

# FEDERAL WETLANDS POLICY: PROTECTING THE ENVIRONMENT OR BREACHING CONSTITU- TIONAL RIGHTS?

---

## HEARING BEFORE THE COMMITTEE ON GOVERNMENT REFORM HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTH CONGRESS SECOND SESSION

OCTOBER 6, 2000

**Serial No. 106-233**

Printed for the use of the Committee on Government Reform



Available via the World Wide Web: <http://www.gpo.gov/congress/house>  
<http://www.house.gov/reform>

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: (202) 512-1800 Fax: (202) 512-2250  
Mail: Stop SSOP, Washington, DC 20402-0001



**FEDERAL WETLANDS POLICY: PROTECTING THE ENVIRONMENT OR  
BREACHING CONSTITUTIONAL RIGHTS?**





**FEDERAL WETLANDS POLICY: PROTECTING THE  
ENVIRONMENT OR BREACHING CONSTITU-  
TIONAL RIGHTS?**

---

**HEARING**  
BEFORE THE  
**COMMITTEE ON  
GOVERNMENT REFORM**  
**HOUSE OF REPRESENTATIVES**  
**ONE HUNDRED SIXTH CONGRESS**  
**SECOND SESSION**

OCTOBER 6, 2000

**Serial No. 106-233**

Printed for the use of the Committee on Government Reform



Available via the World Wide Web: <http://www.gpo.gov/congress/house>  
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

72-734 DTP

WASHINGTON : 2001

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: (202) 512-1800 Fax: (202) 512-2250  
Mail: Stop SSOP, Washington, DC 20402-0001

## COMMITTEE ON GOVERNMENT REFORM

DAN BURTON, Indiana, *Chairman*

BENJAMIN A. GILMAN, New York	HENRY A. WAXMAN, California
CONSTANCE A. MORELLA, Maryland	TOM LANTOS, California
CHRISTOPHER SHAYS, Connecticut	ROBERT E. WISE, Jr., West Virginia
ILEANA ROS-LEHTINEN, Florida	MAJOR R. OWENS, New York
JOHN M. McHUGH, New York	EDOLPHUS TOWNS, New York
STEPHEN HORN, California	PAUL E. KANJORSKI, Pennsylvania
JOHN L. MICA, Florida	PATSY T. MINK, Hawaii
THOMAS M. DAVIS, Virginia	CAROLYN B. MALONEY, New York
DAVID M. McINTOSH, Indiana	ELEANOR HOLMES NORTON, Washington,
MARK E. SOUDER, Indiana	DC
JOE SCARBOROUGH, Florida	CHAKA FATTAH, Pennsylvania
STEVEN C. LATOURETTE, Ohio	ELIJAH E. CUMMINGS, Maryland
MARSHALL "MARK" SANFORD, South	DENNIS J. KUCINICH, Ohio
Carolina	ROD R. BLAGOJEVICH, Illinois
BOB BARR, Georgia	DANNY K. DAVIS, Illinois
DAN MILLER, Florida	JOHN F. TIERNEY, Massachusetts
ASA HUTCHINSON, Arkansas	JIM TURNER, Texas
LEE TERRY, Nebraska	THOMAS H. ALLEN, Maine
JUDY BIGGERT, Illinois	HAROLD E. FORD, Jr., Tennessee
GREG WALDEN, Oregon	JANICE D. SCHAKOWSKY, Illinois
DOUG OSE, California	_____
PAUL RYAN, Wisconsin	BERNARD SANDERS, Vermont
HELEN CHENOWETH-HAGE, Idaho	(Independent)
DAVID VITTER, Louisiana	

KEVIN BINGER, *Staff Director*

DANIEL R. MOLL, *Deputy Staff Director*

DAVID A. KASS, *Deputy Counsel and Parliamentarian*

ROBERT A. BRIGGS, *Chief Clerk*

PHIL SCHILIRO, *Minority Staff Director*

## CONTENTS

Hearing held on October 6, 2000 .....	Page 1
Statement of:	
Davis, Michael, Deputy Assistant Secretary for Policy and Legislation, Office of Civil Works, Department of the Army; and Robert Wayland III, Director, Office of the Wetlands, Oceans, and Watersheds, Environ- mental Protection Agency .....	164
Kamenar, Paul, Washington Legal Foundation; Susan Dudley, Mercatus Center; Gloria Pozsgai-Heater, daughter of John Pozsgai; Victoria Pozsgai-Khoury, daughter of John Pozsgai; and Kathleen Andria, direc- tor, American Bottom Conservancy, and chairman, Environment Com- mittee for East St. Louis, Community Action Network .....	24
Letters, statements, etc., submitted for the record by:	
Andria, Kathleen, director, American Bottom Conservancy, and chairman, Environment Committee for East St. Louis, Community Action Net- work, prepared statement of .....	69
Biggert, Hon. Judy, a Representative in Congress from the State of Illinois, exhibit 20 .....	129
Chenoweth-Hage, Hon. Helen, a Representative in Congress from the State of Idaho:	
Exhibit 1 .....	96
Exhibit 40 .....	89
Exhibit 49 .....	110
Exhibits 28 and 29 .....	119
Exhibit 64 .....	122
Exhibit 65 .....	124
Information concerning fines .....	211
Prepared statement of .....	9
Davis, Michael, Deputy Assistant Secretary for Policy and Legislation, Office of Civil Works, Department of the Army:	
Information concerning costs .....	209
Prepared statement of .....	168
Dudley, Susan, Mercatus Center, prepared statement of .....	45
Gilman, Hon. Benjamin A., a Representative in Congress from the State of New York:	
Letter dated September 15, 2000 .....	17
Prepared statement of .....	19
Kamenar, Paul, Washington Legal Foundation, prepared statement of .....	27
Kucinich, Hon. Dennis J., a Representative in Congress from the State of Ohio, letter to Colonel Morrow .....	80
Pozsgai-Heater, Gloria, daughter of John Pozsgai, prepared statement of .....	64
Pozsgai-Khoury, Victoria, daughter of John Pozsgai, prepared statement of .....	56
Waxman, Hon. Henry A., a Representative in Congress from the State of California, prepared statement of .....	13
Wayland, Robert, III, Director, Office of the Wetlands, Oceans, and Wa- tersheds, Environmental Protection Agency, prepared statement of .....	183



## **FEDERAL WETLANDS POLICY: PROTECTING THE ENVIRONMENT OR BREACHING CON- STITUTIONAL RIGHTS?**

**FRIDAY, OCTOBER 6, 2000**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON GOVERNMENT REFORM,  
*Washington, DC.*

The committee met, pursuant to notice, at 10 a.m., in room 2157, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Gilman, McHugh, Sanford, Biggert, Chenoweth-Hage, Maloney, Cummings, Kucinich, and Allen.

Staff present: Kevin Binger, staff director; Daniel R. Moll, deputy staff director; David A. Kass, deputy counsel and parliamentarian; Sean Spicer, director of communications; Nicole Petrosino and Nat Wienecke, professional staff members; Robert A. Briggs, clerk; John Sare, staff assistant; Robin Butler, office manager; Michael Canty, legislative assistant; Josie Duckett, deputy communications director; Leneal Scott, computer systems manager; Corinne Zaccagnini, systems administrator; Michelle Ash and Elizabeth Munding, minority counsels; Ellen Rayner, minority chief clerk; and Jean Gosa, minority assistant clerk.

Mr. BURTON. Good morning. A quorum being present, the Committee on Government Reform will come to order.

I ask unanimous consent that all Members' and witnesses' written opening statements be included in the record and, without objection, so ordered.

I ask unanimous consent that all articles, exhibits, and extraneous or tabular material referred to be included in the record and, without objection, so ordered.

Today, the Committee on Government Reform will focus on issues surrounding wetlands and the implementation of wetlands regulatory programs under Section 404 of the Clean Water Act. As with any other environmental issue, there are those who seek more protections and those who feel the existing protection is inherently unfair and administered inconsistently. I think this hearing will provide us with a truly comprehensive range of geographic, social, economic and environmental interests that will highlight the public's frustration over problems with Section 404.

On panel one, we will hear from Paul Kamenar from the Washington Legal Foundation; Susan Dudley from the Mercatus Center; and Kathleen Andria, Director of American Bottom Conservancy.

We will also hear from Gloria Pozsgai-Heater, is that correct, and Victoria Pozsgai-Khoury—is that correct? Pretty close? Good—property rights advocates and the daughters of John Pozsgai.

Panel two will consist of Michael Davis, Deputy Assistant Secretary of the Army, Office of Civil Works; and Robert Wayland, Director of Wetlands, Oceans and Watersheds at the Environmental Protection Agency.

I would like to thank all of you for being here today, and I look forward to hearing everyone's testimony.

I think many would agree that the current program is in need of repair. Today, this impressive array of witnesses will provide the committee with further guidance on and reaction to the issues surrounding wetlands policy.

The issue of wetlands revolves around different scientific and Federal program questions. Scientific questions include how to define wetlands and the current rate and pattern of wetlands losses, as well as the importance of those losses. Federal program questions include the operation of the Federal Regulatory Program and other programs to protect, restore and mitigate wetlands resources.

As one who loves the outdoors—I play a lot of golf. I love the outdoors. I truly believe that wetlands are an important natural resource to our society. Wetlands can be valuable for water quality improvement, erosion prevention, flood storage and recreation. They also provide fish and wildlife habitat, food chain support and contribute to our general quality of life.

However, the protection of wetlands has long been a contentious issue. The confusing and onerous nature of existing wetlands policy continues to result in a major controversy. Few would argue with the statement that there are a number of fundamental flaws with our current Federal wetlands policy. The inflexible and wide-ranging definition of what constitutes a wetland has led to Federal protection of prairie potholes and other lands that have been farmed by families for generations.

Many argue that the definition of wetlands has been unreasonably expanded to include properties which are not, in fact, wetlands. Because the current definition of wetlands is imprecise, many plots of essentially dry land are now being classified as wet. Therefore, I believe there needs to be a more clear, concise and accurate definition of what truly constitutes a wetland.

As many of you know, three factors are considered when distinguishing a wetland: first, the number of days land is inundated or saturated with water; second, whether the Earth is hydric soil; and, third, whether the area has one of approximately 7,000 indicator species of plants growing on it. Most of the problems associated with defining wetlands have arisen not from disagreements over the appropriate factors but over how many factors must exist and to what degree.

Some experts have suggested taking a three-tiered approach to regulating wetlands, from highly valuable to the least valuable.

Another factor to consider is the burden of proof in wetlands cases when a property owner is charged with polluting a wetland. When a government entity accuses a property owner of violating the Clean Water Act, the courts have tended to accept the government's determinations that an area is a wetland, notwithstanding

the fact that the burden of proof is supposed to be on the Federal Government.

As a practical matter, the property owner must prove that his or her land is not, in fact, a wetland. I believe, however, that the burden of proof in wetlands cases, as in all others, should always rest upon the government.

This leads us to the story of Mr. John Pozsgai. We have all heard horror stories about small landowners who are needlessly victimized by complex Federal policies. Well, today we will hear the personal story of one of these small landowners directly from his two daughters, Gloria and Victoria.

Mr. Pozsgai is a former Hungarian freedom fighter who arrived in this country in search of the American dream and freedom. And I remember back in 1954, I believe it was 1954, when we received some cries for help from the Hungarian freedom fighters. President Eisenhower was in the White House, and they were ground under the tanks of the Soviets. There wasn't much that could be done, and those people were heroic, in my opinion, fighting for what we all believe in, that being freedom.

Mr. Pozsgai eventually settled in Morrisville, PA, and eventually bought a small piece of land. After the factory he was working at shut down, he opened a small truck repair shop on that land. This truck repair business allowed him to make a modest living for himself and send his two lovely daughters to college.

After many years of hard work and perseverance, he decided to purchase a small 14-acre tract of land directly across the street which would allow him to expand his business and hopefully retire a few years later. After cleaning up more than 7,000 old tires and rusted car parts and putting some clean fill on the land in order to build on it, he received notices from the Army Corps of Engineers stating that he needed to cease and desist. He eventually also received a notice from the Environmental Protection Agency stating that he had to do the same.

After being spied upon by neighbors and local town officials both day and night, Mr. Pozsgai was eventually arrested in his place of business. He went through both civil and criminal proceedings consecutively, allowing no time for the punishment from the civil trial to take effect. He was fined \$200,000—cleaned up 7,000 old tires and car parts and cleaned up this land which was an eyesore, he was fined \$200,000 in the civil trial. A criminal trial ended in a 3-year prison sentence and an additional fine of \$202,000.

I fully understand the controversy surrounding Mr. Pozsgai's case. He did receive notices from the Federal Government, as well as the local government, asking him to stop filling his property. I guess they wanted the old tires back on there and the rusty old car parts.

On the other hand, I strongly believe that Mr. Pozsgai's punishment did not fit the crime. I mean, cleaning up a junkyard and putting fill dirt in there and they put him in jail for 3 years and \$402,000 in fines? It seems to me that the EPA and the Corps made an example out of Mr. Pozsgai.

I would like to show you a brief video clip to give you a better idea of the Pozsgai story. So would you put that on, please?

[Videotape played.]

Mr. BURTON. Let me just say that I have been in Congress 18 years, and I believe that polluters should be punished. I believe that the environmental protection laws should be enforced. I think they should be revisited, especially in the area of the wetlands policy; but this is a travesty.

I have never heard of anything like a man—1956, I stand corrected—a man who fought for his freedom against the Communists in Hungary, laid his life on the line because he didn't want to be controlled by a totalitarian Communist dictatorship, risked his life and everything he owned, which was taken away from him by the Communists, comes to the United States of America, the land of freedom and hope, and they put him in jail for cleaning up a dump and putting clean fill dirt in there. It is the most onerous penalty ever imposed for this kind of a crime by the Environmental Protection Agency and the Army Corps of Engineers and the Justice Department, and I think it is tragic, and whoever instigated this they ought to be punished for this overstepping what should be done.

Obviously, if he broke the law and he didn't pay attention to the notifications, there should have been some kind of punishment, but, my God, 3 years in jail and \$200,000 in civil damages and \$202,000 in criminal damages, and 18 months in jail, that's ridiculous.

What I find most striking is that no one, and I mean no one, truly cared about the condition of that piece of land, nobody—it was a dump—until Mr. Pozsgai took it upon himself to clean it up. He gathered up garbage that people had been dumping for decades and placed some clean fill on the property so he could build on it. Maybe he shouldn't have. I don't know. But this is just way out of line.

Clean fill is generally defined as Earth, dirt, soil and bricks, but in the case of Mr. Pozsgai, the EPA and the Corps of Engineers defined this clean fill as a pollutant—I mean, what were those tires? What were all those rotten old car parts? And I used to live in a place where we saw that kind of stuff—as a pollutant that was contaminating a wetland.

Unfortunately, there are countless other incidents similar to John Pozsgai's. All of these cases have two things in common: First, the land involved is basically dry or only marginally wet at most, making its characterization as a water of the United States highly suspect. Second, the pollutants allegedly being discharged into these waters of the United States and the activities for which a permit is normally required almost always do not pose even the remotest threats to water quality.

Property rights advocates argue that cases like Mr. Pozsgai's come about as a result of Federal agencies seeking to protect wetlands which are of marginal ecological value. Many claim that this type of behavior is having a negative impact upon housing affordability and will eventually have a negative impact on our Nation's economy.

It seems to me that we need to develop a wetlands policy that also takes into account the need for reasonable residential and commercial development.

Another major problem with the Federal Government's current wetlands policy, which also touches upon a fundamental constitu-



tional principle, is individual property rights. The fifth amendment to the Constitution clearly states that Americans shall not be deprived of life, liberty or property without due process of law. Nor shall private property be taken for public use without just compensation.

I certainly agree that true wetlands should be protected from harm by the Federal Government, but the citizens who own that land ought to be compensated for their loss. I truly believe that the original intent of the Clean Water Act was to prevent real pollutants from flowing from one body to another.

Over the years, however, Federal regulators have expanded and reinterpreted the act's open-ended terms to protect wetlands, a purpose for which the act was never intended. I believe that many reasonable people feel on both sides of the aisle that new thinking regarding our current wetlands policy must be considered. That's the purpose of today's hearing, and I look forward to hearing everyone's testimony.

With that, I yield to my good friend, Mr. Kucinich.

Mr. KUCINICH. Thank you very much, Mr. Chairman, and thank you for holding this hearing on the important issue of wetlands protection.

I want to welcome our witnesses and welcome the Pozsgai family to Washington, DC. I know that in watching this brief news clip and reading a little bit about your case, it is very depressing, and it is heartbreaking. I know that your appearance here today is a very emotional one for you, and I can assure you that this committee will deal with this very sensitively.

If the issue is simply your experience, I suppose that the chairman certainly is capable of making a case that what happened to you is totally unjust, and I am sure that a review of that would convince many people of that.

But what we are talking about here today, of course, as you understand, goes beyond your case and it involves policy toward all wetlands in the whole United States, not the fact that perhaps there was an abuse of power here. See, we don't know that but, when you watch, it is possible that could have happened. We don't know. But wetlands play an important role in purifying our water, in controlling floods and droughts, in providing habitat for migratory birds and threatened plants and animals; and, unfortunately, we have lost almost half of our wetlands and continue to lose them at an alarming rate. So that's why I can have compassion for what you have experienced and at the same time say that today we have to look at a broader policy, and I do have compassion for what your experience has been.

Now, in my own State in Ohio, 88 to 90 percent of the wetlands that existed prior to settlement have been destroyed. The Great Black Swamp of northwestern Ohio, which once covered an area the size of the State of Connecticut, is virtually gone; and the inland and coastal marshes of Lake Erie have been reduced to less than 5 percent of their original expanse. Once, 20 percent of the Ohio landscape was wetlands. Now, they comprise only 1.8 percent of it. Studies have ranked Ohio as having experienced the second greatest percent loss of wetlands of any State in the country.

Now, the Corps of Engineers and the Ohio EPA have addressed this problem with a permitting policy that required no net loss of wetlands. However, the National Audubon Society Great Lakes Regional Office found that between 1990 and 1995 the Corps granted individual permits which resulted in an 18 percent loss. In fact, 44 percent of the permits that were granted were expected to result in a net loss.

The study found that the no net loss policy was failing because, first of all, the Corps was not demanding adequate mitigation to conditions in the permits; second, the Corps did not require "in-kind" mitigation; and, third, the Corps and the EPA were apparently biased toward enhancing deep water wetlands that housed game species like fish and duck at the expense of shallow water wetlands that enhance water quality and provide habitat for reptiles, amphibians and food sources for birds; fourth, the Corps granted a large number of "after-the-fact" permits; and, fifth, the Corps and the EPA were keeping poor records.

Even if the Corps had demanded that developers replace each acre of wetlands they destroyed, a 1997 study by the Ohio EPA found that, "from a functional perspective, mitigation projects are not yet measuring up to natural sites with respect to flood water retention, water quality improvement and habitat provision."

So I am looking forward to hearing from the Corps and the EPA about what has been done to address these problems.

Now, Mr. Chairman, we will hear a lot of complaints about wetlands protections and their impact on private property rights. Some might argue that the government should reimburse landowners for the loss in property value caused by wetlands regulations, but also I think we have to ask what about the landowners that brought their land for a song because the buyer and the seller knew about the wetlands restrictions? Should the government reimburse these landowners?

And we are not—and if we are going to look at private property rights, I don't think that we should ignore the private property acts of landowners who are negatively impacted by the loss of the wetlands. If the government allows the developer to fill in wetlands, removing an important natural flood control device, who will reimburse the neighboring landowners when their homes are flooded? What about the landowners that live, work and play near streams and lakes that become more polluted because the water no longer filters through the wetlands; and what about the public which is interested in protecting the environment, saving endangered species and protecting habitat for migratory birds? How do we reimburse them?

Mr. Chairman, these are all important issues; and I look forward to hearing from the witness.

I ask unanimous consent to hold the record open so members may submit speeches and additional materials.

Again, I want to thank the Chair for holding this hearing. I know the Chair has concern about how Federal rules and regulations impact people. So do I. And I also know that the witnesses here today are reflecting on their own pain. We need to find out how that relates to the wetland policies of the United States of America. Thank you.

Mr. BURTON. Thank you, Mr. Kucinich.

Ms. Chenoweth, who requested this hearing some time ago; and I want to apologize to her publicly for not moving on this more quickly, but we finally got around to it.

Ms. Chenoweth-Hage.

Mrs. CHENOWETH-HAGE. Chairman Burton, I am just so deeply grateful to you for holding this hearing today on fundamental issues that impact the very freedoms and rights of American citizens.

You know, I have been acquainted with the Pozsgai family for a number of years. In fact, that is literally one of the major reasons why I ran for Congress. Because here was a case where a family cried out, with the press, the national press, all the way from the New York Times and the Washington Post and the San Francisco Examiner and major television networks, crying out for redress, for a redress of grievance for this heroic immigrant family, a family who didn't make much money but worked from the labor of their own hands, couldn't speak very good English but it was incumbent upon them to understand the plethora of rules and regulations that one could only acquire from studying the Code of Federal Regulations to understand them.

Now, I agree that there is a need for wetlands, but wetlands that grow as a result of the lack of maintenance on the part of the city of Morrisville from cleaning up a drainage ditch? That's carrying the definition of wetlands too far.

An immigrant family who, when told that they could, "mitigate the damage," it wasn't given to them in writing about what the terms might be or why and explained to them. They just said, "well, if you give us several thousand dollars maybe we can mitigate this." Well, what did the government do in Hungary, in Communist Hungary? This was the very same kind of thing that John Pozsgai fled a Communist regime from. He didn't understand what mitigation was, and so he reported it.

A lot of American citizens don't understand what mitigating terms is, especially when the government asks for several thousand dollars. So after reporting it, the full force of the Federal Government came down on John Pozsgai one horrible day when he was led away under arrest and his family didn't know where he was taken.

Interestingly enough, they finally found a lawyer, they finally located their father, and they called the Marshals and said, can we get our dad out of jail? Vicky and Gloria. And they said, yes, that would be fine. You will have to post bond. Well, fine, we will get our attorney, and we will come down. They said, don't worry about your attorney. Just bring your checkbook. And so they did.

At that point in time, after they wrote the check, they were informed, oh, by the way, we can't let your father go because we need to search your home for guns and weapons.

Now, I ask you, Mr. Chairman, when in the course of liberty, when in the course of justice, can any force in the Federal Government ask for a search of a man's home without a search warrant, a warrant that ties guns to the crime in the home? It couldn't have happened, but they didn't understand the process, and so John Pozsgai sat in jail while the Federal agents came in and tore up

the humble little Hungarian home looking for guns. Of course, they didn't find any guns. John Pozsgai had told them, I don't need a gun. I can go to the sheriff. He is just a few blocks away if I need help. But they didn't believe him. No, they had to prove who was boss in this case. After all, John Pozsgai reported that he thought the Federal Government was trying to bribe him when they said they were simply trying to mitigate the situation.

Well, we understand mitigation, Mr. Chairman. We work in this business, but can a Hungarian man who barely speaks English and is functionally illiterate in terms of being able to read, comprehend and understand English at that time, clear back in the 1980's, understand what was going on? This is one of the most egregious cases that I have ever heard of in the course of my work in public policy and in the course of my work here in the Congress.

Mr. Chairman, I brought this case to your attention not because my heart bleeds for this family and for what happened to them. They don't come from my district. They come from clear across the country from the district that I represent, but this is such an egregious case it had to reach the highest levels of Congress or else I just wasn't going to go home.

So, Mr. Chairman, you have very well in your statement covered the circumstances involved, but the fact is that the harassment goes on and on and on. After Mr. Pozsgai has served his term, after he was on probation—and the last call I got from John Pozsgai before I came to Congress was this: He had just received a notice from the Department of Immigration and Naturalization, this freedom fighter, that he received notice that he was going to have to go back to Hungary, being deported to Hungary, because he was a convicted felon.

Now, is that how America welcomes their immigrants? Is this what this Nation stands for, this Nation that was birthed in freedom and liberty? We welcome freedom fighters. We welcome good American citizens, but because of the full force of the Federal Government they put up a psychological sign that said, Hungarian immigrants aren't welcome unless they kowtow.

Thank you, Mr. Chairman, for holding this hearing. I do want to say that I think that wetlands are important, but this was a drainage ditch that was constructed in 1934 by the city of Morrisville, whose water was blocked by 7,000 tires that had been illegally disposed in this dump.

So we have a lot of work to do in terms of the whole wetland regulating authority, but, Mr. Chairman, never can this body turn a deaf ear to the tragedies like John Pozsgai.

Again, I want to thank you for holding this hearing. I want to thank Nicole Petrosino and Chris Caron for their very good work and preparation.

Mr. BURTON. I want to thank you for bringing this to the attention of the committee.

[The prepared statement of Hon. Helen Chenoweth-Hage follows:]

**Statement of Congressman Chenoweth-Hage**  
**Committee on Government Reform**  
2157 Rayburn House Office Building  
October 6, 2000

Chairman Burton, I want to thank you for holding this hearing today on fundamental issues that impact the very freedoms and rights of Americans. You have exhibited extraordinary leadership on these issues, and I commend you for your work. And, I especially thank you for bringing before the Committee a tragic case of an American immigrant family that literally had their dreams shattered by the federal government. It is a case that I have worked on throughout my career, even before Congress. In fact, the story of John Pozsgai and his family haunted me enough that it, in large part, motivated me to run for Congress to enact change in federal policies.

Mr. Chairman, this is why we are here -- to protect the freedoms and liberties of individual citizens in this Nation. We represent the people, and we have the power and authority and duty to stand in the way of an oppressive federal regime trampling on the rights of the people. I thank you for standing up to this sacred obligation. It is appropriate and fitting that I conclude my current tenure in Congress seeking to right the wrongs committed against this fine immigrant family, who have endured much pain at the hands of the federal government. Their case epitomizes the tragedy that occurs when the federal bureaucracy exerts its control unchecked over citizens, and shows no regard for the constitutional rights of property, due process, and freedom itself.

