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May 18, 2015

*SENT VIA EMAIL ONLY ([Lazos.Pamela@epa.gov](mailto:Lazos.Pamela@epa.gov))*

Pamela Lazos, Esq.  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

**RE: Robert Brace & Sons, Inc.  
Waterford and McKean Townships  
Erie County, Pennsylvania**

Dear Ms. Lazos:

I am writing in response to your last letter, which inquired about the status of the Brace expert's work, and in anticipation of the site visit that the EPA and other agencies intend on conducting on May 20th.

As you know, the Braces have spent years attempting simply to use their property for farming. My previous letters to you have recounted, in some level of detail, the substantial obstacles the Braces have faced in this effort. Looking back to just the previous 18 months, I have written multiple times in an effort to obtain an agreement from the EPA that would confirm that the Consent Decree does not affect the Braces' ability to farm the Homestead farm, or return the Murphy farm to the condition that existed in 1984. As I discussed in those letters, the Braces are confident that this position is correct based on the applicable regulations, the language of the consent decree, and the EPA's position in the previous takings case.

Over the past 5 months, the Braces have authorized me to attempt to work collaboratively with the EPA to resolve this issue. This work has included hiring an expert to provide assistance in analyzing the property in both its current condition, and the condition that existed in 1984. This effort has also, most recently, involved the Braces agreeing to another site visit by the EPA and other state and Federal agencies. The Braces have been willing to take these collaborative steps in the hope that they will lead to the EPA acknowledging that the Braces have the right to farm their Homestead property and to return the Murphey farm to the dry and tillable status that existed in 1984.

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The Braces view the completion of their expert report (which they anticipate occurring within the next 30 days) and this site visit, as the final steps needed to complete the multi-decade dispute and confirm their legal right to use their property. As my previous letters have made clear, the Swampbuster determination in 1985, the consistent use of the Homestead farm for farming, the on-going nature of the entire farming operation; the EPA's testimony in the takings case that occurred with regard to this property, and the Federal Court of Claims' decision all strongly support the Braces' position. Further, absent over enforcement of the Consent Order for years, the Braces would have had the ability to fully farm their property.

If the site visit and the completion of the expert report that we expect to provide scientific support to the Braces' position do not result in the Braces being permitted to make appropriate use of their property, then the Braces intend on pursuing their rights through either a petition seeking to modify the Consent Order based on its over enforcement, or a renewed takings claim based on that same over enforcement.

It is the Braces' sincere hope that they will not be required to return to litigation to be able to secure the appropriate use of their property. It is based on that hope that I wanted to write to you so it was clear that they view the upcoming visit and submission of their report as the final steps in this process.

I look forward to seeing you on May 20<sup>th</sup>.

Very truly yours,

KNOX McLAUGHLIN GORNALL &  
SENNETT, P.C.

By: 

Neal R. Devlin