

## THE "WHY'S" OF EPA'S PROPOSED VIOLATION AT THE WATERFORD FARM

1. Why did the government initially propose that Brace "disturbed" 240 acres of wetland, inclusive of the Marsh farm, but then drop the Marsh farm and treat it as if there was no problem once they discovered it was not owned by Brace? Ultimately, the 240 acres was diminished to 30. A second parcel of land near Route 86 was also dropped due to it not being owned by Brace. No violation resulted on this parcel once it was discovered it was not owned by Brace.
2. Why is the government making an issue with the Marsh farm when USDA Conservation maps are listing the Marsh property as a "converted wetland"?
3. Why did the state install a culvert, cemented with concrete, near the intersection of Route 86 and Greenly roads, to raise the water level by 1 foot?
4. Why does the government contend that the channels are regulated waterways rather than agricultural ditches when there has been undisputed evidence that the channels were actually ditches that were created and put in place by Mr. Brace in 1977? Evidence at trial proved excavation work and substantial monies had been expended in the creation of the ditches.
5. Why did the federal government not acknowledge the agricultural exemption under Section 404 when both local and state agencies, including the state Department of Environmental Resources, who coordinates efforts with the Corps of Engineers, did not have a problem with the work being performed and acknowledged it was exempt from regulation?
6. Why was there never any evidence of pollution?
7. Why was there never any acknowledgement that agricultural tile lines help to improve water quality?
8. Why did the government state that, for purposes of farming and the agricultural exemption, the property was (2) separate farms? It did not want to acknowledge that it operated on an essential, interconnected drainage system. Yet when it

came to a regulatory taking of property, the government claimed the property had to be viewed as one parcel.

9. Why did the federal government proceed with a violation when a “prior commenced determination” and a “commenced determination” status had already been granted by the ASCS office, a division of the US Dept. of Agriculture? A 5 year completion should have been allowed to those properties labeled “commenced” but not yet completed. We were denied those rights by being held up in litigation. Meanwhile, wetland characteristics continued to work their way back on these properties due to non-maintenance.
10. Why should there be any question of the court’s decision (as well as the EPA) in regard to the description of “pre-1984” when aerial maps clearly show that the property was dry and farmable in 1984?
11. Why did the federal government not honor the rule of law and the facts presented by Judge Mencer?
12. Why did Andrew Martin of the PA Game Commission not acknowledge what the Commission had previously done for landowners years before by removing beaver dams that were flooding private property and, instead, call in federal agencies to create a problem, particularly when the Conservation District was the lead agency having oversight over agriculture?
13. Why did Michael Fodse from the COE and James Smolka of the PA Fish Commission place a cease & desist against us when this case was in the hands of the EPA? We had previously been granted permission to perform the work we were doing.
14. Why would several of the agencies not participate in the initial meeting with the EPA that they had been invited to in order to hear of the problems being presented and provide options for resolution and then show up months later issuing orders and potential fines for the corrections that were allowed by the EPA? In fact, the PA Fish Commission left a voice mail (which we still have) indicating that this was in the hands of the EPA. The DEP also indicated in a written letter that they also thought this issue was to be handled by the EPA.

- 15. Why after 2 federal judges (Judge Mencer & Judge Allegra) verified that these farms have met the established farming criteria are we not being granted the farming exemption?**
  
- 16. As indicated by Judge Mencer, farming includes multiple uses. Therefore, why has the ongoing farming exemption not been allowed? Farming is more than one use.**