Mr. Chairman, the story of John Pozsgai begins as the classic American tale of a person fleeing from tyranny and instability to a land of freedom and security. John is an immigrant, a Hungarian immigrant. He fled his homeland during the Revolution in 1956 because he refused to raise arms against citizens of his own country. The tyranny the Soviets would impose was simply unacceptable to him. This man fled to America in search of something better... freedom and the American dream.

When John arrived, he was taken to a refugee camp in New Jersey. From there he was outprocessed and settled into the life of a fine and proud mechanic. He met his future wife, became an American citizen, and over the next thirty years, he would raise a family. During this time, he would look out his front window every morning and see a dump, an *illegal* dump. It was a small, fourteen acre piece of land that had been *illegally* used as a dump for over thirty years.

Mr. Chairman, John built a business doing mechanic's work on trucks. He struggled in the early years, but he made it. In almost all respects, John's life literally represented the American dream. He raised a family, with a wife and two daughters. He owned his own home. And, he built a business from the ground up. What more could anyone ask for?

Well, John evidently had the gall to think that he could buy an *illegal* dump, clean it up, and build a new garage on it. He thought this, because he believed that when you owned

property, you owned it. The government couldn't take it away from you without compensating you for it. So, John bought the dump across the street for \$143,000. To do this, he mortgaged his house.

Once he obtained the property, he immediately set about cleaning it. But, there were so many tires on his property, he thought a cost estimate was in order for their removal. The cost estimate was simple and to the point. It would cost \$20,000 to remove the over seven thousand tires that were illegally dumped on his property. John couldn't afford that, so he removed them himself with the help of his son-in-law.

One of the peculiarities of this piece of property was a stormwater drainage ditch ran along its outskirts. This ditch should have contained a stormwater runoff culvert, but it was left unfinished by the Township since 1962. A thousand tires were blocking this ditch. This resulted in it flooding the dump, his street, and his own cellar every single year. So, when John removed the tires, the water started flowing back down the ditch.

Concurrent with this, John started to have clean fill added to his land. He was preparing it for construction. At the time, he received some local citations. What for? He received them for parking *his* vehicles on *his own* land. He also received them for selling *firewood* from *his trees* on *his own* land. However, let's put this in context. John did receive numerous local citations. And, every single step of the way, he was attempting to obtain a permit so as to rectify this situation.

However, eventually the township saw fit to inform the Army Corps, with no evidence, that they believed 'wetlands' violations were occurring. From thereon, the Army Corps was aggressive in saving an *illegal dump* from a man who only wanted to improve it.

Let's be frank. I remember when Congress passed the Clean Water Act. The intent of this legislation was not to save dumps surrounded by industrialized areas from improvement. The intent was to protect those sites that were legitimately wet that were important to the natural ecosystem and wildlife.

Mr. Chairman, there is no "wildlife" on this property, only rats. This property is and was a dump, pure and simple.

John Pozsgai was pursued ruthlessly by the Army Corps. His case was referred to the Environmental Protection Agency (EPA), and then further referred to the Department of Justice. During this time, people continually wanted to enter his property. He exercised his Constitutional rights and told them to go away in no uncertain terms. What was the result? He was investigated and prosecuted for adding clean fill to his dump. This is ridiculous. This property was flooded because of garbage that dammed up a drainage ditch. Now it was considered a wetland?

John was arrested. He had his house searched for weapons. He was sued civilly by Army Corps. He was prosecuted by DOJ. He received a \$202,000 fine. He was bankrupted. He was

imprisoned for a year and a half. He was forced to live in a halfway house for a year and a half. He was sentenced to five years of supervised probation.

At the time he was sentenced. John was characterized as the worst 'environmental criminal' in the history of the United States. No one went to jail for the Exxon Valdez oil spill, and yet, John Pozsgai spent a year and a half in the federal penitentiary for cleaning up a dump. I've been to this dump. It smells badly and there are still tires littered all over their land. The smell near the drainage ditch literally turned my stomach. The fact that the Army Corps actually feels no guilt that their investigation ultimately resulted in a virtually illiterate immigrant going to federal prison astounds me.

Mr. Chairman, what happened to John Pozsgai isn't justice. It's a travesty. Even if he were guilty of all the things alleged in court, the penalty *far* outweighs *any* of the violations. I can name case after case of corporations that purposefully polluted waters of the United States, and because they could afford multiple counsels with specialized backgrounds, they received fines. That's it, fines that are virtually a drop in the bucket for these companies.

Mr. Chairman, John Pozsgai is a hero of mine. He is a salt-of-the-earth citizen who simply struggled to achieve the American Dream, independence and self-reliance. We are a nation that was born in the blood of patriots who struggled for the same ideal. It is simply unreal that we now are witnessing the same violations of natural rights that were perpetuated upon our forefathers. The King does not own the land, individuals do. That's precisely why our Fifth Amendment says what it does.

Mr. Chairman, members of the committee, although I am coming to the end of my term, I would hope that after the facts are aired today, that Congress will follow through, and ensure that justice is done in this tragic case. Let us reaffirm this family's faith in the Constitution, that they did indeed emigrate to a land that is free, and rights the wrongs that are committed against its people.

Again, thank you, Mr. Chairman, and I look forward to this hearing today.

Mr. BURTON. With that, Mr. Allen, you are recognized.

Mr. ALLEN. Thank you, Mr. Chairman.

First, I would ask leave to submit a statement on behalf of Henry Waxman, the ranking member.

Mr. BURTON. Without objection.

Mr. ALLEN. Mr. Chairman, thank you.

[The prepared statement of Hon. Henry A. Waxman follows:]



**STATEMENT OF HENRY A. WAXMAN  
ON “FEDERAL WETLANDS POLICY: PROTECTING THE  
ENVIRONMENT OR BREACHING CONSTITUTIONAL  
RIGHTS?”  
OCTOBER 6, 2000**

Mr. Chairman, wetlands, even small isolated ones, serve important purposes. They trap sediment and pollutants, hold rainwater for slow release, help rivers be less prone to flooding, and are prime habitats for wildlife.

Instead of reviewing how we can best protect these natural treasures, today’s hearing focuses on the private property rights of landowners who own such areas. In fact, today’s hearing highlights one property owner in particular, John Pozsgai. We are told that he is just another “innocent” landowner whose American dream was shattered by overzealous bureaucrats. But this is just the majority again using misleading anecdotes.

In fact, OMB Watch’s Citizens for Sensible Safeguards “Myths and Consequences” report, which was created to go “beyond the horror stories and erroneous claims offered in many anti-regulations sound bytes,” lists Representative Chenoweth’s version of the Pozsgai story as one of its top myths.

Mr. Pozsgai bought a piece of property knowing that it included protected wetlands. Mr. Pozsgai hired and fired four engineering firms which told him the property was wetlands. His real estate agent told him it was wetlands. He chose to buy the property anyway. In addition, he began filling the wetlands before he purchased the property. His position was, “[I] thought this was a free country here –you buy a piece of land; you use it.”

Does this case sound familiar? It should. It was in the news in 1989 and 1990. The Committee on Public Works and Transportation held a hearing on it in 1989. Representative Chenoweth brought it back to life in 1995 by citing it on the House floor. Now in 2000, we get to hear again about how Mr. Pozsgai violated the law.

Even if we stick to the issue of landowners' property rights, we should be talking about the property rights of Mr. Pozsgai's neighbors. Property rights advocates argue that those wetlands that are frequently dry should not be protected. However, when you fill in wetlands, and then the heavy rains come or snow melts, there is no place for the water to go but into roads and people's homes.

Wetland regulations are not just protecting the turtles, birds, caddis flies, and snail darters. Protecting wetland protects people as well. Mr. Kamenar will likely testify that no birds or fish were harmed on Mr. Pozsgai's property. But he failed to mention that neighbors were harmed. Mr. Pozsgai's neighbors' homes, generally not prone to flooding, were flooded the year following the wetland filling.

Just like Mr. Pozsgai has stated, this is a free country. This is also a country with laws and regulations. The Department of Interior summed it up the best when it wrote, "John Poszgai did not go to jail for filling wetlands, he went to jail because he knowingly and brazenly refused to obey the law. In 1989, when Mr. Pozsgai broke the law, President Bush was advocating that there should be no net loss of wetlands. President Bush was on the right track. However, I would argue that wetland policy should be more restrictive, certainly not less restrictive as some will suggest today.

Mr. ALLEN. According to the New England Interstate Water Pollution Control Commission, the United States loses 100,000 acres of wetlands every year; and I believe we need to act to reverse this alarming trend.

I want to second the comments of Mr. Kucinich. I realize how difficult a situation this has been for the Pozsgai family and certainly for thousands and thousands of people all across this country who come in contact with this particular set of regulations. Some of those cases are more difficult than others, and some are worked out, and some are not.

Wetlands collect and filter our drinking water. Our sources of clean drinking water are already imperiled by a number of different pollutants, including mercury. We need to be working together to protect sources of drinking water from a variety of pollutants, including mercury.

Wetlands collect water that would otherwise flood nearby basements, and that's an issue in the Pozsgai case. Wetlands also protect our coastlines from flooding and storm damage. This is especially important in Coastal Maine, which I represent. Even more important to Maine is the economic value of wetlands. The fishing industry, which has been the backbone of the Maine economy for centuries, is dependent on coastal wetlands and estuaries for spawning grounds. Threats to coastal wetlands are a threat to the way of life of many of my constituents.

Beyond the economic, health and environmental benefits that wetlands provide for us, freshwater and coastal wetlands also provide a vital habitat for a diverse group of species, some of which are endangered. I believe we have a responsibility to protect these species and our environment in a balanced and reasonable manner.

Now, I realize that examples can be found of disproportionate responses to legitimate concerns on the part of the Federal Government. I am not here to excuse any wrongdoing on the part of the government in the course of executing the law, although I do question whether this is the appropriate forum to retry individual cases that have already been exhaustively adjudicated, and it is my understanding that this question involves more than simply filling in an area designated as a wetland but also involves an issue simply related to contempt of court.

However egregious the circumstances of an individual case may have been, I cannot believe that one case study can be the rationale for overturning a largely successful environmental policy. Our responsibility to the environment is simply too great.

I am proud of the work that the Bipartisan Oceans Caucus, which I co-chair, has been doing and will continue to do to focus attention on environmental issues related to the oceans. I look forward to working with colleagues on both sides of the aisle through the Oceans Caucus to study and hopefully resolve some of the problems that have contributed to the frightening decline of wetlands in this country.

In closing, I just want to say that, as I look at the panels, as I listen to opening statements, I am disappointed that this hearing is the way that this committee will do environmental policy this year. Though there may indeed be some problems with Federal wetlands policy that need to be examined, I am not persuaded that

the approach that is reflected in the choice of panelists is the way to go.

I hope I am wrong about this. I hope I am wrong, but, given the nature of this hearing, I doubt that it is likely to improve our wetlands policies over the coming years.

Thank you, Mr. Chairman.

Mr. BURTON. Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

First, I would like to take this opportunity to thank Chairman Burton for bringing this important issue before the committee that's been a problem for so many of us throughout the Nation, and I would like to thank our panelists for providing our committee with their views on how Federal wetlands policy has impacted their lives and communities.

We all know that wetlands are a vital link between water and land; and wetlands is a collective term for marshes, for swamps, bogs and similar areas found in generally flat, vegetated areas and depressions in our landscape and between dry land and water along the edges of streams, rivers, lakes and coastline; and wetlands can be found in nearly every county and climactic zone in the United States.

Regrettably, there has been too much of an error in the mapping of wetlands and sometimes wetlands come in—maps of wetlands come in after the fact when someone has been building on that area.

Wetlands do act as a buffer against flooding and a filter to purify streams and rivers throughout our Nation and serve as a breeding habitat to thousands of migratory birds and assist in providing clean drinking water to millions of Americans. However, protection of wetlands and the EPA's and Army Corps of Engineer's policies concerning the wetlands have been extremely controversial; and the bureaucratic morass is impacted by an imprecise definition of just what a wetland is.

Mr. Chairman, I would like to enter into the record a copy of correspondence I have received from Mr. David Hawkins, a realtor from my district. He is concerned that the new permitting regulations are adversely affecting our region's economy, and he states that the most recent reduction and disturbance from one-third of an acre to one-tenth of an acre for a national permit has created a greater workload on the Army Corps of Engineers and applications for permits and wetland delineations have been seriously delayed because of the volume of the number of applications. The usual turnaround, he says, of some 30 to 60 days has become 90 to 120 days, causing an unnecessary added time period to such permit approvals.

The economics of our area depend on a reasonable schedule for such permits, and he is asking us to seek to increase the staff available to handle the additional applications.

[The information referred to follows:]

**D. L. Hawkins & Assoc., Inc. Realtors**

*PO Box 276, 35 Mathews St., Goshen, NY 10924*  
845- 294-3233 e-mail: [landbuy@frontiernet.net](mailto:landbuy@frontiernet.net) 845- 294-2687 (fax)  
**a Real Estate Solutions Company**

September 15th 2000

Congressman Ben Giltman  
419 East Main St  
Middletown, NY

Dear Ben,

I would like to bring to your attention a problem that has come about due to a change in a Federal Wetlands Regulations.

The most recent reduction is disturbance from 1/3 of an acre to 1/10 of an acre for a national permit has created a greater work load on the Army Corp of Engineers and applications for permits and wetlands delineation's have been seriously delayed because of the volume of application.

The usual turn around time of 30 to 60 days has become 90 to 120 days. This causes an unnecessary added time period to such permit approvals. The economics of our area depends on a reasonable schedule for such permits and I ask that you seek to increase the staff available to handle the additional applications being process due to the change in the regulation.

Sincerely,



David L. Hawkins, Realtor

Mr. GILMAN. But I am also disturbed about the gentlelady's case that she has recited for us, and to have the Pozsgai family here to indicate to us how there has been an abuse of the wetland regulations. I think that this is abominable, and I hope we can prevent this from happening in the future.

We recite our concern for the Pozsgai—I hope I am pronouncing that right—the Pozsgai problems that he is involved with; and we want to apologize to him and his family for what he had to go through because of the bureaucratic abuse of wetland legislation.

Accordingly, I am pleased that our committee will have this opportunity today to hear testimony from those whose lives have been drastically affected by wetland regulation. Their input can play an important role in any decisions that we may make with regard to wetland protection policy.

So, Mr. Chairman, I again thank you for affording us this opportunity of expressing concerns about an important piece of legislation.

[The prepared statement of Hon. Benjamin A. Gilman follows:]

Rep. Benjamin A. Gilman  
Statement

10/6/00

**Committee on Government Reform**  
**Federal Wetlands Policy: Protecting the Environment  
or Breaching Constitutional Rights?**

Mr. Chairman, I would like to take this opportunity to thank Chairman Burton for bringing this important issue before our Committee, and I would like to thank our panelists for providing our Committee with their views on how federal wetlands policy has impacted their lives and communities.

Wetlands are the vital link between water and land.

"Wetlands" is the collective term for marshes, swamps, bogs, and similar areas found in generally flat vegetated areas, in depressions in the landscape, and between dry land and water along the edges of streams, rivers, lakes, and coastlines.

Wetlands can be found in nearly every county and climatic zone in the United States.

Wetlands act both as a buffer a buffer against flooding and a filter to purify streams and rivers. Throughout the United States, wetlands serve as breeding habitat to thousands of migratory birds and assist in providing clean drinking water to millions of Americans.

However, protection of wetlands and the EPA's and Army Corps of Engineers' policies concerning the wetlands have been controversial and a bureaucratic morass impacted by an imprecise definition of a "wetland."



Mr. Chairman, I would like to enter into the record a copy of correspondence I received from Mr. David Hawkins, a realtor from my district. Mr. Hawkins is concerned that new permitting regulations are adversely affecting our region's economy.

Accordingly, I am pleased that our Committee will have the opportunity today to hear testimony from individuals whose lives have been drastically affected by wetlands regulation. Their input will play an important role in any decisions that the Congress makes with regards to wetlands protection policy.

Mr. Chairman, thank you for affording me this opportunity.

Mr. BURTON. Thank you, Chairman Gilman.

Let me just say, before we go to Mr. Sanford, that this committee has oversight over the entire Federal Government, and wherever there is a waste or abuse of government powers, then we do have the responsibility, and this committee is the right vehicle to look into that.

Mr. Sanford.

Mr. SANFORD. Thank you, Mr. Chairman.

I would, first of all, thank you for raising this issue and holding this hearing.

I would as well say to Ms. Chenoweth-Hage that, of sorts, she, too, has been a freedom fighter. She has consistently fought on this issue, and the Congress will be a poorer place in her absence because this is an issue that desperately needs to be addressed, and it is part of what makes me a conservative. I mean, I hear stories like the Pozsgai's story and you think about that, the strength of the Federal Government against a family like this, and it gives me real reservation about giving the Federal Government any additional power.

In fact, I think there is a special irony to what is going on here in that, you know, the Federal Government is—has historically, in terms of a single entity, it is the largest entity in terms of draining of wetlands in this country, if you look back on a historical basis. So I think there is a real irony here.

I would say that I have to respectfully disagree with my colleague from Maine on the need to hold this hearing and the need to hold it in this format. This issue has got to be addressed, and I say that as one who has a very strong environmental voting record. My colleagues on the Republican side basically call me a "greeny," but I have come to a conclusion that when it relates to wetland policy we have got a real, real problem. Our policy in its present form is nonsensical; it is ridiculous. It is a bureaucratic morass, as Chairman Gilman just stated.

Let me give you an example, just to get this idea across.

In my home district, in South Carolina, unfortunately 200 years ago there were slaves digging what they called dikes in areas of the coast of South Carolina. Those dikes are still there. They are old rice fields. And a constituent of mine was out there repairing one of these dikes, which is done on a fairly regular basis. They get checked afterward by the Corps; and the Corps person was there afterward checking the dike and looked at an area there along the edge of one of these dikes and said, you will have to fill this area in.

He says, I don't understand. This is inside the dike. We just skinned it off by 6 inches, and we put this dirt on high land.

And the Corps person said, yes, I acknowledge that. That dirt was put on high land, but this was a wetland area, and you disturbed the wetland area.

The conversation ensued and permits ensued, but the bottom line was this: This person said, wait a minute, this doesn't make any sense to me. You are saying I have got to refill this wetland area in, but this is not really a wetland. We control the water level with dikes. We can set a one-way flap on this diked area such that we could grow pine trees in here if we wanted.

He said, it doesn't matter. You have impacted it.

So what they had to do was—they had filled it with freshwater. They let the freshwater out, which was all perfectly allowable. They refilled it with saltwater, which was all perfectly allowable. That killed off the freshwater vegetation. Then they were able to drain the pond back down again and refill it. The regulator said, that's perfectly fine. My constituent said, tell me how that makes any common sense at all. He says, it doesn't, but we are just going with the rules as they are now in place.

That is nonsensical law, if you can see that kind of 360 on a patch of land basically drawn down by 6 inches. And I would say that if we are ever going to get common sense on environmental law—environmental law is there to protect ecosystems, and I think what we would all recognize is ecosystems are diverse by their very nature. So a wetland in the uplands of the West is very different than a wetland along the coastal plane of South Carolina.

So I think this one-size-fits all has led to a lot of misinterpretation. Innocent people like my constituent in South Carolina or like the Pozsgai family are being caught as victims as a result of this morass, and I think it desperately needs to be addressed.

Again, I would reinforce the idea that addressing it won't come as quickly as it would have with Ms. Chenoweth-Hage leaving the Congress, but it is something that I would beg of my colleague from Maine and from other colleagues here on the Hill to address because it needs to be changed.

Mrs. CHENOWETH-HAGE [presiding]. Mrs. Biggert.

Mrs. BIGGERT. Thank you, Madam Chairman. I would like to commend you for pursuing this type of hearing, and I would like to commend Chairman Burton for holding the hearing.

I certainly understand the ecological significance of wetlands and their need for protection, but I also understand the rights of property owners. I would like to also disagree with my colleague from Maine. I don't believe that the testimony we are to hear today is an isolated incident, and this is an issue that very much needs to be addressed.

During my first term in Congress, I have heard from a number of property owners in my district who feel that their rights have been violated because of our wetlands policy and the way that it has been implemented.

In one instance, a small businessman was told he needed a permit to discharge anything into a nearby isolated pond. He didn't run a chemical company or anything like that. He ran a sportsmen's club and there was a remote chance that some shot from a shotgun might land in the water. And why did he need a permit in this isolated pond on his property? Because at one end of the pond there was a culvert that ran under a road to simply prevent it from flooding in high rains.

Because of this culvert, the EPA and the Corps of Engineers in their wisdom declared the pond a United States waterway. Furthermore, it took EPA over 2 years to get him his permit.

Another constituent was told he violated the Clean Water Act because he cleared brush from a ditch to ensure proper drainage of his farmland, and the EPA slapped him with a huge fine, and he no longer can farm the land.

I understand the need for balance between protecting wetlands and property rights, but these stories and their frequency would seem to indicate that the scales are tipped in favor of the wetlands. I hope that those testifying today for the Army Corps and the EPA take these stories to heart. These are true stories about real people trying to live real lives, and I wish they were just stories somebody made up because that would mean that Federal and State agencies were appropriately balancing wetland protection with private property rights.

It appears that that isn't the case yet, but I am hopeful those testifying today can help us move in the right direction. Thank you.

Mrs. CHENOWETH-HAGE. Thank you very much.

I do want to state very clearly that this committee has not been called to examine this case to retry it. The trial already occurred. What the committee is investigating is the ongoing harassment after Mr. Pozsgai has paid a tremendous price, and it is the ongoing harassment that this committee is looking into.

So, with that, we will now welcome our first panel to the witness table. I am very pleased to welcome Paul Kamenar, Susan Dudley, Victoria Pozsgai-Khoury, Gloria Pozsgai-Heater and Kathleen Andria.

I wonder if you would please stand and raise your arm to swear.  
[Witnesses sworn.]

Mrs. CHENOWETH-HAGE. Mr. Kamenar, would you like to make an opening statement?

**STATEMENTS OF PAUL KAMENAR, WASHINGTON LEGAL FOUNDATION; SUSAN DUDLEY, MERCATUS CENTER; GLORIA POZSGAI-HEATER, DAUGHTER OF JOHN POZSGAI; VICTORIA POZSGAI-KHOURY, DAUGHTER OF JOHN POZSGAI; AND KATHLEEN ANDRIA, DIRECTOR, AMERICAN BOTTOM CONSERVANCY, AND CHAIRMAN, ENVIRONMENT COMMITTEE FOR EAST ST. LOUIS, COMMUNITY ACTION NETWORK**

Mr. KAMENAR. Good morning, Madam Chairman and members of the committee. My name is Paul Kamenar. I am the senior executive counsel of the Washington Legal Foundation. Thank you for inviting us to testify here on the regulation of wetlands by the Corps of Engineers and the EPA and the application of the takings clause of the fifth amendment and the commerce clause to wetland regulation and the real world impact of wetland regulation on private property owners.

Our foundation is a nonprofit public interest policy center here in Washington, DC, but we have members Nationwide who experience problems with the Corps of Engineers and the wetland regulation. We promote the free enterprise system, protect private property rights and oppose excessive government regulation. We also sponsor an economic freedom law clinic at George Mason University Law School where I also serve as clinical professor of law.

Over the last 20 years, our foundation has litigated numerous wetlands and environmental cases; and we have represented property rights groups as well as individual owners, such as the Pozsgais in their appeal. Most recently, we filed a brief in the Supreme Court which will determine whether or not the Corps of Engineers has commerce clause jurisdiction over isolated wetlands.

We are also representing another small business owner whose business was raided by 21 armed EPA agents. He was indicted on two felony counts. It was later discovered that the EPA had altered the logbooks to make it appear the water quality was a violation. The court threw out the charges, decried the EPA SWAT team tactics and said it was vexatious. That may be worth another hearing, by the way.

Where does the Corps get authority to regulate wetlands? Congress under Section 404 gave the Corps authority to regulate the discharge of dredged or fill material into navigable waters. Nowhere did Congress give authority to the Corps to regulate wetlands as the Corps would have the public believe.

In fact, we have a chart here. The Corps has a brochure called "Recognizing Wetlands, An Informational Pamphlet," which states: "Section 404 of the Clean Water Act requires that anyone interested in depositing dredged or fill material into waters of the United States, including wetlands," must receive authorization for such activities.

Note how they have the phrase, "including wetlands," to give the impression that Congress had that language in Section 404. They try to emphasize that by even bolding that language and italicizing it. The fact of the matter is, that does not appear in the statute. This is all part of a regulatory action by the Corps defining what is and what is not a water of the United States.

The Corps will try to claim they have jurisdiction here under *United States v. Riverside Bayview Homes*, but there the court only allowed them to regulate wetlands that are adjacent to open bodies of water.

There is a serious commerce clause problem with the Corps regulating wetlands in people's backyards. There are court cases that have struck down such authority on the grounds that there was no connection to interstate commerce. You also have the regulatory takings implication of wetland regulations. In short, when the Corps tells you to leave your property in its natural state, they are essentially saying to you, we are depriving you of all economically viable use of your property. The Supreme Court has said that that constitutes a regulatory taking and just compensation is owed to the property owner.

What the Corps does is turn the just compensation clause on its head. By requiring mitigation, they are telling the property owner you owe us, the government, money for you to reasonably use your property.

It should be the other way around.

Finally, this hearing deals with cases such as the Pozsgais. As I said, we represented them on appeal. One thing that's interesting about that case is that at the time, this essentially isolated wetland was subject to what was called Nationwide Permit 26, which means he was entitled to fill up to 10 acres of the wetlands on this property. At this point, they claim he has filled 4 acres. He went to jail for 3 years for that. The way I read the law, he is entitled to fill up another 6 acres of his land.

