "lead agency for delineating wetlands on agricultural lands." This statement has been leading many farmers to believe that SCS will now be a "one stop shopping spot" in determining if they have wetlands on their farms. The agreement was recently signed by the EPA, Corp of Engineers, U.S. Fish and Wildlife Service and the Soil Conservation Service.

Rhonda McAtee, PLA Executive Director, warns farmers that they should be cautious, however. She states that according to the MOA "the definition of agricultural lands *does not* include range lands, forest lands, wood lots, tree farms, or pasture land where the natural vegetation has not been removed, *even though* the vegetation may be regularly grazed or mowed or collected as forage."

Additionally, Don Etler Co-Chair for the Legislative Committee of the Iowa Drainage District representing more than 3,000 Drainage Districts in 26 Counties in Iowa, warns farmers that the MOA states "SCS will not issue a final delineation until agreement is reached between SCS and the Corp or EPA." He also reports that the agreement states "nothing in this MOA is intended to diminish, modify, or otherwise effect statutory or regulatory authorities of any of the signatory agencies," (meaning that EPA still has veto power over any SCS determination). Furthermore, farmers still must deal with the Corp under the current Section 404 program in determining if wetlands exist on these "non agricultural" lands.

McAtee also reminds farmers that the MOA does not exempt them from any permitting requirements necessitated by the Pennsylvania DER if wetlands are found to exist.

Can You Believe It!

Yes, it's true! Paul Harvey recently reported that the federal government will be spending approximately \$117,000 of taxpayer monies on a study to determine if logging in Washington state is affecting the spotted owl. Specifically, the study will center on "owl droppings" in determining if logging is placing too much stress on the owl's existence.

Pennsylvania Property Rights Case Settled

On the eve of trial the case of Aqua Life Inc. v. Pennsylvania Game Commission, involving the right of a Pennsylvania property owner to protect his property was settled.

The property owner is the largest private fish farmer east of the Rocky Mountains. For years predatory birds had destroyed thousands of his fish. The farmer employed a number of non-lethal methods to deter the predatory birds but without any recognizable success. He therefore sought, on two prior occasions, to obtain a limited kill permit from the U.S. Fish and Wildlife Service to kill a limited number of these predatory birds. In each instance the U.S. Fish and Wildlife Service granted the permit, but because the Pennsylvania Game Commission refused to co-sign it, the permit was never issued. As a result the fish farmer brought this action to challenge the Game Commission's refusal to sign the permit on the ground that it violated his right to protect his property.

The settlement as so ordered by the Commonwealth Court of Pennsylvania provides that if the U.S. Fish and Wildlife Service issues a limited kill permit to AquaLife, then the Game Commission must co-sign it. The permit will be in effect for one year during which time the Game Commission and AquaLife will study the effectiveness of such a permit. Although such permits have been issued by the U.S. Fish and Wildlife Service to fish farmers in other states, apparently no study has ever been made of the results of the use of such permits and therefore this could be a very important contribution to the understanding of how much a limited kill permit deters predatory birds. It also is a victory for the rights of private property owners.

EHB Reports Cases Being Heard on a More Timely Basis

The average time for the Environmental Hearing Board to hear complicated cases that involved discovery motions and hearings was 12 months in 1992, according to a report by the board on its activities since 1988. That was a one-third cut in the 18 months the appeal process took in 1990.

The board reported disposing of cases at 1.1 times the annual number of new filings, compared with 1.8 times that Common Pleas courts dispose of cases and 1.1 times U.S.

Pennsylvania Landowner

GOOD NEWS

District Courts dispose of cases.

The board also reported:

- The number of pending cases dropped from 1,135 to 753 in the last two years.
- An average 576 new appeals were filed in 1991 and 1992.
- The board reversed or changed DER actions in 40 percent of the appeals in 1992, in 29 percent in 1991, and in 20 percent in 1990.
- About two-thirds of the cases in 1992 were decided without hearings in less than 12 months.
- The number of cases settled before action by the board increased from 14 percent to 22 percent because appeals were heard more timely.

