

## ***United States v. Brace*** (WDPA 2017) Summary of Facts & Filings

On January 9, 2017, only 11 days prior to the inauguration of the 45th President of the United States of America, for apparent political reasons, the U.S. Environmental Protection Agency (“EPA”) filed two lawsuits alleging permitting violations under Sections 301 and 404 of the Federal Clean Water Act (“CWA”), against a third-generation northwestern Pennsylvania farming business (Brace Farms, Inc. et al.) for activities previously undertaken on two contiguous and adjacent farm fields/properties. One suit alleges violations had occurred in 2015 in violation of an ambiguous and ill-defined 1996 court-approved consent decree settling prior litigation over CWA 301/404 violations that had allegedly taken place during 1985-1987 on one such field/property. The other suit alleges new CWA Section 301/404 violations had been committed during 2015 on the other such field/property. In sum, during the past 30 years, the operations of this family farming business have been severely disrupted, largely ceased, and rendered practically valueless because of the continuing overzealous and exploitative EPA enforcement of these same CWA provisions against these same fields/properties. EPA CWA Section 404 enforcement in these cases was designed and implemented to preserve for "public use," without payment of "just compensation," considerable portions of "private farmlands" containing wetlands deemed "waters of the United States," even though these former wetlands, which had previously been converted to farmed and farmable drylands pursuant to the terms of a U.S. Department of Agriculture Soil Conservation Service (“USDA-SCS”)-authorized "Conservation Plan"/"Agreement" covering both such fields/properties, had no longer been considered by the U.S. Army Corps of Engineers or the USDA-SCS, and, ultimately by EPA in 1992, as “waters of the United States” subject to CWA Section 404, consistent with the “prior converted cropland” provisions of the Farm Security Act of 1985. These cases are currently in litigation before the U.S. District Court for the Western District of Pennsylvania, and will enter a confidential Alternate Dispute Resolution phase commencing in March 2017. The following court filings have been made to-date:

- Case # 1-90-cv-00229-SPB (United States v. Brace) ([Civil Docket](#))
  - United States' [Motion to Enforce Consent Decree](#) & For Stipulated Penalties (1/9/17)
  - United States' [Memorandum of Law in Support of Motion to Enforce Consent Decree](#) & For Stipulated Penalties (1/9/17)
  - Brace Farms' [Initial Response to United States Motion to Enforce Consent Decree](#) & For Stipulated Penalties (1/21/17)
  - [WDPA Order](#) Granting, in Part, Defendants' Motion to Continue Deadlines to Allow for Completion of ADR in Related Case, Including Request for Expedited Treatment of this Motion (2/8/17)
  
- Case # 1-17-cv-00006-BR (United States v. Brace) ([Civil Docket](#))
  - United States' [Complaint](#) (1/9/17)
  - Brace Farms' [Answer and Affirmative Defenses to United States' Complaint](#) (2/15/17)