In pure catch-22 fashion, the Corps was demanding that Mr. Pozsgai fill out a permit application, when the Corps's own regula-

tions state that if you have a Nationwide Permit 26, you don't have to fill out the permit.

This is not an isolated case. Ocie Mills and his son were sentenced to the Federal penitentiary for 21 months for putting 19 loads of clean building sand on their property.

Members of the committee, these are outrageous examples. I could go on and on. They are in my testimony. For these reasons, though, I think it is important that Congress and this committee continue to exercise its diligent oversight over the Corps and EPA to ensure that these public servants of the Corps and EPA are carrying out their duties in a responsible manner. Thank you.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Kamenar.

[The prepared statement of Mr. Kamenar follows:]

**TESTIMONY OF PAUL D. KAMENAR  
SENIOR EXECUTIVE COUNSEL  
WASHINGTON LEGAL FOUNDATION  
BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON GOVERNMENT REFORM  
ON FEDERAL WETLAND REGULATION**

**October 6, 2000**

Mr. Chairman and Members of the Committee:

Thank you for inviting me to testify on behalf of the Washington Legal Foundation on the regulation of wetlands by the U.S. Army Corps of Engineers and the Environmental Protection Agency, the legitimacy of that regulation under the Takings Clause of the Fifth Amendment and the Commerce Clause, and the real world impact of wetland regulation on private property owners.

The Washington Legal Foundation (WLF) is a national non-profit public interest law and policy center based in Washington, D.C., with supporters nationwide. WLF devotes substantial resources to promoting the free enterprise system, protecting private property rights, and opposing excessive and unreasonable government regulation. WLF also sponsors an Economic Freedom Law Clinic at George Mason University Law School where I also serve as Clinical Professor of Law. Over the last twenty years, WLF has litigated numerous environmental and wetland cases, and have represented property rights organization and

individual property owners such as the Pozsgais in their appeals.<sup>1</sup> Most recently, WLF filed a brief in the U.S. Supreme Court in a case which will determine whether the Corps of Engineers has jurisdiction under the Commerce Clause over isolated wetlands, simply because they are occasionally visited by migratory birds.<sup>2</sup> WLF also has pending before the U.S. Supreme Court a petition for writ of certiorari seeking review on behalf our client, Sam McQueen, a South Carolina farmer, who was denied permission to develop two residential lots, each about one-quarter acre in size, because they contain some wetland areas.<sup>3</sup> WLF also represents a small business owner in a lawsuit against the EPA for malicious prosecution and for constitutional violations when EPA criminally charged the owner and his company with violating the Clean Water Act following a raid on his business with 21 armed EPA agents. After it was discovered that EPA log books were altered to make it appear that there were water quality violations, and after other evidence was suppressed, the court subsequently dismissed the charges and later ruled that the prosecution and EPA's "SWAT team" tactics were "vexatious" and constituted harassment.<sup>4</sup> WLF has also previously testified before the Congress on wetland issues, and has produced a number of publications

---

<sup>1</sup> See, e.g., *United States v. Pozsgai*, 999 F.2d 719 (3d Cir. 1993).

<sup>2</sup> *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, No. 99-1178 (oral argument scheduled for October 31, 2000).

<sup>3</sup> *McQueen v. South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management* (formerly known as the South Carolina Coastal Council), No. 00-285. WLF also filed briefs in other takings cases as well. See, e.g., *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Loveladies Harbor, Inc. v. United States*, 28 F.3d 1171 (Fed. Cir. 1994).

<sup>4</sup> *Riverdale Mills Corp. v. United States*, Civ. No. 0040137 (D. Mass. Aug. 8, 2000); *United States v. Knott and Riverdale Mills Corp.*, Crim. No. 98-40022-NMG (July 27, 2000).



on environmental issues, including wetlands, through WLF's Legal Studies Division. While we appreciate the opportunity to present our views on the public interest aspects of the Corps' and EPA's wetland regulatory program, I want to make clear that neither I nor the Foundation is advocating the passage or defeat of any legislation before the Congress.

#### **SOURCE OF FEDERAL REGULATORY AUTHORITY OVER WETLANDS**

There can be no doubt that the federal regulation of private property that contains wetlands is a highly controversial, complex, and debatable topic. While certain wetlands, depending upon their ecological value and functions, provide environmental benefits for the public at large, the real question is whether and how the federal government should regulate impacts on wetlands. Under Section 404 of the Clean Water Act, Congress gave authority to the Corps of Engineers in 1972 to permit "the discharge of dredged or fill material into the navigable waters at specified disposal sites." 33 U.S.C. § 1344(a). These few words by the Congress have spawned volumes of litigation and regulations over the last 25 years, attempting to determine what the Congress meant by "dredge or fill material" and "navigable waters." Nowhere in Section 404, however, did Congress give the express authority to the Corps to regulate wetlands. Section 404 was never intended by Congress to be a Wetlands Protection Act. Rather, the Clean Water Act, including Section 404, was designed solely to protect water quality, not control flooding or provide wildlife habitat by regulating wetlands. Indeed, scores of bills have been introduced in Congress over the years to address the wetland issue in a more appropriate and straightforward manner. Yet the Corps would have the public believe that the Congress expressly and clearly gave it such carte blanche authority over wetlands, as evidenced by a Corps' brochure, "Recognizing Wetlands: An Informational

Pamphlet," which states:

Section 404 of the Clean Water Act requires that anyone interested in depositing dredged or fill material into "waters of the United States, *including wetlands*" must receive authorization for such activities.

By putting the phrase "including wetlands" within quotes, the Corps gives the public the false impression that its elected representatives in the Congress expressly and unambiguously stated in statutory language that "wetlands" were covered by Section 404, when in fact, wetland coverage is purely a creature of regulatory action. Indeed, lest the public not get the full import of the Corps' false impression, the misrepresentation is compounded when the Corps not only italicized the phrase "including wetlands" but also bolded the phrase. While the Corps is to be commended for attempting to explain its regulatory program to the public, this type of misrepresentation of the statutory language is inexcusable, and the Corps should delete that statement from its literature.

To be sure, the Corps has promulgated regulations greatly expanding on the definition of "navigable waters," which Congress defined only as "waters of the United States." The Corps defines "waters of the United States" to include certain wetlands, *i.e.*, those adjacent to waters "which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce." 33 CFR §§ 328.3(a)(1); 328.3(b). The Corps definition also includes isolated or intrastate wetlands if filling them "could affect interstate or foreign commerce." 33 CFR § 328.3(a)(3). But what exactly is a wetland? According to the Corps, it is any land which exhibits three wetland characteristics: vegetation, soil, and hydrology. Does the wetland have to be wet? Absolutely not. Indeed, the Corps brochure referred to earlier makes that point clear when it warns the public:

*Caution: Most wetlands lack both standing water and waterlogged soils at least part of the growing season.*

Indeed, this caution is worth heeding; certain parts of the desert have been classified by the Corps to constitute wetlands, even though the Corps' regulations state that "wetlands generally include swamps, marshes, bogs, and similar areas." 33 CFR § 328.3(b). The Corps determines what property constitutes a wetland by using a complex 150-page manual entitled "1987 Corps of Engineers Wetland Delineation Manual," which contains lists of thousands of varieties of wetland vegetation and soil. One would think that the Corps would make this key manual readily available to the public on its webpage. Unfortunately, one would have great difficulty finding this document because it is not published on the Corps' main webpage which is rather user unfriendly with respect to locating wetland regulation information; rather, the Manual is published by the Corp's Water Experiment Station in Vicksburg, Mississippi. More troubling is the fact that the Delineation Manual has not been subject to public notice and comment, and was not published in the *Federal Register* as required by the Administrative Procedures Act.

What can a property owner do if he disputes the Corps' characterization of his land as a wetland? Until just a few months ago, not very much. Unfortunately, the courts have held that Congress did not provide for pre-enforcement judicial review of the Corps' determinations. Rather, a property owner was required to go ahead with his fill project and then wait until the government arbitrarily chose to employ administrative, civil, or criminal enforcement actions against the property owner, and then challenge the Corps' delineation in that proceeding. Thus, a property owner had to risk being indicted just to get a court to review a questionable wetlands designation of his property. The Corps has now finally

instituted an administrative appeal process that is intended to provide for review of wetland delineations, but it remains to be seen how effective and costly that process is.

No doubt the Corps and the EPA will defend their regulatory authority over wetlands by citing the Supreme Court's decision in *United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985). But in that case, the property in question consisted of "marshy land near the shores of Lake St. Clair," an obvious wetland adjacent to a navigable waterway. It was only under these circumstances that the Court deferred to the agency's expertise to decide the boundaries of the continuum between open water and dry land. The Court expressly declined to "address the question of the authority of the Corps to regulate discharges of fill material into wetlands that are not adjacent to bodies of open water." *Id.* at 131 n.8. Many of the problems associated with the Corps' regulatory program consist of isolated or essentially isolated wetlands that are not adjacent to open bodies of navigable water such as lakes, rivers, or oceans, and for failing to show any effects on interstate commerce as a predicate for its regulatory action.

#### COMMERCE CLAUSE LIMITS TO FEDERAL WETLAND REGULATION

Even if the Corps' definition of wetlands, however broad, is authorized by the Clean Water Act, there is a further question of whether the Corps can exercise jurisdiction over the private property consistent with the Commerce Clause of the Constitution found in Article I, Sec. 8, Cl. 3. In recent Commerce Clause cases, the Supreme Court has made it clear that the exercise of federal authority over essentially state and local activities does have its constitutional limits. See *United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 120 S. Ct. 1740 (2000) ("even under [this Court's] modern, expansive

interpretation of the Commerce Clause, Congress' regulatory authority is not without effective bounds"). The U.S. Court of Appeals for the Fourth Circuit recently applied these fundamental principles when it struck down the Corps' regulatory grasp over isolated wetlands by overturning the criminal conviction of a developer charged with filling wetlands. The court held that "33 CFR 328.3(a)(3) (defining waters of the United States to include those waters whose degradation 'could affect' interstate commerce) is unauthorized by the Clean Water Act as limited by the Commerce Clause and therefore is invalid. . . ." *United States v. Wilson*, 133 F.3d 251, 253-54 (4th Cir. 1997). Under the Commerce Clause, such "hypothetical" rather than actual effects on interstate commerce exceed Congress' power over what is essentially local land use activity. Of course, the Corps has instructed its agents to ignore this decision in all the other circuits.

More significantly, the Supreme Court will hear the case of *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, No. 99-1178 later this month which raises two key issues: 1) whether the Corps' determination that the wetlands in question in that case is based on a permissible construction of the Clean Water Act and 2) whether the Corps can constitutionally exercise federal regulatory authority over the wetland where the only nexus with interstate commerce is the fact that migratory birds may land on the property. In the Foundation's brief, we argue that the Corps' migratory bird rule is not a permissible exercise of federal authority under any of the three criteria the Court has delineated to authorize federal regulatory jurisdiction. The rule is not a regulation of the "channels of interstate commerce" nor a regulation of the "instrumentalities of commerce." Migratory birds are simply not articles of commerce. Thus, the rule can only be upheld, as

the government concedes in its briefs, if the activity, although wholly intrastate, has a "substantial effect on interstate commerce." However, the Court has stated that isolated activity can be aggregated to meet the "substantial effects" test only if the underlying activity is commercial in character. The temporary presence of a migratory bird on one's property is not economic or commercial activity. If the Supreme Court upholds the Corps' migratory bird rule, then any property, whether wetland or not, that is used by migratory birds, can fall within the federal government's jurisdiction. This would be a sweeping, and indeed, virtually limitless assertion of federal power over local land use in violation of federalism principles and the Tenth Amendment.

Not only is the Corps' broad definition of wetlands constitutionally troubling, there is also controversy over what is meant by the phrase "discharge of dredged or fill material" in Section 404. That issue recently came to a head in a challenge to the Corps' so-called "Tulloch" rule. On its face, Section 404 does not prohibit draining a wetland; the law only regulates the "discharge" of dredged or fill material "into navigable waters" (interpreted by the Corps to include wetlands). Thus, *removing* vegetation and soil from a wetland is not a "discharge" of fill material. Nevertheless, the Corps sought to extend its jurisdictional tentacles over this activity by claiming that when wetland soil is excavated or wetland vegetation is cleared, and dirt trickles or falls back onto the ground in the process, a technical discharge of dredged or fill material into wetlands has occurred. However, the U.S. Court of Appeals for the District of Columbia Circuit struck down the Corps' "Tulloch" rule as an impermissible interpretation of Section 404. *National Mining Association v. U.S. Army Corps of Engineers*, 145 F.3d 1399 (D.C. Cir. 1998). This case illustrates perfectly

why Section 404 was never intended to be some kind of Wetlands Protection Act. Surely, federal legislation could be easily crafted to prevent the draining of wetlands, and indeed, legislation protecting wetlands from such activity has been introduced over the years. In addition, most states have strict wetland protection legislation in place which is the more appropriate mechanism for regulating such wetland disturbances.

#### **REGULATORY TAKINGS IMPLICATION OF WETLAND REGULATIONS**

Even assuming the Corps' has the authority to regulate wetlands, whether dry or wet, and regardless of how attenuated those wetlands are to interstate commerce, the Takings Clause of the Fifth Amendment is an important consideration in determining the impact such regulation has on private property rights. The Fifth Amendment provides that private property shall not be taken for public use without providing just compensation to the owner. Thus, when the Corps refuses to allow a property owner to develop a vacant lot that contains wetlands, the government has effectively taken the property even though title to the property is still in the hands of the owner who continues to pay property taxes on "worthless" property. The Supreme Court has made it clear that when government regulation requires the owner to leave his or her property in its natural state -- whether because the land is a wetland, or is habitat to endangered species, or for similar environmental reasons -- and in doing so, effectively eliminates all economically viable use of the property, a regulatory taking has occurred requiring the government to pay the owner just compensation under the Fifth Amendment. See *Lucas v. South Carolina Coastal Comm'n*, 505 U.S. 1003 (1992). The courts have specifically found regulatory takings and awarded compensation in cases where the Corps has denied permits for filling wetlands. See, e.g., *Loveladies Harbor, Inc.*

*v. United States*, 28 F.3d 1171 (Fed. Cir. 1994). However, litigating these kind of cases are very expensive and time consuming, leaving small property owners without any effective recourse when their permit applications are denied or otherwise unlawfully conditioned by requiring the property owner to pay for so-called "mitigation" efforts, that is, purchasing or restoring *other* wetlands to serve as compensation for the loss of wetlands to be developed. In reality, this mitigation program is essentially extortion which can be paid by large developers who are able to pass the costs of the new housing onto consumers; small property owners are forced to bear those costs or abandon their project.

The mitigation program, which has been touted by the Corps as a reasonable market-based program, is actually a regulatory taking in disguise. Assume that a property owner's one-acre lot is a wetland and a permit is required. If the Corps denies the permit outright, and the owner is denied essentially all economically viable use of his property, a regulatory taking has occurred. However, if the Corps conditions the issuance of the permit by requiring the owner to mitigate the loss of the wetland, for example, by buying an acre of wetlands somewhere else, the Corps has effectively required the owner to move his wetland and leave it undisturbed. The regulatory taking analysis should be no different in that case than if the Corps denied the permit outright. Assume that the Corps tried to avoid a regulatory taking by telling the owner of a wetland lot that instead of filling and developing his wetland, he should buy a lot across town for \$20,000 that is upland, and build his home or business over there, and to leave his original wetland one-acre lot untouched. Under that scenario, it is clear that the owner's original wetland lot was rendered useless by the permit denial, and a regulatory taking has occurred. It should not make any difference from a



regulatory takings perspective whether the owner is forced to buy a wetland lot in "mitigation" in order to develop his original wetland and turn it into upland, or keep his original lot intact as a wetland and buy an upland lot for development. In short, the Corps' compensatory mitigation program has turned the Just Compensation Clause on its head, forcing property owners to pay or compensate the government for the privilege of developing their own property, when in reality, the government should be compensating property owners for requiring them to leave their property in its natural wetland state, ostensibly for the benefit of the public at large. Unfortunately, small property owners do not have the resources to bring lengthy and expensive regulatory takings claims in the courts.

#### **IMPACT OF CORPS' WETLAND REGULATORY AND ENFORCEMENT PROGRAM ON PROPERTY OWNERS**

There can be no doubt that the Corps' wetland regulatory program imposes huge costs on cities, farmers, water agencies, utilities, developers, and small property owners. With the recent changes to the Corps' Nationwide Permit (NWP) program, one can expect yet additional costs and regulatory burdens. Before 1977, NWP 26 did not have an acreage limit for filling isolated wetlands and those above the headwaters. In 1984, the Corps imposed a maximum project limit of 10 acres under NWP 26. By 1996, the acreage limit was reduced to three acres, and now, NWP 26 has been abolished altogether and replaced with a combination of other Nationwide Permits that have an acreage limit of only 1/2 acre, with a pre-notification requirement for filling an area as small as 1/10 of an acre! The legality of the Corps' issuance of new and modified NWPs is currently being challenged in federal court here in Washington, D.C. A recent report prepared by the Corps entitled "Cost Analysis for the 1999 Proposal To Issue and Modify Nationwide Permits" (Jan. 2000) concluded that

direct and indirect compliance costs for the regulated community would greatly increase, and that the Corps would need an additional 15 percent funding to administer the new program. However, a separate study prepared for the National Association of Counties, Foundation for Environmental and Economic Progress, concluded that the costs to the Corps would be double the Corps' estimate, or 30 percent.<sup>5</sup> The study also concluded it takes a total of 313 days to prepare and process a nationwide permit application, and a staggering 788 days for an individual permit. *Id.* at 2. The Corps' low numbers for processing permit applications is due to the fact that the Corps does not begin to count the processing days until a completed application is submitted. Thus, application permits are not counted as received by the Corps if the Corps decides that it is not satisfied with all the information in the application, and requires the applicant "to go back to the drawing board" and resubmit the application. The study also concluded that the elimination of the NWP 26 program "could impose costs well in excess of \$300 million per year, or over \$100,000 per affected acre." *Id.* at 44. Another study examined the time it took the Corps to process individual rather than general permit applications, and concluded that the time involved was substantially in excess of the Corps' computation. See V. Albrecht and B. Goode, "Wetland Regulations In The Real World" (1994). The report noted that the actual time spent in submitting and processing an individual application was approximately double the time estimated by the Corps, that is, 262 days instead of 141. The report also notes that the withdrawal rate of applications for individual permits was 66 percent for the first quarter of fiscal year 1994. If there is no objection, I would like to submit that report for inclusion in the record.

---

<sup>5</sup> D. Sunding and D. Zilberman, "Analysis of The Army Corps of Engineers' NWP 26 Replacement Permit Proposal" (Jan. 2000).

This hearing has also been called to focus on the plight of small property owners such as Mr. John Pozsgai who find themselves caught up in the Corps' regulatory and enforcement program. Our Foundation represented Mr. Pozsgai on appeal after he was convicted. Rather than go into details about his case, I would like to submit for the record a copy of our brief which we filed on his behalf. Mr. Pozsgai's daughters and their current counsel are also here today to talk more specifically about their case. Simply put, for allowing clean, non-toxic, non-hazardous fill material to be placed on an old dumpsite that he cleaned up, Mr. Pozsgai was criminally prosecuted for placing the clean fill and topsoil on a small part of his property that the Corps deemed to be a wetland. He was given a three-year prison term and fined \$202,000 (which we were able to get reduced to \$5,000 on appeal). At that time, Mr. Pozsgai's sentence was the longest prison term even meted out in the history of the United States for *any* water polluter, even for those who wilfully placed hazardous and toxic pollutants directly into rivers and lakes, and where fish were killed and the public's health was impaired. Keep in mind that Mr. Pozsgai did not place anything into water or the nearby drainage ditch which no one disputes runs clearer today thanks to Mr. Pozsgai's "illegal" cleanup efforts than it did when he and his wife first purchased the dump in 1986. Keep it also in mind that Nationwide Permit No. 26 was applicable to Mr. Pozsgai's property at the time because the Corps determined that his property was above the headwaters. NWP 26, found in 33 C.F.R. § 330.5(a)(26), stated as follows in 1987:

(26) Discharges of dredged or fill material into the waters listed in paragraphs (a)(26)(i) and (ii) of this section except those which cause the loss or substantial adverse modification of 10 acres or more of such waters of the United States, including wetlands. For discharges which cause the loss or substantial adverse modification of 1 to 10 acres of such waters, including wetlands, notification to the district engineer is required in accordance with

section 330.7 of this section. (Section 404).

(i) Non-tidal rivers, streams, and their lakes and impoundments, including adjacent wetlands, that are located above the headwaters.

(ii) Other non-tidal waters of the United States, including adjacent wetlands, that are not part of a surface tributary system to interstate waters or navigable waters of the United States (i.e., isolated waters) (emphasis added).

This nationwide permit recognized that certain waters and their adjacent wetlands are not that critical to achieving water quality (which is, after all, the goal of the "Clean Water Act") and that the discharge of dredged or fill material into those waters are generally allowed, even if the fill causes the "loss" or "substantial adverse modification" of up to 10 acres of such waters.

As one court of appeals described it:

A nationwide permit is one covering a category of activities occurring throughout the country that involve discharges of dredge or fill material that will cause only minimal adverse effects on the environment when performed separately and that will have only minimal cumulative effects. See 33 U.S.C. 1344(e)(1). Such a permit is automatic in that if one qualifies, no application is needed before beginning the discharge activity. Riverside Irrigation District v. Andrews, 758 F.2d 508, 511 (10th Cir. 1985) (emphasis added).

See also 33 C.F.R. § 320.1(c) ("If an activity is covered by a general permit, an application for a D[e]partment of A[rmy] permit does not have to be made.") (emphasis added). In pure Catch-22 fashion, the Corps was demanding that Mr. Pozsgai fill out a permit application when the Corps' own regulations stated that he didn't have to. Furthermore, the Justice Department conceded in court that the evidence of federal jurisdiction over his property was "quite thin." The Corps and EPA were clearly satisfied with letting this allegedly damaging fill material remain on the "wetland" site while Mr. Pozsgai served his three-year sentence. In short, the government used a cannon to swat a gnat. Even if a person wilfully violates a regulation, any punishment should be proportionate

to the offense. A person who purposely jaywalks or drives 45 mph in a 40 mph zone, has "wilfully" violated the law. Should that person be punished by throwing him in prison? Or would a reasonable fine, and perhaps community service be more rational. I think most people, even ardent protectors of wetlands, would agree that Mr. Pozsgai's three-year sentence for a minor regulatory offense was clearly excessive.

Unfortunately, there are other cases of heavy-handed wetland enforcement. For example, Ocie Mills and his son were sentenced to prison for 21 months for placing a dozen or so loads of clean building sand on a 1/4 acre lot that the Corps deemed to be a wetland. The government failed to invoke administrative or civil penalties which would have been more appropriate for that case.

Even those who try to improve the environment and actually create wetlands find the Corps' regulatory requirements to be major roadblocks. For example, Sam and Vicki Sebastiani, dedicated conservationists, wanted to turn part of their 175-acre winery in California into wetlands because of their ecological value. Rather than viewing the Sebastianis' efforts as a laudable example of wetland creation, the Corps felt that the project would involve some impact to current wetlands. Thus, in addition to creating 90 acres wetlands, the Sebastianis were forced to build another 4 acres of wetland on a another portion of their property. An official of California's Department of Fish and Game observed that by blindly enforcing the Corps' regulatory authority, this was "going to be counterproductive and discourage stewardship. We should be working with landowners and not against them."

Another example of misguided Corps' enforcement and regulatory activity involved

the 2.8 acre commercial lot purchase by Gaston Roberge in Maine in 1964 for his retirement. In 1986, the elderly Roberge tried to sell his property, but the Corps told him it was an illegally filled wetland, but he could try to apply for an after-the-fact permit. After paying consultants over \$50,000, the permit was denied three years later. He filed suit to allege a temporary taking of his property when it was discovered that the Corps never did an adequate delineation of his property. An internal Corps' document uncovered during the case showed that the Corps wanted to use Roberge as an example to discourage other property owners from reasonably developing their property. The memo said "Roberge would be a good one to squash and set an example." Embarrassed by this memo, the government quickly settled after Roberge's eight-year long quest for justice.

Unfortunately, there are dozens more of these kinds of cases where the small property owner is unfairly targeted for treatment and lacks the resources to press his or her claims in court. For these reasons, it is important for the Congress and this Committee to continue to exercise its diligent oversight over the Corps and EPA to ensure that these public servants are carrying out their duties in a responsible manner.

\* \* \* \* \*

Thank you again for inviting me here today to present these views. I would be glad to answer any questions that the Committee may have.

Mrs. CHENOWETH-HAGE. The Chair now recognizes Ms. Susan Dudley from the Mercatus Center.

Ms. DUDLEY. Well, we pronounce it Mercatus, even though I think the proper Latin pronunciation is Mercatus.

Thank you for inviting me. I am Susan Dudley, and I am a senior research fellow and deputy director of the Regulatory Studies Program at the Mercatus Center. It is a research, education and outreach organization at George Mason University. My remarks today are my own.

They are based on an analysis we submitted as part of our public interest comment project in 1998 to the Army Corps of Engineers on the Nationwide permit regulations.

As Mr. Kamenar mentioned, Section 404 of the Clean Water Act prohibits the dredging or filling of navigable waters without an Army Corps of Engineers permit. However, over the last 25 years, the interpretation of navigable waters has evolved first to include wetlands adjacent to navigable waters and subsequently to include all wetlands. Under the current Federal Government definition, there are over 100 million acres of protected wetlands in the United States. Over 80 percent of these wetlands are on private property.

The Corps has developed a system of Nationwide permits that allow certain activities in certain environments without time consuming case-by-case reviews. However, this last March, the Corps markedly reduced the availability of this streamlined program in favor of case-by-case approval of individual activities that affect more than one-half acre.

Since approximately 90 percent of activities permitted under the Corps' Section 404 program have been authorized through the Nationwide permits, the shift toward more case-by-case review poses not only serious challenges to small property owners but also to the Corps' ability to function efficiently.