Timber Trespass Legislation

On February 17, 1994, Governor Casey signed SB 1384, timber theft legislation, into law. Spearheaded by the Hardwood Lumber Manufacturers Association, a coalition, including the Pennsylvania Landowners' Association, assisted in drafting and supporting this legislation. Senator Musto (D-Luzerne) introduced the bill on October 13, 1993 which was co-sponsored by Senator Peterson (R-Venango).

The legislation was designed to discourage timber theft by mandating significant monetary restitution from any individual who intentionally engages in timber theft while at the same time protecting the innocent individual from punitive damages. Subsequently, the new law allows for three degrees of penalties ranging from single to triple damages.

Supreme Court Hears Important Property Rights Case

PLA Aides Landowner With Amicus Brief

On March 23, 1994, the U.S. Supreme Court heard a vital property rights case important to landowners nationwide.

Known as *Dolan v. City of Tigard*, the case presented the question of how and when local government can demand that real

property be dedicated to public use as a condition for property development.

Mrs. Florence Dolan is the owner of a 1.67 acre commercial lot in Tigard, Oregon, a suburb of Portland. Located on the property is a 9,700 square foot building which houses Mrs. Dolan's retail and plumbing supply store. In 1993, Mrs. Dolan and her late husband proposed to demolish the existing building and construct in its place a new 17,600 square foot building. Subsequently, the City of Tigard demanded that the Dolans: (1) dedicate all portions of the lot lying within the 100 year floodplain to the City for use as a greenway and (2) dedicate an additional 15-foot strip beyond the floodplain to the City for use as a pedestrian and bicycle pathway, including the construction of the pathway.

Mrs. Dolan sued, contending that what the City of Tigard was demanding amounted to an unconstitutional taking.

Pennsylvania Landowners' Association has joined with the Washington Legal Foundation in filing an amicus curiae brief to the Supreme Court in support of the Dolans. As recently stated by PLA Executive Director Rhonda McAtee, "We agree with the Dolans wholeheartedly in their belief that what the City of Tigard wants is extortion, pure and simple."

Court Ruling Protects Landowners Rights Regarding Endangered Species

A Court ruling has thrown endangered species protection into turmoil across the nation by saying that government lacks authority to protect wildlife habitat on private land.

The ruling was issued by the U.S. Court of Appeals for the District of Columbia which sent shock waves through environmental groups nationwide. The decision came in a challenge to federal warnings against timber harvests near northern spotted owl nests in Oregon and Washington.

A timber industry lobbyist recently stated "the new ruling would force federal agencies to shrink the restrictions they seek on timber harvests on private land near spotted owls. If not, landowners will quickly challenge the agencies interpretation."

You Are Bigger Than A Snail!

FEBRUARY 15—In September 1993, you and I visited on the subject of the Bruneau Hot Springs snail.

This teensy snail, visible only with a microscope, lives in groundwater under Bruneau, Idaho.

Area farmers have coexisted with the snail for generations while using the groundwater to irrigate their crops.

But then along came the United States Fish and Wildlife Service, insisting that farmers may no longer share that water. The snail, they say, is an endangered species. "The rural area's farming must be shut down in order not to disturb the snail's habitat."

Additionally, any cattle grazing was prohibited, and all conservation, advice, disaster programs and crop support programs were summarily suspended lest they impact the well-being of the Bruneau Hot Springs snail.

An entire valley of people – living, working people producing food and things – were out of business! Mind you, there was and is no scientific evidence that the snail population is either growing or shrinking, but this was not a scientific decision; it was a political one.

The Idaho Conservation League, The Committee for Idaho's High Desert, The Land and Water Fund for the Rockies – and an environmentally oriented vice president in Washington – seemed to care more about snails than about people.

For a worthless creature smaller than a flyspeck, these agencies of government were willing to shut down agriculture in the area and put local businesses out of business.

They did not get away with it!

You'll want to know that a federal judge – a senior United States district judge, Harold Ryan – has decreed the United States Fish and Wildlife position on this subject to be "arbitrary, capricious, abuse of discretion and otherwise not in accordance with the law."

