

ROBERT BRACE & SONS, INC.



September 25, 2012

Honorable Mary Jo White
Senate P.O. Box 203021
Harrisburg, PA 17120-3021

Dear Senator White,

As Chairman of the Senate Environmental Resources & Energy Committee, I am writing to inform you of my deep concern and frustration with Mr. James Smolko, the Waterways Conservation Officer with the Pennsylvania Fish & Boat Commission who represents my district. While I understand that Mr. Smolko has a duty to protect the waters and fish of the Commonwealth, and while, as a farmer, I certainly aim to protect those same resources in the performance of all my farming activities, as a citizen of the Commonwealth I expect the officers representing the Commission to treat me with respect when they believe there may be a problem associated with my farming activity.

Recently, on September 10, 2012, Mr. Smolko and three other associates appeared late in the afternoon at my farm in Erie County where I have been performing some field and ditch work. This work is being done after nearly two years of conversation and site visits with both the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) regarding adverse effects a government required restoration order issued years earlier (on a now 30 year old case) had on upland portions of my farm. Both the EPA and the USACE, as well as myself, wrote letters and attempted to get all other state agencies who might have an interest or regulatory oversight regarding this property to attend these site visits. The PA Fish & Boat Commission declined, stating that we should follow the advice of the PA Department of Environmental Protection and the U.S. Environmental Protection Agency. In addition, the PA Department of Environmental Protection informed us that no permit was needed to remove beaver dams and declined to attend any site visits with the U.S. EPA and the U.S. ACE. However, now, after nearly two years, the Commission chooses to show up with their hands on their guns ready to haul me off to jail. The attitude displayed when they arrived on site was extremely rude and arrogant, demanding to see my permits. I attempted to explain that I needed no permits, as I was operating under a farming exemption. This particular land had always been agriculturally exempt, but had recently been re-determined to be so by the federal agencies once again. Mr. Smolko stated "I've had enough of you guys and if I find out tomorrow that you don't have your permits, I'm throwing the cuffs on you and you're going to jail." Then, pointing to my son, said, "And you're going to jail too." My son then

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intervened, trying to again inform Mr. Smolko that the agencies had given us permission, but Mr. Smolko was so irate that he just would not listen to reason. The other deputies that were with Mr. Smolko then walked behind my other son and grandson and told them both to stand back. I again attempted to inform him of the agencies' determination and that he needed to make himself aware of it. He then stated to me that we had "lost in every court." I informed him that this was incorrect and that he should educate himself on the circumstances of my situation. I indicated that the sign posted at the corner of my property spoke of the agricultural exemption and informed him of the Pennsylvania Landowners' Association website which included information on all phases of my litigation. He then proceeded to his truck and drove a short distance away, apparently making a phone call. Shortly thereafter, I drove down the road to where he was parked to inquire how he was making out. He seemed to have a completely new attitude. He informed me that he had called the Erie County Conservation District (another agency we worked with and one that did make the time to attend the site visits with the federal agencies) and that we did, indeed, have an agricultural exemption. How nice it would have been had Mr. Smolko had the decency to inquire about this information in the first place, rather than accusing my son and I of wrong doing and threatening to haul us off to jail while screaming at us to shut up, all the while accompanied with three other officers at his side.

Unfortunately for me, this is not the first time I have had the displeasure of encountering Mr. Smolko. In August of 2009, Mr. Smolko made a visit to my office to present me with a fine of \$14,400.00 for alleged "stream and wetland violations" (see attached). These were, again, related to cleaning ditches on one of my farms and replacing a culvert pipe. And again, I attempted to explain to Mr. Smolko that I did, indeed, have legitimate approval from the Conservation District, but to no avail. The man simply refused to hear reason. Rather, he preferred to march into my office and present me with a huge fine and then cost the citizens of the Commonwealth the expense of going to court to defend these charges. At hearing, the judge dismissed the charges. However, the time that this property was wrapped up in litigation over this was also at a time when a gravel company was preparing to file for a gravel permit for this property. Because of the litigation I was involved in at the time over this, they were unable to apply for the permit, which has cost both the gravel company and myself millions of dollars in potential revenues in estimated lost gravel royalties.

Another instance of this man's arrogance and blatant disregard for citizens trying to earn a living again happened in 2009. I lease another farm located near my Garland farm and must cross a stream in order to access one of the large fields. The landowner has a valid stream crossing permit for this purpose which was granted by the Department of Environmental Protection (see attached). Rather than politely inquiring as to whether or not a permit had been secured for this purpose, Mr. Smolko again came barreling in throwing accusations left and right telling me I could not cross the stream. Again, I informed him the landowner had a permit for this exact purpose, which I gladly produced for verification.

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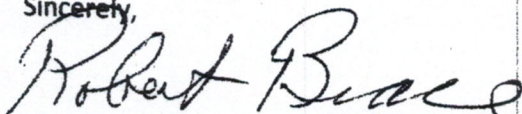
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All he had to do was ask. The conduct and actions portrayed by this individual certainly are not representing the PA Fish & Boat Commission in a manner that the Commonwealth should be proud of. Rather, the exact opposite.

In summation, I am simply disgusted with this individual who continues to interfere with my ability to farm my own land and run my business while threatening me with huge fines and imprisonment, acting like some great sheriff from days of old with his hand on his gun ready to haul me off to jail. Mr. Smolko has earned a reputation of being a dictatorial hothead who has absolutely no regard for private property rights, or for treating citizens with common decency. Rather, he violates their civil rights while performing his duties. I think it is about time someone put this man in his place. I also believe serious consideration needs to be given as to how the PA Fish & Boat Commission is structured. It is my understanding that they (the Commission and its servants) have to answer to no one but the Governor. If that is so, that is an atrocity. All servants of the Commonwealth should be answerable to someone (other than the governor) for their actions. If not, we end up with a totalitarian agency represented by individuals like Mr. Smolko who obviously have no regard for the rights of others.

Thank you for your consideration of my concerns and any assistance you may be able to offer.

Sincerely,



Robert Brace

RB/rm

Enclosures