The Corps estimates that under its new regulations it will receive over 2,800 additional permit applications that will require case-by-case review each year.

It predicts the new regulation will impose direct costs on the public of \$34 million a year. The National Association of Counties predicts much higher public costs, on the order of \$300 million per year. These estimates of direct costs do not include the costs of increasing the already long delays Americans face when applying for permits, nor the possibility that taxpayers will be asked to pay for larger staff to manage the increased workload.

What environmental gain can Americans expect to get from these more burdensome procedures? The Corps has not quantified that, but according to researchers, voluntary, incentive-based programs, including those of the Fish and Wildlife Service, and the Department of Agriculture, as well as States and conservation groups, have been far more effective than the Corps' regulatory program at stemming the loss of wetlands since the mid-1980's. Indeed, reviews of Federal data suggest that not only has the U.S. achieved the goal of no net loss of wetlands, but it would be achieving that goal even without the Section 404 program. In other words, if funds used to run the Corps of Engineers regulatory program were di-

verted to voluntary incentive programs, the rate of wetland gains would likely be even greater.

The ineffectiveness of the Corps' program compared to incentive-based programs is due to simple economics. Land use restrictions reduce private incentives to protect wetlands. Filled land may sometimes be more valuable to the owners than wetland, even if the social value of the wetland is significant. The current program aggravates this underlying problem by reducing the private value of wetlands to landowners. Land use restrictions provide no incentives to property owners to devise creative solutions to manage and protect wetland resources. Instead private owners are pitted against Corps' permit writers because the nature of land use restrictions creates an inherent conflict. In contrast, incentive-based programs foster cooperation by allowing a property owner to reap the benefits of wetlands preservation.

Chairman Burton and Mr. Kamenar mentioned the takings clause of the Constitution. This requirement recognizes not only that a tradeoff sometimes exists between social values and private values as in the case of wetlands, but also the importance of the compensation mechanism in aligning private and public incentives. The Corps of Engineers has an important mission, but it would do well to learn from the insights of our forefathers and the success of existing incentive-based programs.

The Section 404 program is characterized by burdensome review processes, lengthy delays, and enforcement actions that often appear incommensurate with the violation. Private landowners are denied the use of their land without compensation and without fair consideration of the net social effects, both costs and benefits of use restrictions. Rather than centralizing control over privately owned, local resources, the Corps should endeavor to enhance private incentives to manage wetlands and leave the resolution of specific intrastate issues to State and local authorities. Thank you.

Mrs. CHENOWETH-HAGE [presiding]. Thank you, Ms. Dudley.  
[The prepared statement of Ms. Dudley follows:]



UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON GOVERNMENT REFORM

October 6, 2000

Testimony of Susan E. Dudley

Senior Research Fellow and Deputy Director, Regulatory Studies Program,  
Mercatus Center, George Mason University<sup>1</sup>

The Regulatory Studies Program (RSP) at the Mercatus Center at George Mason University is dedicated to advancing knowledge of regulations and their social consequences. As part of its mission, RSP produces careful and independent analysis of agency rulemaking proposals from the perspective of the public interest. In 1998, we submitted comments on the Army Corps of Engineers' Proposal to Issue and Modify Nationwide Permits. These comments, and my testimony today, do not represent the views of any particular affected party or special interest group, but focus on the effect of the Corps's approach to wetlands protection on overall social welfare.

**The Corps' authority under Section 404 of the Clean Water Act**

Section 404 of the Clean Water Act of 1972 prohibits the dredging or filling of navigable waters of the United States without an Army Corps of Engineers permit. "Navigable waters" is defined in the CWA as "waters of the United States, including the territorial seas." However, over the last 25 years, the interpretation of navigable waters has evolved first to include wetlands adjacent to navigable waters, and subsequently to include all wetlands. Under the current federal government definition, there are over 100 million acres of protected wetlands in the United States. Over 80 percent of these wetlands are on private property.<sup>2</sup>

The Corps considers its permitting duties to be a "public interest balancing process," which is guided, in part, by Section 404(b)(1) Guidelines developed by EPA. While in recent years the conflicts between EPA and the Corps over permitting under Section 404 have been mitigated through memoranda of understanding between the two agencies, EPA still retains veto authority over Corps decisions.

The Corps has developed a system of nationwide permits (NWP) that allow certain activities in certain environments without time-consuming case-by-case permit reviews. However, through rulemakings over the last several years, the Corps has moved away

---

<sup>1</sup> These remarks do not reflect an official position of George Mason University.

<sup>2</sup> Ralph Heimlich *et. al.* *Wetlands and Agriculture: Private Interests and Public Benefits*. USDA, Economic Research Service AER-765. September 1998.

from generic nationwide permits for certain activities and circumstances, and toward more case-by-case approval of individual activities.

In March 2000, the Corps issued a final rule that terminated NWP 26, which authorized the discharge of fill into up to three acres of wetlands without obtaining an individual permit. It replaced it with five new nationwide permits and also modified six others. The minimum acreage limit for eligibility for these new and modified permits is one-half acre (down from the previous limit of 3 acres). In addition, individuals considering activities that affect more than one-tenth of an acre must notify the Corps before proceeding.

Since approximately 90 percent of activities permitted under the Corps' Section 404 program are authorized through NWPs,<sup>3</sup> the shift toward more case-by-case review poses not only serious challenges to small property owners but also to the Corps' ability to function efficiently.

The Corps estimates that under its new NWP regulations, the Corps will receive over 2,800 additional permit applications that will require a case-by-case review each year. It predicts the new requirements will impose direct costs on the public of \$34 million per year. The National Association of Counties predicts much higher public costs, on the order of \$300 million per year.<sup>4</sup> These estimates of direct costs do not include the costs of increasing the already long delays Americans face when applying for permits. The Corps' budget has increased by 75 percent since 1980,<sup>5</sup> and the increased work load created by the revised NWP regulations may well result in requests for more staff, further increasing costs to taxpayers.

#### **Wetland economics**

While wetlands offer important social benefits, not all wetlands are created equal. The term "wetland," as used by the Corps, covers not only picturesque stream banks and marshy expanses that offer important habitats for waterfowl and wildlife, but also small patches of land that may, under certain conditions, get wet.<sup>6</sup> Moreover, the tradeoff is often not between a wetland in its natural state vs. urbanization, but as in the case of Mr. Poszgai, between discarded land used as an unofficial dumping ground vs. a cleaned-up and productive lot. The weighing of public and private values of these diverse wetlands requires recognition not only of their different social or environmental values, but their different private values.

<sup>3</sup> NWPs cover a smaller fraction of the acreage permitted by the Corps, roughly one-third.

<sup>4</sup> The NACO report was based on the Corps' proposal, which differed from the final March 2000 rule.

<sup>5</sup> Melinda Warren, Center for Study of American Business, Regulatory Budget Report 23, June 2000. <http://csab.wustl.edu/>.

<sup>6</sup> See for example, discussions of the cases of James Wilson and Robert McMackin, by Defenders of Property Rights, [www.yourpropertyrights.org](http://www.yourpropertyrights.org).

OMB's Economic Analysis Guidelines<sup>7</sup> directs agencies, before developing new regulations, to examine "whether the problem constitutes a significant market failure." Yet, in none of its regulatory actions over the last several years has the Corps stopped to ask the primary question: what market failure or systemic problem is its permit program designed to remedy? While Section 404 of the Clean Water Act of 1972 prohibits dredging or filling navigable waters of the United States without a Corps permit, understanding the fundamental reason for federal involvement is essential to the design of appropriate policy.

Navigable waters and, arguably, wetlands are public goods—they provide social benefits greater than the benefits obtained by the owner. Private landowners may gain private benefits by converting wetlands to alternative uses, such as agriculture or housing. The costs of such conversion to the private landowner may merit the conversion, but the broader social costs (loss in fish and wildlife habitat, increased flood potential, etc.) may exceed the social benefits of conversion. This does not mean, however, that wetlands are not subject to market pressures. It simply means that the public benefit of maintaining property in its undeveloped state is greater than that realized by the landowner.<sup>8</sup>

In economic jargon, property rights are not specified fully, and the property owner cannot internalize the full social benefits of a wetland (or the social costs of dredging or filling a wetland). Thus, absent a market mechanism by which the public could make payments to the landowner, the amount of wetlands held by private landowners will be less than the amount desired by the public.<sup>9</sup>

#### **Federal role in wetlands protection**

Up until the last 25 years, federal policy has exacerbated this public good problem with programs to encourage conversion of wetlands. Federal grants to States during the 19<sup>th</sup> century paid for levees and drainage to facilitate conversion of wetlands for agricultural production. Until as recently as 1985, farm program payments were based on acreage, providing additional incentives to convert wetlands to crops. While the rate of wetlands conversion averaged 800,000 acres per year between the first settlement to 1954, government statistics for 1982-1992 reveal a conversion of less than 80,000 acres per year.<sup>10</sup> Other statistics suggests that we are now achieving our goal of no net loss of wetlands, and indeed are actually seeing an increasing in net wetland acreage.<sup>11</sup>

<sup>7</sup> "Economic Analysis of Federal Regulations Under Executive Order 12866," U.S. Office of Management and Budget, January, 1996

<sup>8</sup> For a nice discussion of the public good aspects of wetlands, see Courtney LaFountain, Center for the Study of American Business, Policy Brief #164, January 1996.

<sup>9</sup> The Fifth Amendment to the Constitution requires the government to compensate property owners for private property taken for public use. This Constitutional requirement recognizes not only this tradeoff between social value and private value, but the importance of the compensation mechanism in aligning private and public incentives.

<sup>10</sup> Heimlich *et al.* *op. cit.*

<sup>11</sup> Jonathan Tolman, "Swamped: How America Achieved 'No Net Loss'," Environmental Studies Program, Competitive Enterprise Institute. April 1997 ISSN#1085-9047

USDA economists suggest that policy changes are partly responsible for the decrease in wetlands conversion, but increased agricultural productivity and falling commodity prices have also reduced demand for agricultural land, and they are unable statistically to separate the market and policy factors.<sup>12</sup>

The evolution of the Corps' permitting program, and the recent changes to NWPs in particular, have attempted to address the public good aspect of wetlands by regulating certain activities in navigable waters and adjacent lands. This approach, however, further exacerbates the problem of inadequately defined property rights. Regulations that attenuate land use options take away private property rights and thereby reduce private incentives to use land in ways that improve social welfare. As a result, the Corps' program to protect wetlands has not been as effective as those approaches that define private rights and rely on private incentives to internalize the external social benefits of protection.

The Corps' approach also raises an important and related constitutional question. The Fifth Amendment to the Constitution states that "private property [shall not] be taken for public use, without just compensation." Our forefathers recognized that such compensation was not only fair, but also necessary to align public and private interests. The issue of regulatory takings arises when government restricts what property owners can do with their property. When are such restrictions "takings" that must be compensated? This issue has been addressed in various courts and may arise in a case to be heard by the Supreme Court this term, which specifically deals with the Corps' jurisdiction over wetlands.

#### **Private incentives offer better protection**

Several authors have compared the effectiveness of the Corps' Section 404 program to public and private incentive-based programs for wetland restoration.<sup>13</sup> The voluntary, incentive-based programs of the Interior Department's Fish and Wildlife Service (the Partners for Wildlife Program and the North American Waterfowl Management Plan), and the Department of Agriculture's Wetland Reserve Program, along with State, local and private efforts, such as those of Ducks Unlimited and other conservation groups, have been largely responsible for stemming the loss of wetlands since the mid-1980s. The Administration's Clean Water Action Plan recognizes the role these incentive-based programs have played, and will continue to play, in wetland conservation and restoration.<sup>14</sup>

Tolman uses federally reported data to show that the U.S. has achieved the stated goal of "no net loss" of wetlands. However, he observes that:

<sup>12</sup> Heimlich *et al.* *op. cit.*

<sup>13</sup> See, for example, LaFountain *op. cit.*, and Tolman *op. cit.*

<sup>14</sup> U.S. Environmental Protection Agency and U.S. Department of Agriculture. *Clean Water Action Plan: Restoring and Protecting America's Waters*. February 1998. (EPA-840-R-98-001)

The data suggests that the U.S. would still be experiencing “no net loss” of wetlands even if the 404 program disappeared. In fact, if the funds used to run the Corps of Engineers regulatory program were diverted to voluntary incentive programs, the rate of gain would likely be even greater.<sup>15</sup>

The reasons for the ineffectiveness of the Corps’ program, particularly when compared to the effectiveness of incentive-based programs, are clear.

**Land-use restrictions reduce private incentives to protect and manage wetlands.** “Filled” land may sometimes be more valuable to the owners than wetlands. The permit program aggravates this underlying problem by reducing the private value of wetlands to landowners. Land use restrictions provide no incentives to property owners to devise creative solutions to manage and protect wetland resources. Instead, private owners are pitted against Corps’ permit-writers because the nature of land-use restrictions creates an inherent conflict. This conflict leads to deadweight losses for society, as resources are expended to fight and enforce Corps permitting requirements.

The costs of permitting are borne by the property owners (and the users of the land, including families who purchase or rent residences in affected areas) while the benefits are enjoyed broadly. It should not be surprising that voluntary, incentive-based programs that attempt to internalize the external benefits of wetlands protection by compensating property owners who undertake restoration efforts, are more effective at achieving their goals. In contrast to the conflict inherent in the Corps’ permit program, which imposes costs on property owners, these incentive-based programs foster cooperation by internalizing with the property owner the benefits of wetland preservation.

**The federal government is unlikely to set socially optimal goals for wetland use and protection.** Absent a significant market failure, markets allocate scarce resources to their highest and best use, maximizing social welfare. When not left to the market however, determining the socially optimal quantity and quality of a public good, such as wetlands, requires careful balancing of competing goals and recognition of the opportunity costs of different actions.

In our 1998 comments on the Nationwide Permit proposal, we highlighted the Corps’ lack of analysis regarding the social costs and benefits of its actions and its failure to determine what level of wetlands protection would maximize net benefits. The Corps had developed those proposals based on little if any analysis or information on the extent to which land in the U.S. would be affected by the NWP modifications, to say nothing of the benefits or costs associated with the more restrictive activity-specific permit requirements. After receiving public comment, and in response to a Congressional requirement, the Corps conducted an analysis of the consequences of its proposals. The results of this evaluation lead it to issue a final rule that included some cost-saving revisions.

---

<sup>15</sup> Tolman, *ibid.*

However, even a careful analysis at the national level will obscure important information regarding the benefits and costs that accrue to local populations affected by wetlands. The approach adopted by the Corps in March 2000 still relies on case-by-case approval by federal officials.

The Corps permitting process is already widely recognized as being slow and expensive, and the trend toward increased reliance on case-by-case reviews rather than generic permits will exacerbate those delays or increase taxpayer costs. The delays themselves have opportunity costs, which are real costs to American consumers; they reduce the availability and increase the ultimate costs of residential housing and non-residential activities. Furthermore, there are significant costs both to the Corps and property owners associated with enforcing the new permitting requirements.

Retroactive designation as a wetland requiring a Corps permit also imposes significant burdens on unsuspecting property-owners.<sup>16</sup> This uncertainty increases all property costs, thus increasing the cost of living for American families. These are real costs that will be diverted from more valued uses, such as actually restoring, enhancing or protecting valuable wetlands, or protecting the health and welfare of American citizens in other ways.

**State and local solutions are more likely to meet goals of protecting valuable wetlands.** Alternative approaches, including those that rely on private incentives and state and local controls may be more effective at protecting valuable wetlands. For example, the Clean Water Action Plan presents a case study of California grape growers who voluntarily created a no-crop buffer zone along streams based on an economic model developed by a local agency.

Under other sections of the Clean Water Act, and through local land use authorities, State and local governments already consider the potential impacts of projects on impaired and critical resource waters. States also conduct wetland protection programs, independent of the federal government, which are tailored to local ecological values. For example, many states protect wetlands through shoreline or coastal zone protection programs, and the states of Maryland and New York regulate wetland buffer zones (which the Corps does not). Many states also protect "critical areas" of ecological significance through special land use controls, and wetlands are also protected by local zoning ordinances.<sup>17</sup>

<sup>16</sup> Defenders of Property Rights, a nonprofit national legal foundation dedicated to protecting property rights, represented a retired couple in Arrowhead Lakes, Pennsylvania, who suddenly received a cease and desist order from the Corps, informing them that their land was now legally a wetland. The Corps ordered the couple to dig up their entire yard outside a five-foot perimeter surrounding the house and driveway and to create new wetlands two times the size of the house at another location. Under threat of civil fines and/or criminal prosecution, the couple was given only 60 days to submit a plan to carry out these orders, which would entail the expense of hiring an environmental consultant and uprooting their landscaped yard to make way for reseeded of government-approved native plants and trees. Defenders of Property Rights obtained an after-the-fact permit allowing the couple to keep both their house and landscaping.

<sup>17</sup> Jonathan H. Adler, "Swamp Rules: The End of Federal Wetland Regulation?" *Regulation*, Vol. 22, No. 2.

Wetlands have largely intra-state effects, so state and local authorities are in the best position to resolve any issues that cannot be resolved between private parties.

For wetlands that cross state boundaries, Anderson and Hill note:

an authority larger than a single state may be necessary to apportion water among the states and to determine water quality policy. This authority does not have to be the national government, however. Interstate commissions should clarify private rights to water quality and quantity, encourage water transfers across state borders, and establish water quality standards where appropriate.<sup>18</sup>

### Conclusions

The Corps' Section 404 program is characterized by burdensome review processes, lengthy delays, and enforcement actions that often appear incommensurate with the "violations." Private landowners are denied the use of their land without compensation and without fair consideration of the net social effects (both costs and benefits) of use restrictions. The burdens of smaller property owners who must face the permitting procedures and mitigation requirements are especially troubling because they often do not have the time or money necessary for extensive permitting procedures nor the resources with which to bargain.

The Corps' recent rulemakings, which reveal a trend away from generic nationwide permits for certain activities and circumstances, and toward more case-by-case approval of individual activities, are likely to increase these burdens. In March, it replaced NWP 26 with five activity-specific nationwide permits, and reduced the maximum size for which a generic permit would apply from three acres to one-half acre. This approach will increase the costs of the Section 404 program to American citizens, both as taxpayers and consumers, and it is not likely to increase the benefits American citizens derive from wetlands.

The costs associated with the increase in case-by-case permitting will be borne by Americans as taxpayers and consumers, as the new rules may well increase the bureaucracy, increase the time it takes to get NWP approval, and increase property costs (increasing the cost of living for American families). These social costs will be diverted from more valued uses, such as actually restoring, enhancing or protecting valuable wetlands, or protecting the health and welfare of American citizens in other ways. Moreover, federal data indicate that (1) despite lengthy reviews, the Corps disapproves less than one percent of the permits it processes and (2) voluntary incentive-based programs have been more effective at restoring wetlands than the Corps' Section 404 program. Thus, expanding the case-by-case review process to include more areas is unlikely to increase the quantity of the nation's wetlands, nor improve their condition.

<sup>18</sup> Anderson Terry L. and Peter J. Hill "Environmental Federalism: Thinking Smaller" in PERC Policy Series, Jane C. Shaw, ed. Issue Number PS-8 (December 1996)

The Corps' goal of "encouraging development that is planned and designed for the long-term protection of the nation's valuable aquatic resources" is a good one. However, by taking private property rights from property owners, the Corps' approach is ineffective and its recent regulatory actions move in the wrong direction. Rather than a lengthy, burdensome permit process and costly enforcement proceedings that will increase the cost of living for all Americans, the Corps could achieve its goals more effectively by returning property rights that have been taken away. By allowing planned developments in defined locations to proceed without a cumbersome review (as envisioned by the nationwide permit process the Corps has moved away from), the Corps would give State and local governments the flexibility to work with private parties to devise mutually satisfactory management plans that meet social goals. Clearly defined property rights will provide the best incentives to ensure the optimum level of wetland protection and environmental quality.

Rather than centralizing control over privately-owned, local resources, the Corps should endeavor to enhance private incentives to manage wetlands, and leave the resolution of specific intra-state issues to state and local government authorities. A greater reliance on generic nationwide permits would leave important decisions regarding activities in and around wetlands to parties that are best able to address them – property owners and state and local decision-makers.



Mrs. CHENOWETH-HAGE. The Chair recognizes Ms. Pozsgai-Khoury.

Ms. POZSGAI-KHOURY. Madam Chairman, members of the committee, I am honored and appreciate this opportunity to appear before this committee today. My name is Victoria Pozsgai-Khoury. I am the daughter of John Pozsgai of Morrisville, PA. I will speak briefly on his background and the history of his case. Additionally, I will explain the absolutely devastating effects that impersonal and bureaucratic agencies like the Army Corps of Engineers and the Environmental Protection Agency have had upon families and communities.

First, you should understand why I am speaking to the committee today instead of my father. My father is a first-generation immigrant to this country. He can communicate adequately in English, but it is sometimes broken and sometimes results in a misunderstanding in both meaning and intent.

Members of the committee, my father was born in prewar Hungary. As a small child, he witnessed horrendous actions of a truly tyrannical government. Each day he witnessed the Nazis corralling the Jews and other dissidents into gated cattle cars across the street from his home. These were his formative memories. Later in his life he was forcibly conscripted to serve the Soviet Army as a mechanic. All he ever wished to do was to raise his family and live a humble life; however, this was not to be because of the Hungarian Revolution. At the time my father was told he would be forcibly reintegrated into the Soviet Army. He could not morally consent to fighting his fellow countrymen, so he fled to freedom in America.

My father raised our family with the belief that America was not just a good country, but a great Nation. Members of the committee, Mr. Chairman, this country was good to my father. Nowhere else in the world would he have been able to arrive with nothing, buy a piece of property, and build a truck repair business. For this, both he and my family are incredibly thankful.

However, this was not to be accomplished without literal sweat and blood. He took no vacations or breaks over the course of 40 years, none. He had no relatives to help him build his business, and his immediate family lived in a town where the word "immigrant" was literally an epithet.

On January 15, 1964, my father would realize the proudest day of his life when he became a naturalized American citizen. My parents continued to struggle for over 40 years, but they were ultimately successful in building a solid truck repair business. This is John Pozsgai, my father.

Both my sister and myself have vivid memories of playing in the illegal dump located across the street when we were children. It is a 14-acre plot of land that has been filled with assorted junk such as cars, steel remnants, fill, and tires, thousands of tires. Not surprisingly, a tire store was located next to our dump. The dump contained a stormwater drainage ditch system. This ditch was filled with old tires. Our road and basement were flooded every single year for approximately 20 years because of these old tires, and since we removed them, it has never been flooded for the past decade.

In 1986, my father signed an agreement of sale. He wanted to build a 12,500-square-foot building that would expand his truck repair business and enhance the community. He removed well over 5,000 tires from our dump, approximately 1,000 tires of which were in the drainage ditch. Then, within months of acquiring the property, notices were sent to my father from the Army Corps of Engineers informing him of the presence of wetland. These supposed wetlands stem from a stream that was connected to navigable waters of the United States.

Mr. Chairman, members of the committee, a stream never, never ran through our property. From the beginning, it was a stormwater drainage ditch that was installed by the township of Morrisville in 1936. We repeatedly told this to the Army Corps of Engineers, yet they never believed us. Just this past year, the township of Morrisville has finally recognized the responsibility for the upkeep of this stormwater drainage ditch.

Mr. Chairman, members of the committee, my father is the type of man who will tell you straight to your face whether he likes you or not. When people came to our property to trespass on it, he told them in no uncertain terms to leave. He believed that America was still a country where a man's property was his own, and that the government needed a warrant before attempting to collect evidence to use against any citizen.

Please remember his background. He came to this country to escape governmental tyranny over his family's life. When my father started receiving notices, he did not fully understand some of them. Some of the notices were forwarded to our prior lawyer who never told us about them, many of them actually referred to a completely different piece of property with another tax parcel number, and a few my father flat out ignored because he was totally convinced that there was a mix-up between the properties being cited.

Remember, this was an illegal dump for approximately 30 years. People had deposited fill, cars and tires all over it. He had never in his wildest imagination thought he would ever be thrown into jail for adding clean fill to this dump.

In 1987, my father was informed by the Army Corps of Engineers that he was being sued to restore the property to its previous condition. It is important that you understand that the Army Corps wanted him to reestablish the damming effect that approximately 1,000 tires in a stormwater drainage ditch had. In effect, they were telling him to redam his property that had been an illegal dump for over 30 years.

When he was told by the Army Corps that he needed a permit to build his truck repair shop, he obtained a water quality permit from the Pennsylvania Department of Environmental Resources. He thought, we thought, that he had gotten the right permit. He thought everything was OK, because he was told by the Department of Environmental Resources that this dump was not on the national wetlands inventory.

Mr. Chairman, members of the committee, at every point along the way, my father kept asking, how can we make this work? When he was told by the Army Corps of Engineers he must do mitigation to build on his property, he thought he was being asked for a bribe. He went to the FBI to report it. He never fully under-

stood what he was accused of doing wrong, yet the Army Corps sued him. Concurrently, the Army Corps referred his case to the Environmental Protection Agency, who then referred it to the Department of Justice for criminal prosecution. At the same time he was being sued by the Army Corps, he was continually being asked to add more information to process his permit. This was our catch-22.

The effect this had upon my family is absolutely devastating. In the end, my father was imprisoned for a year and a half. He lived in a halfway house for a year and a half and was given 5 years supervised probation. At the time we lost my father, he was the sole support of my family for over 30 years. My family was forced to declare bankruptcy because our family was unable to pay the property tax on our dump. Subsequently, the judge lowered his fine to \$5,000. I lost my job as a journalist after my editor explained to me that my father's name was too visible for the news. But then the thing that hurt the most was scheduling my own wedding between trials and appeals.

I sincerely wonder if the EPA has ever considered investigating the Army Corps for the countless acres of wetlands they regularly destroy in their projects. Now, that would be an interesting exercise, to say the least.