Judge Ryan has dared to decree that YOU ARE BIGGER THAN A SNAIL!

What's this to you?

Seven hundred species are presently listed as threatened or endangered. Four thousand more candidates are awaiting approval. Petitions are sought to list an additional 8,000.

So your area might be threatened next.

However, now and henceforth, you will have a legal precedent to cite in which (for the first time as far as I know) a federal court has de-listed an endangered species.

The legal precedent established in this case will require federal agencies to respect the due process of all United States citizens in the Endangered Species Act listing process.

Most Americans are unaware that for every new law passed by Congress, nameless, faceless, unaccountable underlings in the bowels of the bureaucracy issue on average 18 new regulations with the force of law.

Thank you, citizens of Bruneau, Idaho, for daring in a significant instance to force our government to obey its own laws.

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A Bad Penny Turns Up

On March 14, EPA Administrator Carol Browner announced that former Bucks County Congressman Peter Kostmayer will head the agency's Region III office in Philadelphia. The position had not been filled since the Clinton Administration took over in January 1993. Kostmayer, a Democrat, failed to win reelection to Congress in 1992 after being defeated by former State Senator Greenwood.

Kostmayer is an environmental activist who sponsored legislation in Congress to help protect rain forests and designate parts of the Delaware and Allegheny Rivers as Federal Scenic Rivers. Before running for Congress, Kostmayer was an assistant press secretary for Governor Milton Shapp and a journalist.

Score a big one for the anti-development lobby and for supporters of radical environmentalism.

High Court Turns Down The Olons

On January 10, 1994 the U.S. Supreme Court denied Richard and Jennifer Olon's Petition for Certiorari (request to hear a case). Of the 350 petitions reviewed by the High Court for Certiorari, only 5 were selected to be heard.

The Olon's petition dealt with a violation of their Constitutional rights as guaranteed under the 14th Amendment (due process and equal protection) in a ruling handed down by the Pennsylvania Supreme Court in June of 1993.

Specifically, the case pertained to the acquisition and renovation of a former college site in Cambridge Springs, PA for use as a state prison. The Olon's contended that the state agencies involved did not follow clear mandates of PA law regarding their obligations to comply with local zoning regulations. After reviewing the evidence, PLA concurred, and in early 1993 filed an Amicus Curiae Brief (friend of the court) on the merits of the case.

As previously stated by PLA counsel, "PLA believes... that state agencies must obey the law at all times irrespective of the merit of any particular action the state wishes to take and observance of specified procedural safeguards is essential in this era of expanding government power."

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Same as I but in excess of 500 acres

Any land owning member (excluding Individual I) purchasing PLA signs and participating in the "Posting For Support" program is entitled to a 50% reduction in membership fees for the current membership year.

☐ POSTING FOR SUPPORT PROGRAM

Yes, I wish to become a participant in this program. Please send me _____ signs.

I have enclosed 60¢ for each sign ordered.

- ☐ I am a current participant in the "Posting for Support" program
- ☐ I am a new participant in the "Posting for Support" program

☐ **PART** – Political Action Response Team
Yes, I wish to participate in this program sponsored through PLA's national affiliate ECO. Please put me on the PART mailing list.

☐ **Wetlands Videotape (VHS)** ☐ Part I ☐ Part II

"Our Environment, Whose Property?"
\$15.00 Donation each. Please send me a copy of this limited edition PLA videotape.

☐ **USA v. Brace & Brace Farms Videotape (VHS)**

"One farmer's battle with federal wetland provisions." \$15.00 Donation.

☐ **YES!** I wish to subscribe to ECO-LOGIC, the monthly publication of the Environmental Conservation Organization. I understand ECO is a national property rights organization of which PLA is affiliated. I have enclosed \$15.00 for this annual subscription.

PLEASE NOTE: All membership fees of \$100 or more are inclusive of 12 complimentary issues of ECO-LOGIC.

Please complete this information:

Name _____

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