While my father was still in prison, the Army Corps ordered a restoration of our newly acquired property. They wanted to restore it to wetlands.

Now, in the process of restoring our property, they excavated 10 acres, moving 400 truckloads of fill from one side of the property to other. They dug a hole and said it would turn into a wetlands pond. Ten years later the hole is a hole, it is not a pond.

Mr. Chairman, members of the committee, this harassment has simply gone too far. Our family has been bankrupted. My father lost the use of his property without ever being compensated. Worst of all, my father literally lost 3 years of his life, and we lost our father. This occurred even though the Solicitor General of the United States admitted that the evidence the government had jurisdiction on the Pozsgai property was admittedly thin.

So Mr. Chairman, members of the committee, many of you may be wondering what can be done. In my written testimony, I propose a five-tiered solution that I would ask you to study carefully. I promise you, it makes much more sense than the rules that we are living under now.

In conclusion, I still believe America is a great Nation. I am firmly convinced that in no other Nation would two simple daughters of a Hungarian immigrant be allowed to honor this full committee of its governing body. However, I am not sure my father feels the same way. He is a man who believed enough in this country to seek citizenship. Now he is a convicted felon, and he still does not understand why he was ever charged.

Mr. Chairman, members of the committee, I thank you so very much.

Mr. BURTON [presiding]. Thank you very much. That is a heart-rending story. I would like to have those five recommendations that you make, and we will take a close look at all of those.

[The prepared statement of Ms. Pozsgai-Khoury follows:]

**TESTIMONY OF VICTORIA POZSGAI-KHOURY  
BEFORE  
THE HOUSE COMMITTEE ON GOVERNMENT REFORM  
2157 RAYBURN HOUSE OFFICE BUILDING  
OCTOBER 6, 2000**

Chairman Burton, Mr. Waxman, and other Members of the Committee:

I am honored and appreciate the opportunity to appear before this Committee today. My name is Victoria Pozsgai-Khoury. As some of you may already know, I am the daughter of John Pozsgai of Morrisville, Pennsylvania. For those of you who are not familiar with my father's story, I will briefly speak to his background and the history of his case. Additionally, I will explain the absolutely devastating effects that impersonal and bureaucratic agencies like the Army Corps of Engineers and the Environmental Protection Agency can have upon families and communities.

**JOHN POZSGAI'S BACKGROUND**

To give you an idea of my father's background, you should understand why I am speaking to the Committee today instead of my father. My father is a first generation immigrant to this country, and while he can communicate adequately in English, it is somewhat broken and sometimes results in misunderstandings in both meaning and intent.

Members of the Committee, my father was born in pre-war Hungary. As a small child, he witnessed the horrendous actions of a truly tyrannical government. You see, he lived on a small farm directly across the train tracks from a government run railroad. Each day he witnessed the Nazis corralling Jews and other dissidents into gated cattle cars. He remembers the clanging of the train doors as they closed on the lives of his neighbors, friends, and countrymen. These memories would be formative in the development of his character, and his belief in America and for the freedom it represents.

Mr. Chairman, Members of the Committee, it would be nice if my father's story ended here, but it doesn't. Later in life, he was forcibly conscripted to serve in the Soviet Army as a mechanic. He served his time honorably, albeit under the adverse conditions of an occupying force. However, he was ultimately discharged and returned home to his family. All he ever

wished for was to raise a family and live a humble life. However, this was not to be.

As I am sure all of you know, the whine of Soviet tank treads were heard all throughout Hungary during the fall of 1956. The time of initial rumblings for democracy in occupied Eastern Europe surfaced. It was the time of the Hungarian Revolution. Born in the same spirit as the American Constitution, the ultimate result was the Blue Danube would run red with the blood of Hungarian patriots.

At this time, my father received notice that he would be forcibly reintegrated into the Soviet Army to serve during the Revolution and the occupation of his homeland. Because he could not morally consent to fighting his fellow countrymen, he fled to freedom in America. He would arrive at Camp Kilmer, New Jersey just a few months later. At that time, the refugees were greeted by Vice President Nixon who promised them that this country would forever protect their rights. Never again would they suffer from an oppressive regime.

My father took these words to heart and raised our family on the belief that America was not just a good nation, but a great one.

Mr. Chairman, Members of the Committee, this country was good to my father. Nowhere else in the world would he have been able to arrive with nothing, buy a piece of property and build a truck repair business. For this, both he and my family are incredibly thankful. However, this was not accomplished without literal sweat and blood. My father hand-painted, replaced all the windows by hand, and hand-tarred the roof of a ten-thousand square foot building. He did this while raising two small children with our mother. He took no vacations or breaks over the course of forty years, none. He had no relatives to help him build his business. And, his immediate family lived in a town where the word "*immigrant*" was literally an epithet.

However, my parents always remained grateful. On January 15, 1964, my father would realize the proudest day of his life when he became a naturalized American citizen. My parents continued to struggle for over forty years, but with much hard work they were successful in building a solid truck repair business. They sent both of their children to college and inculcated in us a belief in our great nation and its Constitution. They taught us that our liberty was only secured if good citizens recognized and complied with the duties of citizenship.

This is John Pozsgai, my father.

**AN ILLEGAL NEIGHBORHOOD DUMP**

As I told you earlier, living in Morrisville, Pennsylvania as an immigrant was not the easiest thing. It is about five minutes outside of Trenton, right next to the famous bridge that has the city's motto on it. "*Trenton makes; the world takes.*" It is an industrial area and one that has been developed heavily over several generations.

Growing up in this area, both my sister and I have vivid memories of playing in the illegal dump that was located across our street. It is a fourteen acre plot of land that had been filled with assorted junk such as cars, steel remnants, fill, and tires, *thousands of tires*. There were so many discarded tires in this dump that they could have filled several tire stores. I doubt it would surprise you if I told you that a tire store, Jules Tires, was immediately adjacent to this dump.

The dump also had some unique geographic characteristics that made it stand out. First, it contained a stormwater drainage system dating from 1936. Additionally, it contained a stormwater drainage ditch that the township of Morrisville had responsibility for taking care of. Unfortunately, the township would not recognize their responsibility for the upkeep and cleaning of this ditch. As a result, our road and basement flooded every single year for approximately twenty years. The primary cause was due to approximately one thousand tires located in the stormwater drainage ditch.

**PROPERTY ACQUIRED**

On August, 21, 1986, my father signed an agreement of sale and obtained title insurance for the dump across our street. He wanted to build a twelve-thousand five-hundred square foot building that would expand his business and enhance the community. At the very least, an ugly eyesore of a dump would be cleaned up. He removed well over five thousand tires from this dump, approximately a thousand of which were blocking the stormwater drainage ditch. However, within months of acquiring this property, notices were sent to my father from the Army Corps of Engineers informing him of the presence of wetlands. These supposed wetlands stemmed from a "stream" that was connected to "navigable waters of the United States."

Mr. Chairman, Members of the Committee, a "stream" *never* ran through our newly acquired dump. From the beginning, it was a stormwater drainage ditch that was installed by the Township of Morrisville in 1936. We repeatedly told this to the Army Corps of Engineers, yet

they never believed us. It was only in this past year that the Township of Morrisville recognized their responsibility for the upkeep of this stormwater drainage ditch. And then, the Township only did so after we presented it with irrefutable evidence that it had acquired the property on which the ditch lay in 1962.

#### **THE GENESIS OF THE PROBLEM**

Mr. Chairman, Members of the Committee, my father is the type of man who will tell you straight to your face that he doesn't like you. That may not be politically correct in today's society, but it's honest. That is because he's honest. So when people came to our property and trespassed on it, he told them in no uncertain terms to leave. He believed that America was still a country where a man's property was his own, and the government needed a warrant before it attempted to collect evidence to use against a citizen.

My father is also a man who always believed in complying with the law. He never meant to violate it. But, when he started receiving notices, he did not fully understand some of them. Some of the notices were forwarded to our lawyer who never told us about them. (Our lawyer was reprimanded later for drunkenness in court.) Many of them actually referred to a completely different piece of property, with another tax parcel number. And, a few my father flat-out ignored because he was totally convinced there was a mix up between the pieces of property being cited.

Remember, this was an *illegal* dump for approximately thirty years. People had deposited fill, cars, and tires all over it. He never, in his wildest imaginations, thought that he would be cited for wetlands violations for cleaning up his property and adding clean fill to this dump.

#### **ACTIONS OF THE ARMY CORPS**

In 1987, my father was informed by the Army Corps that was being civilly sued to restore the property to its previous condition. It's important to understand that the Army Corps wanted him to reestablish the damming effect that approximately one thousand tires had in the stormwater drainage ditch. In effect, they were telling him to re-dam his property that had been an *illegal* dump for over thirty years.

When he was told by Army Corps that he needed a permit to build his truck repair shop,

he obtained a water quality permit from Pennsylvania's Department of Environmental Resources. He did this, even though he was told by the Department of Environmental Resources that his new property, the dump, was not on the National Wetlands Inventory.

Mr. Chairman, Members of the Committee, at every point along the way my father kept asking, "How can we make this work?" When he was told by the Army Corps that he must do "mitigation" to build on his property, he thought he was being asked for a bribe. He went to the FBI to report it. He never fully understood what he was doing wrong, yet Army Corps sued him. Concurrently, Army Corps referred his case to the Environmental Protection Agency, who then referred it to the Department of Justice for criminal prosecution. And, at the same time he was being sued, the Army Corps was continually asking for more information to process his permit. Talk about a Catch-22.

He was arrested. His house was searched for weapons by two federal EPA officers. Our family owns no weapons, besides the knives we use in our kitchen. We are *still* trying to figure out why our house was searched. Our family had little to no money for a lawyer as my father had invested most of it in the dump across the street from our home.

Because of Army Corps' actions, my father was civilly sued and had a judgement laid against him. My father was sentenced to three years in prison and a \$202,000 fine.

#### **FAMILIAL EFFECTS**

The effect this had upon my family was absolutely devastating. In the end, my father was imprisoned for a year and a half, lived in a halfway house for a year and a half, and was given five years of supervised probation. My family was forced to declare bankruptcy. Our family was unable to pay the property taxes on our dump. Subsequently, the judge lowered his fine to \$5000. I lost my job as a journalist, after my editor explained to me that my father's name was too visible in the news. But, the thing that hurt the very most was scheduling my own wedding between trials and appeals.

At the time my father was sentenced, he was the 'worst environmental violator' in the history of the United States. No one had gone to prison for the Exxon Valdez disaster. No one went to prison when EPA noted 22,348 pounds of toxic TRI chemicals were released into the water in Essex, New Jersey. But, John Pozsgai went to prison for Clean Water Act violations on



fourteen acres of an *illegal* dump in Morrisville, Pennsylvania.

I sincerely wonder whether EPA has ever considered investigating the Army Corps for the countless acres of wetlands they regularly destroy in their projects. That would be an interesting exercise.

#### **RESTORATION**

While my father was still in prison, the Army Corps ordered a restoration of newly acquired property. They wanted to 'restore it' as a wetlands. So, in the process of "*restoring*" our property, they excavated ten acres and moved four-hundred loads of fill from one side of the property to the other. They dug a hole and said it would turn into a pond.

Ten years later, the hole is still a hole, although some cattails do grow in it. The land is hilly, where it was relatively flat before. And, my father is still receiving notices of "violations," both new and stemming from civil order and the cease & desist order. What particularly astounds me is my father was notified these new violations occurred *after* the Army Corps confirmed, in the presence of his lawyer, that they saw no *new* violations.

Mr. Chairman, Members of the Committee, this harassment has simply gone too far. Our family has been bankrupted. My father lost use of his property without ever being compensated for his loss. Worst of all, my father literally lost three years of his life. This occurred, even though the Solicitor General of the United States admitted, "that the evidence that the government had jurisdiction on the Pozsgai property is admittedly thin."

#### **WHAT CAN BE DONE?**

So, Mr. Chairman, Members of the Committee, many of you may be wondering what can be done. I would propose a "*five-tiered*" solution.

First, the Army Corps and EPA should *return to a constitutional view of private property*. The Army Corps and EPA should not be able to simply declare an area wetlands and diminish its value without compensating its owner.

Second, *reform the permitting process*. The Army Corps and EPA should both have a simple pamphlet that actually explains their permitting procedures to citizens. For ten years now, my father and his family have been *unable* to obtain a simple explanation for applying for a permit. To this very day, the Army Corps cannot succinctly explain the permitting process in

simple and easy terms. To mandate this would be a true “reinvention of government.”

Third, *differing definitions of what is, and what is not, a wetlands must be resolved*. The Army Corps and EPA evaluate wetlands differently. One agency may not recognize a piece of property as wetlands, while another one may.

Fourth, an independent citizens’ ombudsman office should be created. It should possess the administrative authority to overrule decisions of the Army Corps and EPA regarding section 404(B) of the Clean Water Act.

Fifth, Congress should review our case and others like it, and provide for comprehensive private property relief.

#### **CONCLUSION**

In conclusion, I still believe America is a great nation. I am firmly convinced that in no other nation would two simple daughters of a Hungarian immigrant ever be allowed the honor of addressing a full Committee of its governing body. However, I am not sure my father feels the same way. He is a man who believed enough in this country to seek citizenship. Now, he is a convicted felon, and he *still* does not understand why he was ever charged.

Mr. Chairman, Members of the Committee, thank you.

Mr. BURTON. Gloria Pozsgai-Heater.

Ms. POZSGAI-HEATER. I come before you today to testify on behalf of my father, John Pozsgai. My sister testified on my father's background and the effect his case had upon our family. Today I would like to speak to you about the ongoing problems that we are still experiencing with respect to the U.S. Army Corps of Engineers.

Mr. Chairman, members of the committee, my father has suffered. He is now an old man, a Hungarian immigrant who fled his country to find freedom. And what has he found? Persecution by any other name, bureaucracy.

Mr. Chairman, you would think that after sending my father to jail, fining him, bankrupting our family and devastating our lives, that the government had gotten all that they wanted. However, after the restoration of my father's property, both my father and his lawyers had believed he had fully complied with the requirements of the law with respect to the court order. Then my father received a letter from the Army Corps dated November 24, 1999, 8 years after the restoration had been completed and his jail termed had finished. The Army Corps' letter accused him of new violations of Section 301 of the Clean Water Act.

In my father's response to this letter, he requested to know the origin of the new complaint. The Army Corps never responded to this letter. Instead they demanded that they come back to inspect my father's property on January 3, 2000. The representative of the Army Corps maintained that the inspection resulted merely from a routine overflight of my father's property. Furthermore, during that inspection, the representative of the Army Corps was unable to fully match his maps to my father's property. And at the cessation of the inspection, the Army Corps representative stated that he could see no new violation.

Contrary to what we had been told, this was not the case. Four months later, my father received a letter from the Army Corps dated May 5, 2000. The letter then accused my father of not complying with the Federal court order from the civil trial in 1988. It further accused him of new violations of a cease and desist letter the Army Corps had issued previously.

Mr. Chairman, members of the committee, my father and our family have been put through the ringer over this dump. The only thing we ever wanted to do was improve and clean up this 30-year-old dump. We simply cannot understand why the Army Corps is so stubborn in continuing to prevent us from building on our land. My father has done absolutely nothing, nothing to this land, since the court order. Now we have heard that the Army Corps has again referred material to the Department of Justice. When will this end?

Mr. Chairman and members of the committee, I am incredibly grateful to be able to testify in front of you today. My father and my family have suffered through this bureaucratic nightmare long enough. We need your help. The property owners of America need your help. All I ask is that you listen impartially to the testimony today. I am convinced that you will see the truth. Thank you, Mr. Chairman.

Mr. BURTON. Thank you.

[The prepared statement of Ms. Pozsgai-Heater follows:]

**TESTIMONY OF GLORIA HEATER  
BEFORE  
THE HOUSE COMMITTEE ON GOVERNMENT REFORM  
2157 RAYBURN HOUSE OFFICE BUILDING  
OCTOBER 6, 2000**

Chairman Burton, Mr. Waxman, and other Members of the Committee:

I come before you today to testify on behalf of my father, John Pozsgai. My sister testified before me to speak to my father's background and the effect his case had upon our family. Today, I would like to speak to you about the ongoing problems that we are still experiencing with respect to the United States Army Corps of Engineers.

After the "restoration" of my father's property, both he and his lawyer had believed he had fully complied with the requirements of the law with respect to the court order. Then, he received a letter from the Army Corps dated November 24, 1999. The Army Corps letter accused him of new violations of Section 301 of the Clean Water Act. In my father's response to this letter, he requested to know the origin of the new complaint.

The Army Corps never responded to this letter, except to coordinate an inspection of my father's property on January 3, 2000. At the time of that "inspection", the representative of the Army Corps maintained that the inspection resulted from a routine overflight of my father's property. Furthermore, during the inspection, the representative of the Army corps was unable to fully match his maps to my father's property. And, at the cessation of the interview, the Army Corps representative stated that he could see no new violation.

Four months later, my father received a letter from the Army Corps dated May 5, 2000. This letter then accused my father of not complying with the Federal Court Order from the civil trial in 1988 (United States v. John Pozsgai, Civil Action No. 88-6545). It further accused

him of new violations of the Cease and Desist letters the Army Corps had issued previously.

Mr. Chairman, Members of the Committee, my father and our family have been put through the ringer on this dump. The only thing we have ever wanted to do is to develop this dump. It is simply *beyond* the realm of my intellect

Mr. BURTON. Ms. Andria.

Ms. ANDRIA. Mr. Chairman and members of the committee, through some incredible fluke, we are on the same panel. My grandfather is also from Hungary, and my grandfather, the other grandfather, was a Macedonian freedom fighter.

My name is Kathy Andria. I am a director of the American Bottom Conservancy, which is a not-for-profit conservation group in East Saint Louis, IL, the area across the river from St. Louis. I am also a board member and chair of the Environment Committee of the East Saint Louis Community Action Network, a coalition of 26 neighborhood organizations and community groups working for the betterment of the city of East Saint Louis. I thank you for your invitation to testify here today on the Corps' wetland policy.

The American Bottom is the southwestern Illinois floodplain of the Mississippi River. It is called Bottom because it was the bottom of the river. Levees and floodwalls allowed the development of cities and towns, which share the Bottom with farmland, but it remains a floodplain, and as such we flood.

There are 150,000 to 200,000 people living in the American Bottom. It is mostly an inconvenience to farmers when their land floods, but not so for communities. When the river is high, our groundwater is high. The river's tributaries, our streams, creeks and ditches, they are high and overflow their banks.

The American Bottom is a wonderfully diverse area. It is home to the United Nations World Heritage Cahokia Mounds. It is also the horseradish capital of the world. There are soybean and cornfields adjacent to steel mills, oil refineries and smelters. It is home to Site No. 1 of the Lewis and Clark Trail. It has a marvelous view of the confluence of the Mississippi and Missouri Rivers. We have the world's longest pedestrian bridge, which crosses the Mississippi River. Unfortunately, the Illinois entrance to that bridge is from a landfill which was allowed to develop and expand in the floodplain, in islands on a wetland in the middle of the Mississippi River.

The American Bottom was declared a Presidential disaster area for flooding in 1993, 1994, 1995, and 1996, 4 straight years. Some eight communities in the Bottom have already been bought out by FEMA, and there are a number of others which should be bought out, including neighborhoods in the city of East Saint Louis, much of which, like the rest of the cities in the Bottom, were built in and around wetlands.

I have a map over here that shows. This is the city of East Saint Louis. The blue on the left is the Mississippi River. Everything in blue that you see is the wetlands and flood hazard areas. Everything in red there are areas that reported that flood.

After all of the flooding, development in our area continues in the Bottom and on the bluffs. The bluffs send their stormwater pouring down into the Bottom. The American Bottom has recently been discovered by developers who have run out of areas within reasonable commuting distance west of St. Louis and have turned their attention to the Illinois side of the river. They have targeted prime farmland; wetlands, which are considered cheap swamp land; and anything and everything in sight. Our cities, towns and villages are eager to grow, but most have no comprehensive plans as to how to grow, and no real understanding of where not to grow. Developers

look for the cheapest land available to them. Unfortunately, it is often the swampland, valued wetlands that help keep us from flooding.

In your memorandum to this hearing, you say that wetlands act as a buffer against flooding. Actually they are like sponges, holding the water and then releasing it. They get the stormwater, and then they slowly release it, and this can help keep the adjacent areas from flooding. One acre of wetlands can hold up to half a million gallons of water. If you take that wetland away, you lose that flood control function. If you fill it in and then pave it over, which is what the developers usually do, you have created millions more gallons of water that will run to the adjacent community or to neighboring homes. If you put that sponge elsewhere, which is what the Corps calls mitigation, when the stormwater pours onto the original site, the sponge is no longer there to absorb that water. Then you have flooding. Added to that problem is the extra stormwater runoff from development on the bluffs that comes running down into the Bottom.

Our cities and villages are old. Our sewers are combined—many of them—that combine sanitary/storm sewers. When the river and groundwater levels fall and rise, our sewers frequently break, and when stormwater and floodwaters inundate the combined sewers, our families and their children are subjected to raw sewage. Yet the State and the Federal Government give tax incentives and economic assistance to developers to develop in the floodplain, and the Corps of Engineers issues permits for them to develop in wetlands.

I used to think of wetlands as just marvelous places where one could see egrets and herons. Being on the Mississippi River, we are on the flyway, and we frequently see great numbers of herons and egrets, the migratory waterfowl. But in 1993, and I am sure you all remember that was the year of our big flood, I learned the role that wetlands play in flood control, and I have since been active as a wetland watchdog.

I understand many of you think that the Corps is too restrictive in its issuance of wetland development permits. Perhaps that is so in other parts of the country. I can only speak about the St. Louis district. In the last 10 years, the Corps has issued tens of thousands of permits to develop wetlands. It has denied fewer than five. A 102-acre landfill was allowed to expand on the island in the Mississippi River after it had been flooded and the residents were forced to leave through a FEMA buyout. Another 176-acre landfill was permitted to expand in the bed of a creek just outside of East Saint Louis. I also have a picture of that. A giant warehouse complex was permitted to be developed in 2,500 acres of wetlands. This shows the landfill, and it shows the creek, and this is—they are even applying for another expansion now. A giant warehouse was permitted to be developed in 2,500—

Mr. BURTON. Excuse me just 1 minute. We have a vote on the floor, and we have about 7 minutes until the vote. Could you summarize in the next 2 minutes so we can make the vote?

Ms. ANDRIA. I sure will. Thank you.

Just last year, an automobile racetrack was originally built in wetlands nicknamed the Swamp. It has since expanded; applied to the Corps to build parking lots for 20,000 cars in the wetlands. It

is right next to other communities that flood. This was the third permit application to the Corps, and this is what we call piecemealing. As we sit here today, they are getting another permit to expand for an access road.

The map—I did the map—the children walking home from schools are subjected to raw sewage. Two schools that were built in East Saint Louis in wetlands are now closed.

You asked, should the Corps be less restrictive and allow more development in the wetlands? The answer is a resounding no. In your efforts to cut Federal Government, many badly needed programs that need funding don't have the money to operate. Enforcement of violations of the Clean Water Act is one, and in St. Louis the enforcement section has been combined with the permit reviewer section, and the permit reviewers are told to work on permits, and they have no time for enforcement. But this is a false savings, because the resulting flooding is going to cause millions of more dollars of disaster relief.

Dobrey Slough is another one, and I would ask you to read what I write about Dobrey Slough. These are residents who have been permitted to—have to live in this floodplain, and the developers are allowed to come back over and over and over again and develop. It is a slough, it is a wetlands. It should never have been developed. These people have lost their homes; their foundations are cracking. There are many people who are having nervous breakdowns over it.

Will the Corps allow more development? History tells us they will. I urge you, for all of the people who are being subjected to this, if you do anything, tighten the rules; make sure that the laws protecting our wetlands, our sponges are enforced; and please, help to close the Tulloch loophole that allows wetlands to be developed.

There are other ideas that I am sure you have. The Wetlands Reserve Program needs to be expanded and fully funded. Enforcing and tightening the current laws could save billions of dollars in the long run. The cost to taxpayers and our psyche as a Nation is too high to allow homeowners to lose their homes and to allow children to be exposed to raw sewage. Yes, there is a need for government reform with the Corps' wetlands policy, but it should be more restrictive, not less, and it should be enforced for everyone.

Thank you for the opportunity to speak with you today.

Mr. BURTON. Thank you, Ms. Andria.

[The prepared statement of Ms. Andria follows:]



**TESTIMONY OF KATHY ANDRIA,  
DIRECTOR, AMERICAN BOTTOM CONSERVANCY,  
DIRECTOR AND ENVIRONMENT COMMITTEE CHAIR,  
EAST ST. LOUIS COMMUNITY ACTION NETWORK,  
BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM,  
FEDERAL WETLANDS POLICY HEARING,  
OCTOBER 6 2000**

Mr. Chairman and members of the Committee, my name is Kathy Andria. I am a director of the American Bottom Conservancy, a not-for-profit conservation group in the East St. Louis, Illinois, area across the river from St. Louis. I am also a board member and chair of the environment committee of the East St. Louis Community Action Network, a coalition of 26 neighborhood organizations and community groups working for the betterment of the city and citizens of East St. Louis. I thank you for your invitation to testify here today on the U.S. Army Corps of Engineers' wetlands policy.

The American Bottom is the southwestern Illinois floodplain of the Mississippi River. It was once the bottom of the river. Levees and floodwalls allowed the development of cities and towns, which shares the Bottom with farmland. But it remains a floodplain and, as such, we flood. There are 150-200,000 people living in the American Bottom. It is mostly an inconvenience to farmers when their land floods. Not so for communities. When the river is high, our groundwater is high, the river's tributaries—our streams, creeks and ditches—are high and overflow their banks.

The American Bottom is a wonderfully diverse area. It is home to the Cahokia Mounds, the most sophisticated prehistoric Indian civilization north of Mexico, which has been designated by the United Nations as a World Heritage Site. It is also the horseradish capital of the world. There are soybean and corn fields adjacent to steel mills, oil refineries and smelters. It is home to Site Number One of the Lewis and Clark Trail, where they camped for the winter before beginning their remarkable journey. It has a marvelous view of the confluence of the Mississippi and Missouri Rivers. We have the world's longest pedestrian bridge, which crosses the Mississippi River. Unfortunately, the Illinois entrance to the bridge is from a landfill which was allowed to develop and

expand in the floodplain, in wetlands on an island in the middle of the Mississippi River. There were people who lived on that island, too, but they are gone now, the result of a FEMA buyout.

The American Bottom was declared a presidential disaster area for flooding in 1993, 1994, 1995 and 1996—for four straight years. Some eight communities in the Bottom have already been bought out by FEMA. And there are a number of others which should be bought out, including neighborhoods in the City of East St. Louis, much of which—like the rest of the cities in the Bottom—were built in and around wetlands. The U.S. Army Corps of Engineers is in the process of doing yet another study on why the area floods (it's a floodplain) and what can be done about it. This time the Corps is proposing wetlands preservation and restoration as part of its flood control plan, called the East St. Louis and Vicinity Interior Flood Control and Ecosystem Restoration Project. The study is due to be made public later this year.

Even after all the flooding, development in the area continues—in the bottom and on the bluffs, which then sends its stormwater pouring down into the lowland. The American Bottom has recently been discovered by developers who have run out of areas within reasonable commuting distance west of St. Louis and have turned their attention to the Illinois side of the river. They have targeted prime farmland, wetlands—considered cheap “swampland.”—anything and everything in sight.

Our cities, towns and villages are eager to grow. But most have no comprehensive plans as to how to grow--and no real understanding of where not to grow. Developers look for the cheapest land available to them—and unfortunately it is often the “swamp land”—valued wetlands that help keep us from flooding.

In your memorandum for this hearing you say that wetlands act as a buffer against flooding. They actually are like sponges, holding water and then releasing it. They hold stormwater and release it slowly, which can keep adjacent areas from flooding. One acre of wetlands can hold up to a half million gallons of water. If you take that wetland away, you lose that flood control function. If you fill it in and then pave over it, which is what

developers tend to do, you have created millions more gallons of water that will run to the adjacent community or neighboring homes. And if you put that sponge elsewhere, which is what the Corps calls mitigation, when the stormwater pours onto the original site, the sponge is no longer there to absorb that water. And then, you have flooding.

Added to that problem is the extra stormwater runoff from development on the bluffs that comes running down into the Bottom. Our cities and villages are old and many of our sewers are combined sanitary/storm sewers. When the river and the groundwater levels fall and rise, the sewers frequently break. And when stormwater and floodwaters inundate the combined sewers, our families and their children are subjected to raw sewage. And yet the state and the federal government give tax incentives and economic assistance to developers to develop in the floodplain. And the Corps of Engineers issues permits for them to develop in wetlands.

I used to think of wetlands as just marvelous places where one could see egrets and herons. Being on the Mississippi River flyway we frequently see great numbers of migratory waterfowl. But in 1993—the year of our big flood—I learned the role wetlands play in flood control and have since been active as a kind of wetlands watchdog. I understand many of you think the Corps of Engineers is too restrictive in its issuance of wetlands development permits. Perhaps that is so in other parts of the country; I can only speak about the St. Louis District. In the last 10 years, the Corps has issued tens of thousands of permits to develop wetlands. It has denied fewer than five. A 102-acre landfill was allowed to expand on that island in the Mississippi River, after it had been flooded and the residents forced to leave through a FEMA buyout. Another 176-acre landfill was permitted to expand in the bed of a creek just outside of East St. Louis. A giant warehouse complex was permitted to be developed in 2,500 acres of wetlands designated as “prior converted farmland,” causing flooding not only to its neighbors, but also the adjacent state highway. Just last year an automobile racetrack, which was originally built in wetlands and nicknamed “the swamp”, applied for a permit from the Corps to build parking lots for 20,000 cars in wetlands, adjacent to East St. Louis and

other small communities which already flood. It was their third permit application to the Corps, a process called piecemealing. They obtained one permit without public notice and public input by claiming it was for an emergency access. Today as we sit here in Washington, the Corps in St. Louis is issuing Gateway Raceway a permit to develop that road into a four-lane major entrance to their VIP parking lots. Again, this road goes through wetlands and is adjacent to the City of East St. Louis, which already has serious flooding problems. A member of our ESL CAN board, Richard Suttle, who lives very near the new entrance to the racetrack says that flooding in his neighborhood has gotten worse since the racetrack expanded. He says he sometimes sees ducks walking in the middle of the road or in his backyard.

I'd like to show you a map of East St. Louis. Everything in blue is wetlands or flood hazard areas. It is typical of cities in the American Bottom, developed in and around wetlands. Unfortunately, the sewers in East St. Louis haven't kept up with the development. Everything marked in red indicates reports from citizens of flooding. And, remember, these are for the most part combined sewers. So the children walking home from school through the flooded streets or playing in front of their houses are exposed to raw sewage. Two schools were built in East St. Louis in wetlands. They are now closed, the victims of severe flooding. We sponsored a town hall meeting on flooding and the reports from citizens were heart-rending. So you ask, should the Corps be less restrictive and allow more development in the wetlands? The answer is a resounding NO!

In your efforts to cut funding for the Federal government, many badly needed programs now do not have the funding to operate. Enforcement of violations of the Clean Water Act is one. The Enforcement section was discontinued and its function given to permit reviewers. But the permit reviewers are told to push the permits through to shorten the process and have no time for enforcement. But it is a false savings: the resulting flooding causes millions of dollars more in disaster relief. I hope you will reconsider this policy.

In Nameoki Township, a few miles north of East St. Louis, a subdivision was allowed to be built years ago in a wetlands called Dobrey Slough. Even after this subdivision had been flooded a number of times, another developer received a permit from the Corps to develop even more homes. Since then, the area has flooded countless times, affecting probably 1,000 families. Residents, such as Helen and Hubert Hawkins, retired and in their 70s, have to live with 24-hour a day pumping of their basement, which has frequently flooded up to the first floor level and has severely damaged the foundation of their home that should be worth more than \$100,000. They probably couldn't even sell it. The Hawkinses have flood insurance, but taxpayers are paying for the damages to many of the homes and for the infrastructure repair. And now that same developer today has applied for another permit application to the Corps to develop 115 more homes in the Dobrey Slough wetlands area, with the City of Granite City backing him.

There are reports that cities in their zeal to annex homes and communities try to entice prospective residents by not designating the area as a floodplain if they are annexed. The location wouldn't change, only the designation. One village has put hundreds of acres of its wetlands into a tax increment financing district to lure developers.

Will the Corps allow them to develop in the wetlands even though there is widespread flooding in the area? History tells us that they will. And what will happen to those communities and their neighboring communities? They will flood and the taxpayers will have to pay the bills to bail them out.

So I urge you, for Hubert and Helen Hawkins, Ms. McShann, the children of East St. Louis and the thousands of residents in the American Bottom and around the country who are already subjected to flooding, please do not weaken Corps of Engineers restrictions for obtaining a permit to develop in the wetlands. If you do anything, tighten them and make sure that the laws protecting our wetlands, our precious sponges, are enforced. And, please, help to close the Tulloch loophole that allows wetlands to be drained indiscriminately.

There are many other ideas that need to be explored in order to protect the wetlands. In St. Clair and Madison counties in Illinois, we are purchasing targeted land with state money to use as a match for the federal dollars that we hope will come so that the ecosystem restoration/flood control project can be implemented. The wetlands reserve program needs to be expanded and fully funded. I am sure you have ideas, too.

Enforcing and tightening the current laws could save billions of dollars in the long run. The cost to taxpayers and our psyche as a nation is too high to allow homeowners to lose their homes and to allow their children to be exposed to raw sewage.

Yes, there is indeed a need for government reform with the Corps' wetlands policy, but it should be more restrictive, not less. And it should be enforced for everyone.

I thank you again for the opportunity to speak with you today.

City of East St. Louis, IL  
Flood Hazards / Wetlands

ESL CAN Flood Survey  
-- Resident reports, Jan-Mar 2000



Created on 4/4/00 by  
Neighborhood Technical Assistance Center  
248R Collingsville Avenue  
East St. Louis, IL 62201  
618/271-1655  
618/271-9655 Fax  
<http://www.italab.uiuc.edu/eslaprint/c/>

Mr. BURTON. We will recess for the vote. We should be back here in about 10 or 12 minutes.

[Recess.]

Mr. BURTON. The committee will come to order.

Let me start, and I will try to restrict my questions to 5 minutes, and then I will yield to the gentlewoman from Idaho.

Mr. Kamenar.

Mr. KAMENAR. By the way, I am also Hungarian. Both sides of my grandparents came from Hungary, so we have a whole Hungarian panel.

Mr. BURTON. I am Heinz. I come in 57 varieties, and I am from all over the place.

Which Federal Government agency is the final authority on wetlands policy; do you know?

Mr. KAMENAR. Well, I think that may be the Environmental Protection Agency in the sense that under Section 1344, they have—Section 404 is 33 U.S.C. 1344—they have veto authority over permits that are granted by the Corps of Engineers. It is a very rarely used veto authority. They have a memorandum of understanding in terms of sort of cojurisdiction, their definitions of wetlands are essentially the same, and so forth. They have just recently changed the definition of pollutants, because the EPA had this definition dealing with discharging out of a pipe into the water under Section 402, and the Corps has a definition of pollutants where you need a permit under Section 404.

The irony is—and I am glad you asked this question—that in the Pozsgai case, the U.S. attorney first charged Mr. Pozsgai for not having a Section 402 permit, which is what factories have when they put their pipes directly into the water.

Mr. BURTON. If you could just get back a little bit further from the mic. You sound a little like Elmer Gantry.

Mr. KAMENAR. Sorry about that.

I am just saying that EPA has the authority over—veto authority, but it is basically administered by the Corps of Engineers, and I am sure the Corps can speak to that.

Mr. BURTON. Why does there seem to be such a lack of consultation between government agencies over how to define a wetland and how to pursue a consistent and sensible wetlands policy?

Mr. KAMENAR. Well, you do have a number of government agencies that do have overlapping jurisdiction. They do not seem to be reading from the same sheet of music in terms of what is a wetland. There is this 1987 Wetland Delineation Manual that presumably is the one that everyone is supposedly following. By the way, it is very hard to find that manual on the Corps of Engineers' Web site. They supposedly want to be user-friendly and let the regulated community know what is going on. I have searched in vain for several hours trying to find that, and it is actually on the Web site, I believe, down at the Corps in Vicksburg, MS. So there is this problem of trying to get together.

Mr. BURTON. Let me just ask you about the Pozsgai case. Have you looked into that in any detail?

Mr. KAMENAR. Well, we represented Mr. Pozsgai on the appeal in that case. I was not the trial attorney, but I did—



Mr. BURTON. But you are very familiar with all of the aspects of it?

Mr. KAMENAR. It has been a few years, but I am fairly familiar with it.

Mr. BURTON. Well, I would just like to have from your legal perspective your view on how he was treated. It appears to me, and I think most members of the committee, even though we are very concerned about ecological problems and wetlands, that the agencies involved, including the Justice Department, went clear overboard in meting out punishment to this family and to this gentleman. Can you give us your legal opinion on that?

Mr. KAMENAR. Yes. It was clearly a case of overkill. It was using a sledgehammer to kill a gnat. The Corps, I think, felt that they had an easy target, that the EPA felt that they had an easy target, that here is what they claim to be a wetland. They sent out a cease and desist letter. I use that word "letter," I underline that, because they are supposed to send out cease and desist orders, formal orders, which they never did in this case.

It was always kind of weird how this case was handled. He was eligible for a Nationwide Permit No. 26, because this so-called wetland was above the headwaters, which is a technical term meaning that the flow of the drainage ditch was less than 5 cubic feet per second, which means that he could fill 1 acre right off the bat without even submitting any prenotification. So it just seemed that they felt that he was defiant, and they were going to make an example out of him, and they certainly did.

Again, this is not an isolated case. I mentioned the Ocie Mills case.

Mr. BURTON. I understand.

Let me just say, it seems to me that the government went overboard as well. Even though we are concerned about preserving wetland, and we understand from the gentlewoman from East Saint Louis the problems that can occur, there is no question, no question, that we should not be building those areas, and we should make sure that wetlands are protected.

Mr. KAMENAR. Absolutely, right.

Mr. BURTON. But in this particular case where it was a drainage ditch that was plugged up by spare tires, and he was penalized so severely, is there any case for restitution from the agencies involved or for some recourse for this family?

Mr. KAMENAR. No, there isn't in that regard. There still is the possibility that he can seek compensation under the takings clause, if, in fact, as it appears to be, he is denied all economically viable use of his property, or a good chunk of it.

Part of the problem is when you go back to the Corps for what they call after-the-fact permits, they do allow that in some cases, but in other cases they won't allow you to do it unless you restore the property. So you have this anomaly of saying, OK, you restore the property, then we will look at your permit, and then you can put the fill back in again. I mean, it seems like it doesn't make much sense in that regard.

So there doesn't seem to be much recourse unless the Corps is willing to sit down now and take a hard look at this and say, here is what you can do with your property. You can build your garage

here, you can do something over here, but it looks like from—and, again, I haven't been the recent counsel; the local counsel is here who has been handling some of the recent correspondence. I don't know exactly where legally it stands.

Mr. BURTON. OK. My time has expired.

I would just like to know one last thing. Are there a lot of cases like this where the agencies involved have gone too far?

Mr. KAMENAR. Oh, it is absolutely clear that the agencies have gone too far. I mentioned a couple in my testimony.

Mr. BURTON. You don't need to get into details.

What I would like to have as chairman of the committee, I would like to have as many examples as you can give, not where there are legitimate problems like the gentlewoman from East Saint Louis talked about, but where there has been overstepping of the bounds of reasonableness by the EPA and the Corps of Engineers. If we have those, maybe we will have a series of hearings and bring them in and just go through these one by one, so that maybe we can come up with some more sensible approaches of dealing with the problems of preserving our wetlands, but at the same time not going overboard and beating people to death when it is not necessary.

Mr. KAMENAR. Sure, absolutely.

Mr. BURTON. Mr. Kucinich.

Mr. KUCINICH. Thank you, Mr. Chairman.

Again, thanks to the witnesses.

Ms. Andria, I left to vote before I heard all of your testimony, but I did have the chance to read it prior to you delivering it.

Now, in your testimony about your concern about developers, you testified that developers can avoid the intent of wetlands protection by applying for permits in a piecemeal fashion. What do you mean?

Ms. ANDRIA. The one instance that—I mean, there are many instances, but for time's sake, I will cite one, the Gateway Raceway. It was a little racetrack, drag strip, called the Swamp. A developer came in from California, wanted to expand it, asked for one-third of an acre. This was, I think, in 1997. He came back the following year and asked for 40 acres. He came the next year, and this was the one asking for the emergency access permit, which didn't go to public inspection, and so I am not sure what—how many acres was asked for then, and then he asked for 11.5 to put the 20,000 cars in for parking lots. This last one, he has asked to widen the road that goes through the wetland into a four-lane superhighway. So that is one example of piecemealing.

Mr. KUCINICH. So you are talking about the Gateway Racetrack expansion?

Ms. ANDRIA. That is the Gateway Racetrack expansion.

Mr. KUCINICH. Is it your sense, after looking at that case, that the person who was the applicant may have misled the government?

Ms. ANDRIA. Absolutely, because the man was an experienced racetrack developer in California at Long Beach, and, I mean, surely when he bought the land, he knew he wanted to expand it to 150,000 seats, he surely knew that he was going to need a parking lot. He bought the land because it was cheap. He could have gone

and should have gone up into the highlands and not developed right there. He knew there was flooding.

Mr. KUCINICH. Thank you.

Mr. Chairman, I actually have a letter here from the EPA to the Corps in this Gateway case, which, in part, states, "We feel that Gateway may have deliberately misled your district on its intent for this road, and we do not look favorably upon this duplicity. However, if there is an absolute need for this roadway expansion, it would result in only 0.51 acres of wetland impact."

I would like to submit this, if I may.

Mr. BURTON. Without objection.

[The information referred to follows:]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

R-19J

Colonel Michael R. Morrow  
District Engineer  
U.S. Army Corps of Engineers  
St. Louis District  
1222 Spruce Street  
St. Louis, Missouri 63103-2833

Re: P-2224 (P224A), Gateway International Motorsports Corporation Racetrack  
Expansion

Dear Colonel Morrow:

The U.S. Environmental Protection Agency (U.S. EPA) has reviewed the above referenced public notice, alternatives analysis, and wetland delineation for the proposed Gateway Race Track expansion, and recommends that you deny the project, as proposed. The applicant has not adequately demonstrated compliance with the Section 404(b)(1) Guidelines of the Clean Water Act (CWA). We are also making a preliminary determination that the site comprises an "Aquatic Resource of National Importance," and we reserve our right to escalate any permit decision under Sections 404(c) and 404(q) of the CWA.

The applicant, Gateway International Motorsports Corporation, proposes to expand the racetrack (seating and parking) in order to hold Nascar Winston Cup events and maximize economic demand. The proposed action will result in the loss of 16.45 acres of American Bottoms wetlands. The racetrack, and surrounding expansion areas, is located in Section 6, Township 2 North, Range 9 West in Madison County, Illinois. The site is located within the American Bottoms, and is adjacent to the Cahokia Canal to the north, and the Landsdown Ditch to the west and south. Both of these waterbodies are tributaries to the Mississippi River, and are waters of the United States.

U.S. EPA is committed to preserving and restoring habitat, especially wetlands in the American Bottoms. We have partnered with the Corps and other federal and state agencies on the East Saint Louis and Vicinity Flood Control and Ecosystem Restoration Project. As a part of this project, we are working with our partners on a Programmatic Environmental Impact Statement (EIS). A draft EIS should be completed around December, 2000. We are currently assessing ways to use ecosystem restoration to temporarily detain and divert rain water in order to recharge habitat and eliminate

flooding events. The Ecosystem Goals of this project were identified at a March 11, 1999 Habitat Evaluation Procedure team meeting, and include:

1. Recreate/reclaim wetlands that have functions and values for trust resources and native species;
2. Restore meanders and channels and associated riparian habitats;
3. Increase biodiversity for species and communities (measure of habitat acres and contiguous larger blocks);
4. Maintain/improve existing wetlands;
5. Prevent a net increase in exotic and invasive species;
6. Improve water quality through sediment reduction;
7. Re-establish the flood pulse between the bluffs and American bottoms.

The EIS will examine ways to accomplish the Ecosystem Goals cited above by looking at opportunities to reduce flood damage and sediment loads, perform ecosystem restoration and wetland/habitat enhancement and protection, preserve open space, and restore biodiversity.

The 16.45 acres of wetlands that would be impacted by this project contribute to the overall function and value of wetlands in the American Bottoms. These wetlands specifically provide habitat for four state endangered species of birds: little blue heron, snowy egret, black-crowned night heron, and yellow-crowned night heron. They also provide habitat for great blue herons, green herons, great egrets, wood ducks, and numerous other migratory waterfowl. In addition, these wetlands provide stormwater detention and water quality improvement. Preserving these wetlands addresses six of the seven goals mentioned above.

Destruction of these 16.45 acres of wetlands also has the potential to negatively impact a CWA Section 303(d) listed waterbody. They are located near the Landsdown Ditch, which flows into the Cahokia Canal, which flows to the Mississippi River. The Cahokia Canal is listed as impaired on the CWA Section 303(d) List by the State of Illinois. The cause of impairment is siltation. These wetlands hold flood water and improve water quality. If they were replaced with a parking lot, the wetlands would no longer serve this function. Because of their proximity to the existing flood control system, they are a part of the American Bottoms floodplain flood pulse, and serve to treat stormwater before it enters the Landsdown Ditch and Cahokia Canal. This function should be preserved for the overall benefit to this area and the ecosystem. Preserving these wetlands would prevent further impairment of the Cahokia Canal, and would address goal 6 of the Ecosystem Goals.

We believe that the Gateway Corporation has enough upland area at its disposal to meet the size requirements for a Nascar Winston Cup event without impacting 15.94 acres of wetland in Sections F8 and F9. Numerous options are available that were dismissed in the alternatives analysis, or were not discussed at all. Comments related to the specific

nature of the alternatives analysis are attached to this letter.

We are still evaluating the need to impact 0.51 acres of wetland in Section F10. The impacts to this wetland would result from widening the new south entrance roadway to provide shuttle lanes and a pedestrian walkway. However, it has come to our attention that this roadway was initially permitted by your District as an emergency access road only. Shortly after this road was constructed, Gateway constructed signs directing traffic to this area. We feel that Gateway may have deliberately misled your District on its intent for this road, and we do not look favorably upon this duplicity. However, if there is an absolute need for this roadway expansion, it would result in only 0.51 acres of wetland impact. If Gateway wishes to pursue this option without impacting the wetlands in Section F8 and F9, then we would request that your District issue a new public notice. We feel that this option would warrant a new public comment period.

In addition, this project is located in an area listed as a moderate nonattainment area for ozone. Gateway must prove that the proposed project meets the general conformity requirements of the Clean Air Act (CAA). In this regard, Gateway must show that the project will result in *de minimis* emissions, or offset emissions somewhere else. We found numerous deficiencies with the air quality information Gateway submitted. These deficiencies are described in more detail in the attachment to this letter. Since your agency is responsible for determining conformity with the CAA, we urge you to scrutinize Gateway's air quality data, and require them to provide an acceptable analysis.

We believe that the proposed action may result in significant degradation of the aquatic ecosystem (40CFR Part 230.12(a)(3)(ii)). The combined efforts of both of our agencies, and our partners, reflect a consensus in the public interest for habitat restoration and preservation, flood control, and water quality improvement of the American Bottoms. Therefore, under our authority of Sections 404(c) and 404(q) of the CWA, we recommend that you deny this permit.

Thank you for the opportunity to provide comments on this project. If you have any questions, or if we can be of further assistance, please contact Amy Nerburn at 312-886-9861.

Sincerely,

Francis X. Lyons  
Regional Administrator, Region 5

cc: Brent Manning, Illinois DNR  
Bruce Yurdin, Illinois EPA  
Field Supervisor, U.S. FWS - Marion Field Office

10/04/00 08:37 FAX 2025011549 OCIR/EPA @005/008  
-----  
USEPA REGION 5 ID:312886273? OCT 03'00 17:05 No.003 P.05

bcc: Kathy Andria, American Bottoms Conservancy  
David Rabenau, Webster Groves Nature Study Society  
Noemi Emeric, Gateway Team Manager  
Sherry Kamke, OSEA  
Pat Morris, Air Division  
John Goodin, OWDW  
Amy Nerburn (originator)  
WNPS branch reading file

10/04/00 08:37 FAX 2025011549 UCIX/LFA  
 JOSEPH REGION S ID:3128862737 OCT 03'00 17:05 No.003 P.06

U.S. Environmental Protection Agency  
 comments on  
 Gateway International Motorsports Corporation Expansion

Nascar Seating Capacities and Parking Requirements

According to Gateway's Alternatives Analysis, Nascar requires a minimum seating capacity of 75,000 and 25,000 parking spaces for Winston Cup Events. Gateway currently has the capacity for 69,000 spectators, and 20,950 parking spaces, and they want to expand their seating capacity to accommodate 112,500 spectators. An expansion of this magnitude requires Gateway to construct an additional 12,250 parking spaces, and is much greater than the minimum amount required by Nascar.

As support for such a large expansion, Gateway listed five racetracks with Winston Cup events that have an average seating capacity of 124,000 (Table 1, page 4). This information is misleading. There are 23 racetracks that hold Winston Cup events (two of these tracks will hold their first Winston Cup event next year). The average seating capacity of 124,000 from the five tracks does not give an accurate representation of the true average for all the tracks. We ask that Gateway provide accurate information on the mean and median seating capacities for all of the racetracks that host Winston Cup events. We believe the data they are using are skewed to depict a larger average.

Parking Options

We do not agree with Gateway that a parking garage is not a feasible alternative. We believe that a two or three level garage would minimize the amount of land needed for parking lots, and would be cheaper than acquiring the massive amounts of property and converting them to parking lots.

We believe that Gateway prematurely dismissed several sites because the land was not for sale, or was not for lease. Specifically, the old Venture parking lot in Section F deserves further consideration. The Alternatives Analysis (page 30) indicates that the site is currently occupied by an existing business that specializes in classic automobiles, and that there was "no indication that the site could be leased from the landowner." We think it may be possible to work out a lease agreement with the property owner, and would like Gateway to research this option in more detail.

It has come to our attention that the Hunter-Packer brownfields site is located less than one mile from the racetrack. This site could potentially be converted to a parking lot, and is not discussed in the Alternatives Analysis. This site deserves some attention.



10/04/00 08:38 FAX 2025011549 OCIR/EPA  
 USEPA REGION 5 ID:3128862737 OCT 03'00 17:06 No.003 P.07

#### Mass Transit and Shuttle Options

Gateway examined mass transit options utilizing the MetroLink system and shuttle service from the Casino Queen. U.S. EPA disagrees with Gateway's assertion that the main obstacle to increased shuttle ridership is the distance between the track and potential shuttle sites (page 9). People may prefer taking a shuttle out of the track rather than idling in traffic for three hours. In addition, shuttle service should be seen as the cost of doing business, and be either free or low cost in order to promote its use. This option is still cheaper than buying land. We also disagree with Gateway's assertion that a five minute headway would be desirable (page 10). We believe that people would be willing to wait 15 to 20 minutes between shuttles. In addition, Gateway should look at shuttle service from sites other than the Casino Queen.

#### 100-Year Floodplain

Gateway proposes to build parking lots at 10 sites (A4, C6, B9, C7, D7, E1, F7, F8, F9, F13). The Alternatives Analysis indicates that every site except D7 lies partially or completely in the 100-year floodplain. Sites F7, F8, and F9 are entirely within the 100 year floodplain. The wetlands proposed for filling are located in Sections F8 and F9. Gateway states that in order to avoid having to create compensatory storage, they will grade the sites by cutting down the higher areas and filling in the lower areas so that they achieve a no net decrease in available flood storage. They also state that parking would be restricted during times of flooding so pollutants entering receiving waterways from vehicles will be minimized.

There are several problems with this. If a 100-year flood were to occur during a Winston Cup event, where does Gateway intend to park 25,000 vehicles if they say they will restrict lots during flood events? In addition, stormwater detention in gravel parking lots will not provide the same degree of water quality improvement that naturally occurring wetlands and native habitat provide. The surrounding waterways are already listed as impaired by the State of Illinois, and can not suffer further degradation.

#### Air Quality

The Alternatives Analysis includes a brief discussion on air quality issues (pages 44 - 46). This information lacks general air quality information and air quality requirements, and is misleading and inaccurate. We note the following deficiencies:

- It does not mention that Gateway Racetrack is located in an area listed as moderate nonattainment for ozone.
- It does not note that Gateway must meet the General Conformity Requirements of the Clean Air Act. They must prove *de minimis* emissions, or offset emissions

10/04/00 08:38 FAX 2025011549 OCIR/EPA 008/008  
 JSEPA REGION 5 ID:3128862737 OCT 03'00 17:07 No.003 P.08

someplace else. The Corps determines conformity with the Clean Air Act.

- Table 24 (page 45) provides air emissions estimates on VOC, CO, and NO<sub>x</sub> for vehicle exhaust. Gateway must recalculate these estimates based on the following:
  - The data should represent the "worst case" air quality scenario. Thus the air emissions estimates should represent the highest number of vehicles expected, the greatest travel distances and the longest idle times expected.
  - The data are based on an entering and exiting time of 1.5 hours. Elsewhere in the Alternatives Analysis, this travel time is lengthened to 3 or 4 hours. If 3 or 4 hours is the expected travel time, then the estimates need to be based on this time length, not 1.5 hours.
  - The data were calculated using the Mobile5 emissions model. The speed and emission rates on the vehicles are unknown. Gateway must use idling emission rates.
- Gateway must conduct PM<sub>10</sub> and CO hot spot modeling for event days, based on 25,000 parking spaces rather than emissions averaged out over the year. This modeling will indicate if exceedances of the CO or PM10 national ambient air quality standard may be expected to occur.
- The Alternatives Analysis states that the amount of VOC, CO, NO<sub>x</sub> and PM<sub>10</sub> emitted from Gateway Racetrack would be minimal compared to Granite City Steel. This is irrelevant.

Mr. KUCINICH. Also, to Ms. Andria—thank you, Mr. Chairman. Do you believe that wetlands policy is not just about the property rights of the landowner once they develop the land, but it is also about the property rights of landowners that would be harmed by a loss of wetlands?

Ms. ANDRIA. Chairman Burton said something about marginal wetlands, and that is one thing that I don't think that is ever properly addressed. I mean, there is little pockets of wetlands that sometimes might seem marginal, but if you live in an area like East Saint Louis and the area there that is full of steel mills, full of abandoned territory, if you can drive by and see egrets, that is really wonderful. But the whole issue of the impact on neighbors is so important. It has to be respected, what you do to your neighbors, and what your impact is on your land. I understand people who want to do that, but when it affects the surrounding territory, that absolutely should not be permitted.

Mr. KUCINICH. In a number of instances, the Corps and the EPA allowed developers to fill a wetland if they create or enhance a wetland elsewhere. In fact, mitigation banking, where developers buy part of a site that will become wetlands in order to qualify for a permit, is becoming increasingly popular.

I am concerned that the policy could create problems because the newly created wetlands may not provide the flood and water quality protections to the same people that are impacted by the proposed development.

Do you share concerns like that?

Ms. ANDRIA. The thing about—I mean, you lose the water quality. Some of the areas in the Bottom get their water from the Mississippi. There are others on the bluffs that use the aquifer, and that is contaminating. There are different areas that need concern, and it is hard to address them in just these few minutes.

Mr. KUCINICH. Well, I think you have probably covered that.

Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Kucinich.

Mrs. Chenoweth.

Mrs. CHENOWETH-HAGE. Mr. Kamenar, I want to, in my questions with you—and I can cite numerous cases, as can you, where large corporations and individuals have gotten away with fines, simply fines for much, much larger damage. I think of the Exxon Valdez case that was featured in the CNN clip, etc., just to begin with. But I also notice that EPA cited the Pennsylvania Department of Transportation for wetlands violations in Bucks County in March 1999. This was well after the Pozsgai case. At the time, EPA was seeking a fine from the Pennsylvania Department of Transportation for \$10,000.

Do you know if EPA ever cited PENDOT for illegally filling the part of Mr. Pozsgai's property condemned in the taking of August 24, 1973?

Mr. KAMENAR. I am afraid I don't have the answer to that question, since it deals with a local issue way after the case when I was involved. The Pozsgai daughters or maybe their counsel might have some information on that.

Ms. POZSGAI-KHOURY. As far as we know, the answer to that question is no, they have never.

Mrs. CHENOWETH-HAGE. The Pennsylvania Department of Transportation was never fined or cited?

Ms. POZSGAI-KHOURY. Never fined or cited or anything done on that property.

Mrs. CHENOWETH-HAGE. Amazing.

Maybe it is because they weren't Hungarian and didn't speak with an accent, I don't know.

But, Mr. Kamenar, can you explain why the Army Corps and the EPA used different methods of evaluation in determining wetlands, and do you have any idea as to why they apply separate and sometimes conflicting standards in making their determinations?

Mr. KAMENAR. Well, I think I responded to that in some regard to the chairman's question about the various agencies have concurrent jurisdiction, whether it is the Department of Agriculture and their swampbuster program, the Forest Service, the Corps or the EPA. Again, it seems that there is some conflict there, but the manual that they are supposed to be using and reading from the same sheet of music is the 1987 Wetland Delineation Manual. I would think that the next panel would have both of those witnesses from those agencies there, and maybe they can explain that better. But there is sometimes a conflicting definition, as well as conflicting definitions with State authorities.

Keep in mind that Pennsylvania State authorities also have wetland protection laws, as do many other States. So even if the Corps were to go out of business tomorrow, that does not mean our wetlands are going to be lost, because we do have local land use activities. They are of keen interest to State and local communities as well.

Mrs. CHENOWETH-HAGE. Mr. Kamenar, you indicated that recourse or restitution for this family is very, very limited, unless they file a takings case in the U.S. Court of Claims, and those cases, I know, cost millions of dollars. My husband is involved in one of them. But wouldn't you say that the city of Morrisville is somewhat liable for not maintaining their ditch when—isn't there an agreement here? I think it is in an exhibit, exhibit No. 40? I think there is an agreement that says—


[Exhibit 40 follows:]

IN THE COURT OF COMMON PLEAS OF  
BUCKS COUNTY, PENNSYLVANIA - CIVIL ACTION LAW

IN RE: CONDEMNATION BY THE : NO. TERM, 19  
COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF TRANSPORTATION, : 73 7780 24-4  
OF RIGHT OF WAY, FOR LEGISLATIVE :  
ROUTE 281 PARALLEL, SECTION :  
13C R/W AND LEGISLATIVE ROUTE :  
281, SECTION 18A R/W, LIMITED :  
ACCESS HIGHWAYS, IN THE BOROUGH :  
OF MORRISVILLE AND FALLS TOWN- :  
SHIP : EMINENT DOMAIN PROCEEDINGS - IN REM

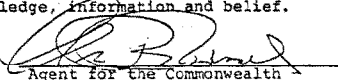
NOTICE OF CONDEMNATION

NOTICE IS HEREBY GIVEN that the Secretary of Transportation of the Commonwealth of Pennsylvania on Aug 24, 1973 filed a Declaration of Taking in the above named Court to the above term and number in an action to condemn the property described in Exhibits 1 thru 2 attached hereto and made a part hereof. The names of the owners of the property interests condemned are also contained in the said Exhibits.

  
Agent for the Commonwealth

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF Bucks : SS

Before me, the undersigned officer, personally appeared Charles R. Kisser, who being duly sworn according to law, deposes and says that he is authorized to and does make this affidavit on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the averments contained and set forth in the foregoing Notice of Condemnation are true and correct to the best of his knowledge, information and belief.

  
Agent for the Commonwealth

Sworn or affirmed and subscribed

Before me on AUG 24 1973

My Commission Expires: 1-1-74

Upon Recording Notice, mail to  
Legal Bureau  
Department of Transportation  
Harrisburg, Pennsylvania

D2099-295

COUNTY	Pucks
CORPORATION-TWP.	Falls Township
	Morrisville Borough
L.R. SEC.	281 Par 13C R/W
	281-12A R/W

**SCHEDULE OF CONDEMNED PROPERTY**  
(Declaration of Taking)

NO.	NAME, MAILING ADDRESS, PROPERTY INTEREST OF OWNER, AND LOCATION OF CONDEMNED PROPERTY	CLAIM NO.	PARCEL NO.	PLOT PLAN RECORDED IN
1.	<p>Frances Cassalia, (Mother &amp; Sons) Peter Cassalia &amp; Alan B. Cassalia</p> <p><u>Property Address:</u> West Bridge Street Morrisville, Pennsylvania</p> <p><u>Mailing Address:</u> Moreton Road &amp; Green Lane Huntingdon Valley, Pennsylvania 19006</p>	0907302	54	
2.	<p>Fred Joseph Brezina &amp; Esther Gladys Brezina, H/W &amp; Anthony Brezina</p> <p><u>Property Address:</u> U. S. Route # 1 Morrisville, Pennsylvania, 19067</p> <p><u>Mailing Address:</u> Same as above</p> <p>Golden Petroleum Co. (Tenant) Division of Puritan Oil Co., Inc.</p> <p><u>Mailing Address:</u> c/o Mr. Kenneth David, Manager 1601-H Hammer Street Levittown, Pennsylvania, 19053</p> <p>Jules Carcanague (Tenant)</p> <p><u>Mailing Address:</u> U. S. Route # 1 Morrisville, Pennsylvania, 19067</p>	0907289	41	
		0907289-01		
		0907289-02		

FOR EXHIBIT SEE

PLAN BOOK 113 p. 26+27

D2099-296

RIGHT-OF-WAY AGREEMENT

THIS AGREEMENT, made this 24 day of April, A.D., 1962, by and between JOHN D. FARBER and ROZE J. FARBER, his wife, of the City and County of Philadelphia and State of Pennsylvania, parties of the first part, (hereinafter called the Grantors)

AND

THE MUNICIPAL AUTHORITY OF THE BOROUGH OF MORRISVILLE, a body corporate and politic organized and existing under the Municipality Authorities Act of 1945, as amended, having its principal place of business in the Borough of Morrisville, County of Bucks and Commonwealth of Pennsylvania, party of the second part, (hereinafter called the Grantee),

## W I T N E S S E T H:

That, for and in consideration of the sum of \$345.00 to them in hand this day paid by the Grantee, the receipt whereof is hereby acknowledged, and intending to be legally bound, the said Grantors, have granted, bargained, released and sold, and by these presents, for themselves, their respective heirs, executors, administrators and assigns, do grant, bargain, release and sell unto the said Grantee, its successors and assigns, the free, uninterrupted and permanent right, liberty and privilege of constructing, operating and maintaining a sanitary sewer pipe line along and through so much of the property of the Grantors as is located and shown on a certain plan attached hereto and made a part hereof and which said right-of-way is more particularly

D1651-167

T-8785  
TA 113081

Planned  
#11216

bounded and described as follows, to wit:

ALL THAT CERTAIN piece of ground or right-of-way situate in the Borough of Morrisville, Bucks County, Pennsylvania, belonging to John D. Farber and Roze J. Farber, his wife, as shown on a plan prepared by Albright & Friel, Inc., Consulting Engineers, Philadelphia, Pennsylvania, dated June 29, 1955, attached and made a part hereto, bounded and described as follows:

BEGINNING at a point in the Southerly side line of Woodland Avenue (60' wide), said point being located a distance of 351.96 feet measured North 54° 03' East along the said Southerly side line of Woodland Avenue from the Easterly side line of South Lafayette Street (60' wide).

THENCE extending along the said Southerly side line of Woodland Avenue North 54° 03' East a distance of 21.65 feet to a point.

THENCE extending through the land of John D. Farber and Roze J. Farber, his wife, South 82° 06' East a distance of 54.33 feet to a point in line dividing lands of John D. Farber, et ux, from lands of the Pennsylvania Department of Forest and Waters (Delaware Division Canal).

THENCE extending along the line dividing lands of John D. Farber, et ux, and lands of the Pennsylvania Department of Forest and Waters (Delaware Division Canal) South 0° 43' West a distance of 15.12 feet to a point.

THENCE extending through the land of John D. Farber, et ux, along a line parallel to and 15.00 feet Southerly from the second described course North 82° 06' West a distance of 18.00 feet to a point.

THENCE continuing through the land of John D. Farber, et ux, South 2° 24' West a distance of 329.4 feet to a point in the Northerly side line of McKinley Avenue (60' wide).

THENCE extending along the Northerly side line of McKinley Avenue South 54° 03' West a distance of 25.50 feet to a point.

THENCE extending through the lands of John D. Farber, et ux, along a line parallel to and 20.00 feet Northerly from the fifth described course North 54° 03' East a distance of 356.65 feet to a point.

THENCE continuing through the land of John D. Farber, et ux, along a line parallel to and 15.00 feet Southerly from the second described course North 82° 06' West a distance of 33.74 feet to point and place of BEGINNING.



INTENDING to describe a 15 feet wide right-of-way through the land of John D. Farber and Roze J. Farber, his wife, for the construction and maintenance of a sanitary sewer extending from the land of the Pennsylvania Department of Forest and Waters to Woodland Avenue and a 20 feet wide right-of-way extending from McKinley Avenue to the above mentioned 15 feet wide right-of-way.

TOGETHER with the perpetual right of ingress, egress and regress to the said Grantee, its successors and assigns, to and along the said right-of-way above defined, for the purpose of constructing, renewing, replacing, repairing and maintaining the said sanitary sewer pipe line, or any part thereof, at any and all times and seasons.

That the said Grantors do also grant unto the said Grantee, its successors and assigns, a temporary forty feet wide right-of-way through said property, the center line of which shall be located as shown for the aforementioned permanent right-of-way, to be used by the Grantee, its contractors, agents, servants and employees in and about and during the construction of the said sanitary sewer pipe line therein.

That the said Grantors further grant unto the said Grantee, its successors and assigns, the further right to remove and/or trim any and all trees and/or shrubbery which may be growing in the line of the said right-of-way and to remove any and all other obstructions which may be in the same.

That, in consideration of the grant hereinbefore defined, the Grantee hereby covenants and agrees with the Grantors, their heirs, executors, administrators and assigns, as follows:

1. That Grantee will at all times, now and

hereafter save and indemnify the Grantors of and from any and all loss or damage which may be sustained by the Grantors by reason of construction, operation, maintenance, repair or replacement of the aforementioned sanitary sewer-pipe line through their said property, including damage or injury done or occasioned to persons or property of any kind.

2. The said Grantee shall construct, operate and maintain its said sanitary sewer-pipe line in a workmanlike manner, in accordance with modern and approved practices, and with a minimum of interference to the Grantors in the use of their said property.

This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, and the benefits thereof shall inure to the same.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals and the said party of the second part has caused to be affixed hereto its corporate name and seal duly signed and attested by its proper officers, the day and year first above written.

Signed, sealed and delivered in the presence of:

Charles R. D. Giff

Lawrence J. Martin

Myrtice Adams

Attest: Charles R. D. Giff  
Secretary

Myrtice Adams (L.S.)

John S. Johnson (L.S.)

THE MUNICIPAL AUTHORITY OF  
THE BOROUGH OF MORRISVILLE

By: James E. Brown  
Chairman

D1651-170

Mr. KAMENAR. Again, there may be some avenue for some kind of contributory negligence, what have you. There is a general principle of nuisance law that if you cause a nuisance to somebody else's property, causing it to be flooded or what have you, you can sue them for the damage to your property. When that nuisance is being done by the governmental entity that floods your property, if there is a road next to your property that the Department of Transportation has built up and, because of that, water runs off on your property and floods your basement, you may have a takings case against that, because the water has occupied your land.

So I am not sure exactly—

Ms. POZSGAI-HEATER. We do have a 1962 right-of-way agreement from Morrisville, the township, which gave the prior owners \$345 for the promise forever to keep a storm drainage ditch and to construct the pipe to maintain it, and it was never maintained.

Mrs. CHENOWETH-HAGE. Well, that is very interesting.

I see my time is up, but, Mr. Chairman, if I might just ask one more question?

Mr. BURTON. Go ahead.

Mrs. CHENOWETH-HAGE. I would like to ask Victoria to just sort of recount for the committee, because we are not trying to retry the case, but why did you come to my office one more time? Would you explain the ongoing harassment that has been occurring?

Ms. POZSGAI-KHOURY. Madam Chairman, we needed an answer. We tried and tried for over a decade to work with the Army Corps and the EPA to ask for information. They refused to even allow us the application. They blocked us in every way. They had lawyers and engineers available to them on their payroll. We were a simple family, a small business. We couldn't financially compete in the courtroom. We showed them the truth; we walked, touring several site visits. This is a stormwater drainage ditch. We scratched the insignia off of the wall. We crawled through the pipes. We did everything to show them what was our situation, but they refused to listen to us, and we had nowhere else to turn. I went to every U.S. Senator's office in the early 1990's, and I asked for help, and I went to every Congressman's office that I could bear. It took about 11 consecutive days. I tried to do a commutation plea to President Bush. We collected 15,000 petitions. People continually call us and ask us what do they do in their situation, and I have nowhere to turn but here and to plead with you to help us and to make some kind of comprehensive private property relief for our family and for the many families who do not have a sponge and who do not have a wetland that is truly, truly valuable, but something that has been misdesignated and delineated in the property owner's own blood. This has to be addressed somewhere. We thank you.

Mrs. CHENOWETH-HAGE. Mr. Chairman, I would like to just call your attention to exhibit No. 1. It is a letter to you in response to the questions that you asked the Army Corps of Engineers about the contacts that they have had with the Pozsgai family since Mr. Pozsgai was released from prison. And the Corps did indicate here on page 2 that over the last 6 years, they have had 38 contacts with the Pozsgais. So it just goes on and on and on. And that is the reason why I asked you to hold this hearing.

[Exhibit 1 follows:]



DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

7 JUN 2000

REPLY TO  
ATTENTION OF:

Office of Chief Counsel

Honorable Dan Burton  
Chairman  
Committee on Government Reform  
and Oversight  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Burton:

This is in response to your letter of May 23, 2000, addressed to Lieutenant General Joe N. Ballard (USA), the Chief of Engineers, concerning Mr. John Pozsgai of Morrisville, Pennsylvania. Because the Headquarters of the U.S. Army Corps of Engineers has had no direct involvement with Mr. Pozsgai, the following response is based entirely on information provided by the U.S. Army Corps of Engineers, Philadelphia District.

As noted in your letter, Mr. Pozsgai was convicted, in a criminal enforcement case, of violating Sections 301 and 309 of the Clean Water Act (CWA) in 1989. Mr. Pozsgai's violations of the CWA resulted from the unpermitted discharges of fill material into waters of the United States located on Mr. Pozsgai's property. The illegal discharges were made either by Mr. Pozsgai or by other persons acting under Mr. Pozsgai's instructions and with his full consent.

As an initial matter, I have inferred from your letter that you may be under the impression that the U.S. Army Corps of Engineers ("Corps") had some involvement in the criminal prosecution of Mr. Pozsgai. In fact, the criminal action taken against Mr. Pozsgai was based solely on a referral from the U.S. Environmental Protection Agency (EPA) to the United States Attorney for the Eastern District of Pennsylvania. The Corps took no part in the decision making process leading to the criminal indictment, and was unaware of any contemplated criminal action against Mr. Pozsgai prior to his indictment. The Corps of Engineers has no first-hand or reliable information relating to the criminal prosecution of Mr. Pozsgai. Therefore, to the extent that some of your questions concern the criminal prosecution of Mr. Pozsgai, I suggest that you address those questions to the U.S. Environmental Protection Agency, the U.S. Attorney for the Eastern District of Pennsylvania, and the U.S. Department of Justice (DOJ).

The following statement is a brief summary of the Corps' involvement with Mr. Pozsgai. The Corps' Philadelphia District repeatedly warned Mr. Pozsgai, both orally



and in writing, in 1987 that his continued unpermitted filling of wetlands on his property in Morrisville, Pennsylvania, was a violation of the Clean Water Act. Mr. Pozsgai's illegal destruction of approximately five acres of wetlands and his refusal to stop illegal filling activities left the Corps no choice but to request that the DOJ bring a civil enforcement action against him, to stop his continued illegal filling of wetlands and to compel him to restore those wetlands. On August 24, 1988, the U.S. Attorney's Office served Mr. Pozsgai with a Temporary Restraining Order issued by the Federal District Court. The Order directed Mr. Pozsgai to immediately cease filling the wetlands on his property. This Order was ignored by Mr. Pozsgai, who continued to fill wetlands illegally for an additional nine days. Ultimately, in 1990, after two preliminary hearings, a contempt order, a preliminary injunction, and a final hearing, the District Court entered a civil judgment against Mr. Pozsgai and two of the companies that Mr. Pozsgai had encouraged to dump demolition debris into wetlands on his property. The preliminary injunction enjoined any further filling, and ordered restoration of the destroyed wetlands.

Your letter appears to express concerns that the Corps' involvement with Mr. Pozsgai since 1990 in some way could have been inappropriate. Let me assure you that the Corps' involvement with Mr. Pozsgai since 1990 has focused strictly on two issues: 1) completion of the wetland restoration ordered by the District Court; and 2) notifying Mr. Pozsgai of additional Clean Water Act violations on his property resulting from his continued illegal filling activities. In both of these endeavors, the Corps has shown remarkable restraint and has attempted to work with Mr. Pozsgai in order to achieve compliance with the Court ordered restoration, and to remedy Mr. Pozsgai's additional violations of the CWA that have occurred since 1990.

#### ANSWERS TO SPECIFIC QUESTIONS

**1. Was Mr. Pozsgai's case ever officially closed? If not, why not?**

No. The civil case has not been closed, because the Court ordered restoration of the site has not been completed. The Corps is unaware of the status of the criminal case, with which the Corps has never been involved.

**2. How often has the Corps inquired into the Pozsgai matter, by contacting Mr. Pozsgai, since the end of Mr. Pozsgai's imprisonment.**

In the past six years the Corps has had a total of 38 contacts with Mr. Pozsgai and/or his attorney, David Sowerbutts.

**3. Specifically, why is Mr. Pozsgai's case considered currently open? Why has the United States Army Corps of Engineers continued to conduct an investigation into Mr. Pozsgai after a period of thirteen years?**

See, Answer to 1, above. Additionally, the Corps attempts to investigate all

unauthorized discharges of dredged or fill material into waters of the United States, to the extent that the Corps' available resources allow that. To the extent that Mr. Pozsgai continues to conduct unauthorized activities, the Corps must continue to investigate them.

**4. Has the U.S. Army Corps of Engineers ever informed Mr. Pozsgai that there would be regular inspections of his property even though there were no seeming violations of the Clean Water Act?**

There have never been regular inspections of Mr. Pozsgai's property; therefore, there has never been a need to inform him that there would be regular inspections of his property. However, the premise of this question is incorrect, because Mr. Pozsgai has continued to violate the Clean Water Act, both with new, unpermitted discharges of dredged or fill material, and by refusing to comply with the District Court's restoration order.

**5. How many other environmental investigations of individual private citizens have taken as long as Mr. Pozsgai's.**

The Corps does not track "length of investigations"; therefore, it is not possible for us to accurately answer this question. However, it should be noted that the Philadelphia District has an extremely small Regulatory Branch staff in relation to the large number of Section 404, Clean Water Act, violations within the District. Thus, it is not unusual for violations to take many years to resolve, since Corps staff can devote only limited time to each violation.

**6. In the past thirteen years, how many individual private citizens has the Corps investigated to the same extent as Mr. Pozsgai?**

The Corps attempts to investigate every CWA Section 404 violation to the extent necessary to achieve an appropriate resolution of the case. I do not know of any other person who has refused to comply with the mandates of the Federal Courts and of the CWA for as long as, or as persistently as, Mr. Pozsgai. Consequently, I am not aware of any citizen who has been investigated to the same extent as Mr. Pozsgai. Nevertheless, I have no records available to me that would enable me to provide a definitive answer to this question.

**7. Provide a complete list of private individuals who were sentenced to more time in federal prison than Mr. Pozsgai for the same type of crimes.**

As a general rule, the Corps does not recommend or instigate criminal enforcement actions to enforce the CWA. The Corps does not have available any records that would enable me to answer this question. The Corps is not aware of how many criminal prosecutions the DOJ has brought for violations of Sections 301 and 309 of the Clean Water Act, or for violations of any other Federal environmental law. If such data is available, it is most likely kept by the U.S. Department of Justice.

**8. In the past thirteen years, how many corporate polluters who violated the Clean Water Act to a similar or greater extent than Mr. Pozsgai has the Corps investigated? Provide a complete list of these corporate polluters, a list of their violations of the Clean Water Act, and subsequent actions taken against them.**

The Corps shares responsibility with the EPA for only one of many programs that exist within the framework of the Clean Water Act (that is, the Corps and EPA jointly administer the CWA Section 404 program). Concerning the CWA Section 404 program, the Corps does not differentiate between corporations and individuals in investigating Section 404 violations, nor, as noted in response to question 5, does it track length of investigations. Consequently, the Corps has no data available that would enable me to answer this question.

**9. In the past thirteen years, how many polluters, corporate violators or private citizens, have been sentenced under the new federal sentencing guidelines. Provide a list of all convictions differentiating between corporate violators and private citizens.**

See, answer to questions 7 and 8, above.

**10. Provide a list of all these corporate polluters who were sentenced to more time in prison than Mr. Pozsgai.**

See, answer to question 7 and 8, above.

**11. Provide any and all photos that were entered into evidence during Mr. Pozsgai's trial.**

The criminal prosecution of Mr. Pozsgai and the trial were conducted by the U.S. Attorney for the Eastern District of Pennsylvania and the U.S. Environmental Protection Agency. All evidence used in that trial would likely be in the possession of one of those agencies, or with the U.S. District Court for the Eastern District of Pennsylvania. The Corps does not possess the documents that you have requested in this question.

**12. Provide any stereoscopic evidence used in determining the hydric content of soils.**

See, answer to question 11, above.

**13. Can stereoscopic cameras be used to determine the hydric content of soils?**

To the best of our knowledge, the answer to this question is "no".

**14. Provide any and all maps used to determine whether Mr. Pozsgai violated the Clean Water Act.**

See, answer to question 11, above.

**15. Provide any and all photos and maps that have been taken or made since the time of Mr. Pozsgai's trial and imprisonment.**

The Corps' Philadelphia District office is currently retrieving and copying this information for you. The District office will provide the information directly to you as soon as it is available. If you have any question about the documents referenced in this question, please contact Mr. Barry Gale, Esq., of the Office of the District Counsel, Philadelphia District. His telephone number is (215) 656-6528.

**16. Provide solid documentation that Mr. Pozsgai's land does indeed intersect waters of the United States as defined by the Clean Water Act.**

A portion of Mr. Pozsgai's property consists of wetlands, as defined by Corps regulations at 33 CFR 328.3(b). Those wetlands are adjacent to a tributary to the Pennsylvania Canal. The Pennsylvania Canal flows into the Delaware River. Waters of the United States are defined by the Corps to include wetlands that are adjacent to tributaries of navigable waters. 33 CFR 328.3(a)(7). The maps being provided in response to question 15 will document the relationship between the wetlands on Mr. Pozsgai's property and the Pennsylvania Canal and the Delaware River.

**17. Provide copies of all internal procedures used in investigating Mr. Pozsgai.**

The procedure for investigating Section 404 violations is set forth at 33 CFR part 326 and the Philadelphia District Enforcement "Blue Book". [attached].

**18. Provide copies of all internal correspondence, both paper and electronic, within the last year relating to Mr. Pozsgai's case before the U.S. Army Corps of Engineers.**

These documents will be included with the information that will be provided in response to question 15.

**19. Does the U.S. Army Corps of Engineers conduct regular overflights of Mr. Pozsgai's property? If so, does it conduct the same type of overflights for the rest of Morrisville?**

The Corps has never conducted regular overflights of Mr. Pozsgai's property. The Philadelphia District, on infrequent occasions, conducts overflights in general geographic regions. If such a flight was in the vicinity of the Pozsgai property, it is likely that the flight would photograph the Pozsgai property in order to document the extent of illegal activities on the site. In addition, the Pennsylvania Department of Environmental Protection conducts an overflight of the Delaware River corridor once every two years. The Corps participates in these flights, and would likely photograph the Pozsgai site during these flights for the same reasons noted above.



**20. Provide all memos and internal correspondence, both paper and electronic, that address Mr. Pozsgai's case prior to his conviction.**

All memos and internal correspondence related to Mr. Pozsgai's criminal conviction would be in the possession of either the U.S. Attorneys Office or the U.S. Environmental Protection Agency, as noted above.

**21. Provide the precise methodology used to determine the boundaries of the wetlands versus non-wetlands on Mr. John Pozsgai's site (Tax Parcel 13-28-83).**

The precise methodology for determining wetland boundaries is set forth in the Corps' Wetland Delineation Manual, Technical Report Y-87-1, January 1987. That Manual is a lengthy technical document, used by all Federal agencies to delineate wetlands. The following are possible sources for the Manual:

Location for hard copies of 1987 Wetlands Delineation Manual:

**NTIS (National Technical Information Services)  
U S Dept of Commerce  
Springfield, VA 22161  
800-553-6847  
Cost: \$59.50**

**In the alternative, the Manual can be downloaded from the Internet, as follows:**

Internet address for "pdf" file of 1987 Wetlands Delineation Manual (WRP-Y-87-1)

**"http://www.wes.army.mil/el/wetlands/wlpubs.html"**

**22. Provide a detailed estimate of money spent on conducting oversight on Mr. Pozsgai's property since his conviction of violations of the Clean Water Act.**

The Corps does not track its costs or time in conducting any particular individual investigation. Therefore, I have no way to accurately answer this question.

**23. Provide a list of violators of the Clean Water Act who have been cited for impacting .005 acres, or less, of waters of the United States.**


The Corps does not track violations of the CWA based on their size. Therefore, there is no way to accurately answer this question. However, one might infer from this question that you believe that Mr. Pozsgai's Section 404 violations have filled or adversely affected less than .005 acres of waters of the United States. In fact, the cumulative adverse effects of all of Mr. Pozsgai's multiple violations of the CWA are approximately five acres of waters of the United States.

**24. Provide a list of all individual cases where the violator of the Clean Water Act was cited for removing trash left on property that resulted in impacts upon waters of the United States.**

The removal of trash from waters of the United States ordinarily would not constitute a violation of the CWA. Consequently, the Corps would not bring an enforcement action for the mere removal of trash from waters of the United States. I do not believe that the Corps has ever contemplated bringing any enforcement action against Mr. Pozsgai for the mere removal of trash from any part of his property, including the wetlands on his property.

I hope that the information provided above has been responsive to your questions. As stated above, the Corps' Philadelphia District will send you the additional documents that you have requested, as soon as they have been copied. My point of contact for this matter is Lance D. Wood, whose telephone number is (202) 761-8556.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert M. Andersen", written in a cursive style.

Robert M. Andersen  
Chief Counsel

Mr. BURTON. We will talk to the Corps of Engineers and the EPA in just a few minutes about that.

Mr. Sanford.

Mr. SANFORD. Thank you, Mr. Chairman.

I guess my first question would be to Ms. Andria. If I heard your testimony right, fundamentally what I heard was, when we looked at that map that showed the blue and the red lines, was it fundamentally what you are arguing in the bottomland issue is that there are basically pieces of land that should not be basically developed, for lack of a—if I was to catch it all, that would be basically what you are saying, right?

Ms. ANDRIA. That is correct.

Mr. SANFORD. My question is this, though: The nature of this debate is how do we do something about it? One way is regulatory; in other words, let's regulate wetlands so that we prevent that from happening, and there is a question about the degree to which that is appropriate. The other is to look at market-based incentives. What I find interesting is when you look at that gridwork that you were showing, which I think was east of St. Louis, what is interesting to me is are there water or sewer lines that are laid in that territory that frankly help a developer to go out and develop the land?

Ms. ANDRIA. The sewer lines, we have applied—asked for WRDA to try to assess, have the Corps assess the sewer lines and all of the problems.

Mr. SANFORD. My question is surely for houses to go in, water and sewer is laid in, because you don't turn on the ground to get water. Do every one of these houses have an individual well?

Ms. ANDRIA. I wish I could say, Congressman, that, yes, indeed, the houses do not go in until there is adequate sewers to take them. That is not the case.

Mr. SANFORD. I am not saying adequate. I am saying are there water and sewer lines out there in any of these neighborhoods?

Ms. ANDRIA. Are there water and sewer lines? Yes.

Mr. SANFORD. If you look at one of the appropriations bills that we are going through right now, what you would see are special earmarks, projects within the Federal budget that, frankly, work toward developing those areas that you don't think should be developed. In other words, I just use that as an example. If we eliminate some of the earmarks, probably you wouldn't see that land being developed. That would be one way of getting at the problem.

All of these houses have Federal flood insurance, correct? You are in a Federal floodplain; you have flood insurance?

Ms. ANDRIA. I don't believe everybody has flood insurance.

Mr. SANFORD. You are right, not everyone. But in most of these areas there is a Federal subsidy that helps to create the—in other words, the risk—in other words, lowers the risk so that one can build a house in these neighborhoods. So I just find it fascinating that if the Federal Government is against development in these wetland areas or these bottoms which you are legitimately arguing, we have Federal policy that works in the opposite direction, either through appropriation bills that would provide water and sewer grants for these neighborhoods, or with Federal flood insurance so that you subsidize the risk of developing in these areas.

So we have a convoluted, confused policy not only from the standpoint of wetland policy itself, but, frankly, from the standpoint of one hand doing one thing with the Federal Government and another hand doing another. So I wanted to make that one point.

Two, I wanted to refer to, I guess, Mr. Kamenar or Ms. Dudley, in that as I understand it, this problem is about to grow worse, because as I understand it, the EPA—historically, point source pollution has been handled basically through EPA, and nonpoint source pollution has been handled at the State government level. As I understand it, EPA is contemplating a decision or maybe unilaterally acted on a decision wherein forestry or agricultural practices for the first time would be caught up in this whole tragic level of confusion that the Pozsgai family was in; you would now see that with farmers. Is that true, or could you elaborate, either one of you?

Mr. KAMENAR. I would like to take a stab at that. I think what you are referring to are the recent efforts by the EPA to regulate nonpoint sources of pollution through their—

Mr. SANFORD. Mind you I had an EPA person come in my office. I said, would you define “pollutant,” and it was dirt. In other words, it was simply runoff by the side of—let’s say, of a mountain out West. It was dirt, and they were going to exempt all Federal policies—all Federal lands, even though the government owned about 80 percent of the land in the West, and the largest pollutant was dirt.

Mr. KAMENAR. The sediment that comes down. There is a court case pending right now in the Ninth Circuit called *Pronslino v. Marcus*. It is a challenge to the EPA’s authority to regulate basically nonpoint source on the Garcia River where there is only nonpoint sources of pollution, namely agriculture, silviculture and so forth.

There is another court case in the D.C. circuit here that is pending, challenging that whole TMDL program that the EPA is trying to come up with.

But you are right, there is this problem of the various kinds of ways that the agencies are trying to control the pollution through the point source and nonpoint source, and you are quite right that it is a mixed policy.

Mr. SANFORD. Do you have anything to add? In particular, I would as well ask if you could elaborate a little bit more on some of our market-based ideas in solving the dilemma that this family is in.

Ms. DUDLEY. Yes, you are right. TMDL is the total maximum daily load rule that the EPA just issued, I think, in May, or maybe later. It does the same thing that the Corps has done in March with the nationwide permits, where it takes what are very local decisions, local issues, and requires reporting to a Federal bureaucracy, so that all of these decisions have to be made at the Federal level. I think that not only are market incentives going to be more effective, as we have seen with wetlands, but also State and local controls are going to be more effective due to the very nature of local decisions.

Mr. SANFORD. Could you elaborate just a little bit further, though? In your testimony you referred to some market-based ideas. Give me an example of those.

Ms. DUDLEY. The Department of Agriculture and the Fish and Wildlife Service both offer incentive payments to landowners who protect their wetlands. I mentioned briefly that there may be an imbalance between the social value of the wetland and the private value. So when a landowner examines his own tradeoffs, it may make sense to fill a wetland that actually has social values, like Ms. Andria talked about. But the solution to that does not seem to be regulating at the Federal level, because we have seen, both from what Ms. Andria has talked about and what the Pozsgais are talking about, it is just not working. So you have a situation where large developers, who have big resources and can offer mitigation or do other things, are able to develop wetlands, whereas people like the Pozsgais can't.

Mr. SANFORD. Speaking of which, could somebody elaborate on the difference between what Ms. Andria, I think, is very legitimately raising, which is do you want to build a house in an entire floodplain, versus the isolated wetlands perhaps that you will see in coastal South Carolina wherein literally every 50 feet there will be a different little inundation, and it is defined as a wetland in the same way the Congaree River Basin is defined as a wetland. I think the two are very, very different. Could either of you comment on that?

Ms. DUDLEY. I will be very brief. I think it goes back to what you said in your opening statement, that one size does not fit all, and wetlands really range from what our vision of a wetland is to something like the Pozsgais' tire pile. That is why I think that the one-size standard isn't working.

Mr. KAMENAR. Just to reiterate that point, the definition of "wetland" that the Corps has, it doesn't matter what the functions or values are of that wetland in order for it to be categorized as such. That kind of a wetland is regulated the same way, with the same kind of muscle from the Corps, regardless of the value. Now, it may come into play when they are trying to do mitigation, etc., but clearly this piece of property that the Pozsgais had had very low ecological value; there is no wildlife habitat and things of that nature. They claim there was some stormwater damage, as if it were some kind of a sponge; but you can always mitigate that by putting a retention pond on your property, which I think is something that the Corps did not let Mr. Pozsgai consider.

Mr. SANFORD. I see my time is up, Mr. Chairman.

Mr. BURTON. If Members would like to ask further questions of this panel, we have extended the time for the hearing, so we will be glad to do that.

If you want to go ahead right now, or we can come back to you after we recognize Mrs. Biggert.

Mrs. Biggert, you are recognized.

Mrs. BIGGERT. Thank you, Mr. Chairman.

Ms. Dudley, does current law—you were talking about the incentives—does current law prevent or prohibit a landowner from going into or enrolling his or her land in an incentive program if he or

she have been previously said to have violated the wetland laws and regulations?

Ms. DUDLEY. I don't know the answer to that. Do you?

Mr. KAMENAR. No, I don't.

Ms. DUDLEY. I am sorry.

Mrs. BIGGERT. OK. Then to Mr. Kamenar, are either of you—do you know how many land—property owners have been affected each year by the Federal wetlands policy regulations? We keep talking about all of these stories and things, but—

Mr. KAMENAR. I don't have the figures here, but I do know that the Corps, I think—in their testimony I thought I saw this morning they have a list of the number of thousands of permits that have been applied for and granted, and there are both general permits and individual permits, and this is all being changed with these new nationwide permits and so forth. So there are quite a few, and it is just going to get worse, because the Nationwide Permit 26 that Mr. Pozsgai had on his property, which allowed him to fill up to 10 acres, has now been abolished. Now it is really down to a half acre of land, and if you are going to impact one-tenth of an acre of your property, like putting in a swingset or something in your backyard, you have to give prenotification to the Corps of Engineers.

So I can only see this problem getting worse and a lot more costly and a lot more Pozsgai cases coming down the pike.

Mrs. BIGGERT. Do you think that the Corps of Engineers should perform a cost assessment evaluation to determine how proposed regulation, wetland regulation, would affect private owners?

Mr. KAMENAR. That has got to be the best suggestion that I have ever heard. That is absolutely crucial because what the Corps does now, this is a freebie, off-the-books regulation of private property. I would think that one thing that would be very beneficial is that the Corps would have to estimate what is the value of the property, the market value, that we are taking from this property owner, where we say you can't develop your property; because that in itself will reveal who is bearing the cost for this sponge. Why should the private property owner bear the cost of this sponge that's supposedly benefiting the whole community? For the Corps and the EPA, there is not a penny out of their budget.

Although the Congress has appropriated money to the government agencies to purchase wetlands, they are doing it through the back door, on the cheap, by not having any cost factor apply to them. To them, it doesn't matter whether this is a low-value wetland or a high-value rare calcareous fen or bog. To them, they are equivalent because there is no cost. If you make them start paying out of their budgets and itemizing it, then you will start seeing priorities being established here.

Ms. DUDLEY. Very briefly, the Corps did do an analysis of the cost of their nationwide permit provisions, and I think that that was a very useful thing to do, and it actually led them to reduce the burdens of that rule. They did not look at the benefits, which I think is the one missing piece. They need to look at the benefits as well as the costs.

Mr. KAMENAR. The administrative costs or the cost of the property?

Ms. DUDLEY. Not the cost of the property.

Mrs. BIGGERT. Do you have a further comment?

Mr. KAMENAR. I would say that those costs are the administrative costs, both direct and indirect cost. What is not really being factored in here is the loss to the value of the person's property, the market value of their property by all of this.

Mrs. BIGGERT. So that would actually specify what that market value was before?

Mr. KAMENAR. That's correct. I believe there was some legislation a few Congresses back where there was going to be at least a requirement that the Corps come up with a number, and that if it came to more than 50 percent of the value of the property, just compensation would be due, rather than having to spend 8 to 10 years in the court of claims trying to figure out, you know, how much of your property has been taken. It is too costly to litigate so it is never done. There needs to be something that is done in a more fair manner to the property owner.

Mrs. BIGGERT. One last question. You had also talked about some of the unwarranted criminal enforcement actions taken in the wetland cases. Do you think that the government has too much discretion in this area?

Mr. KAMENAR. I think they certainly do. Keep in mind that under the Clean Water Act, the government can use three kinds of enforcement powers. They can use administrative penalties before an administrative law judge and get class 1, class 2 penalties. They can file a civil lawsuit in Federal court; and finally, for the worst-case scenario, they would have the option to use criminal penalties.

I have seen in my practice that it is totally arbitrary which one of those three the Corps, the EPA and the Department of Justice will use. You can see cases where there is an administrative penalty, a \$10,000 fine, where valuable wetlands were intentionally filled, and you see cases like Mr. Pozsgai and Ocie Mills, where they—especially in Ocie Mills' case where they went straight to criminal penalties. They didn't even begin civil penalties, at least as they tried to start in Mr. Pozsgai's case.

So there is entirely too much discretion there. There needs to be some uniform policy on how the Justice Department and EPA and the Corps use those various three levels of options.

Mrs. BIGGERT. Then the appeals process, too?

Mr. KAMENAR. The appeals process, that is just a recently enacted provision that allows the property owner to challenge administratively the delineation of your property.

Heretofore, the court would not allow you to take the Corps of Engineers to court to challenge their delineation. You had to actually violate the law, risk the government picking one of those three choices against you, and then defending yourself in court, saying this is not a wetland, or the Corps doesn't have commerce jurisdiction—commerce clause jurisdiction on my property. So it was only until a few months ago that that procedure has been put in place. It is too early to tell whether that's been effective yet.

Mrs. BIGGERT. Thank you.

Thank you, Mr. Chairman.

Mr. BURTON. Let me just ask a question regarding the legal expenses that the Pozsgais had to go through. Do you think if there

had been some kind of an ombudsman at the EPA and the Corps of Engineers, where people like them that have legitimate complaints and legitimate questions, if they could go to an ombudsman rather than have to go out and hire a lawyer on their own, do you think that might be one possible solution to streamlining this procedure and maybe eliminating these kinds of problems?

Mr. KAMENAR. I think that's a very good suggestion. Our foundation, of course, offered our services pro bono to the Pozsgais at the appellate level.

Mr. BURTON. I know, but they went to the primary with an attorney.

Mr. KAMENAR. That's right. They had to hire local attorneys, local engineers and so forth. That's a very expensive process for property owners that own just a small parcel of land, and I think that the Corps could have some kind of an ombudsman or some kind of a mediator that should be able to deal with these small property owners who just have one parcel. They don't have the funds to hire high-priced attorneys, like developers do, and consultants, who can pass that cost on into the development itself. Here they have to eat whatever costs that they incur.

Mr. BURTON. I understand. If there was an ombudsman, they could explain the legal ramifications of the problem as they came up, rather than—

Mr. KAMENAR. Sure.

Mr. BURTON [continuing]. End up with a tragedy like Mr. Pozsgai's family went into.

I am going to yield the rest of my time to Mrs. Chenoweth.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Chairman.

Victoria, I wanted to ask you about your father's arrest. I know that's a very difficult time to recall, but in my opening statement I got sort of carried away and talked about the fact that I do remember, I believe, your telling me that the family didn't have any weapons in their home, but that's sort of like hearsay.

So I wonder if you could attest to that?

Mr. BURTON. Would the gentlelady yield real quickly?

Mrs. CHENOWETH-HAGE. Yes.

Mr. BURTON. Did the law enforcement agencies that came into your house have a search warrant?

Ms. POZSGAI-KHOURY. No, they did not.

Mr. BURTON. Was your father—on what basis did they come in and search your house?

Ms. POZSGAI-KHOURY. During the arraignment, they specified as part of his release that I had to give them a \$1,000 check for bail and to allow my father's property, our home and our vehicles, to be searched for unspecified firearms.

Mr. BURTON. OK. Well, I would like to have more information on that because if there was unlawful entry into your home without a proper search warrant, you may have recourse through the courts for restitution for invasion of your privacy. Even if you—I don't know what State—what State?

Ms. POZSGAI-KHOURY. Pennsylvania.

Mr. BURTON. I think in Pennsylvania you have the right to have a firearm in your home, and unless there is some reason to believe that a felony has been committed, and they don't have a search



warrant, they cannot enter your premises without a search warrant. So you might talk to your legal representatives to find out if they entered illegally, that you may have some recourse in the courts for—in some kind of civil action.

Ms. POZSGAI-KHOURY. Thank you.

Mr. BURTON. I thank the gentlelady.

Mrs. CHENOWETH-HAGE. Victoria, I would like for you to look at exhibit No. 49. I wonder if we can pull it up. On page 5, I think that—Chris, if you could point to the section in the guidelines that clearly state that any searches that occur should happen at the time of arrest—did this search occur at the time of arrest or did they make a search?

[Exhibit 49 follows:]

## ARREST POWERS POLICY AND PROCEDURES

ARREST POLICIES AND APPROVAL PROCEDURES

In environmental criminal cases, charges will normally be initiated by indictment or information, followed thereafter by the voluntary appearance of the named defendants for arraignment and trial where necessary.

Arrests will be necessary in a certain portion of the Agency's cases, either to prevent ongoing criminal activity or to bring the defendant before the appropriate tribunal to answer charges. In these situations, procedures delineated below will be observed by Special Agents of the Criminal Enforcement Division.

Approval Procedures

Whenever possible, arrests will be made after referral of the case to the Justice Department and pursuant to an arrest warrant. Accordingly, most arrests will be made with the prior approval of a Federal magistrate and an Assistant United States Attorney in the Federal District where the offense will be prosecuted. Approval for the warrant application will also be given by the SAIC.

Absent exigent circumstances, an arrest warrant must be obtained to arrest a person in a private home. In most circuits, a search warrant is not necessary where the arrest is to be made in the suspect's own home. However, if an agent seeks to arrest a defendant in the home of a third party, absent consent or exigent circumstances, it will be necessary to obtain a search warrant in addition to the arrest warrant in order to enter the premises to make the arrest. A warrantless arrest may be made in a "hot pursuit" situation if the following three elements are present: (1) probable cause to arrest, (2) probable cause to believe that the defendant is inside the particular premises and (3) an urgent need for immediate police action (next paragraph).

Warrantless arrests are legally permissible for felonies and for misdemeanors committed in the presence of the Special Agent. However, it shall be the policy of this Agency that warrantless arrests shall be made only in exceptional circumstances and when demanded by the exigencies of the situation. Such circumstances would include the need to prevent an assault on a Special Agent or others or the need to prevent illegal pollution activity that threatens immediate risk of human endangerment or substantial and irreversible environmental contamination. Notification of the arrest will be given to the SAIC, who,



in turn, will notify the Assistant Director, OCI, as soon as possible after the arrest.

Where a warrantless arrest is made, the responsible Special Agent will prepare a report of the arrest within 2 working days on EPA Form 2720-9 (Report of Investigation). A referral package will be prepared and processed through the normal referral review mechanisms within 10 days thereafter.

#### PROCEDURES AND PRACTICES DURING ARRESTS

##### General

Where possible, the SAIC will personally supervise arrests. When this is not feasible, arrests will be supervised by an experienced Special Agent.

The reaction of a person being placed under arrest may vary widely. He or she may submit peacefully, attempt to flee, resist arrest or even attempt to commit suicide. Special Agents must be prepared for any of these eventualities in approaching an arrest situation. They are expected to be firm and to take all precautions necessary to ensure the safety of themselves, the prisoner and others who may be involved.

Because the experience level of the investigative staff of EPA's Criminal Enforcement Division is high, this section will not address basic "how-to" considerations that might be required for a less experienced staff. Rather, it will focus on procedures in which consistency on a national level is crucial to the implementation of a professional program.

##### Arrests Pursuant to Warrant

There are two forms of warrants for the arrest of Federal law violators: Magistrate's warrants, issued by United States Magistrates, and bench warrants, issued by the clerk of the United States District Court on an order of a district judge. Rule 4 of the FRCP details procedures for the application, issuance, execution and return of arrest warrants. It is the responsibility of the Special Agent to be familiar with the requirements of this Rule. Rule 4(d)(1) of the FRCP specifies that arrest warrants may be executed by federal officers "authorized by law". This would include Special Agents of the Office of Criminal Investigations. In general, arrest warrants issued as a result of an investigation by OCI should be executed by OCI Special Agents.

The Special Agent's regular duties include the swearing out of complaints before a Magistrate and of affidavits in support of complaints. The purpose of the complaint and its supporting affidavits is to enable the Magistrate to determine whether the

probable cause required to support the issuance of an arrest warrant (or a summons) exists. Under Rule 4(b) of the FRCP, the finding of probable cause may be based upon hearsay evidence in whole or in part. The form of the warrant (or the summons) is specified in Rule 4(c) of the FRCP.

Where the situation so requires, EPA may also make joint arrests in conjunction with the U.S. Marshals or State or local authorities. Special consideration should be given to alerting local authorities in instances where resistance may logically be anticipated, in order to avoid confusion or confrontation between officers. Of course, the need for absolute confidentiality during preparations for an arrest is a consideration of paramount importance.

The Special Agent should ensure that all persons participating in the arrest are thoroughly briefed on the circumstances, including but not limited to the description of the person to be arrested, any criminal record, any evidence of violent behavior, any information indicating that the individual is armed and dangerous, the nature of the offense and EPA policy governing the use of firearms. The arresting Special Agent should include general details of the briefing in the subsequent report of arrest.

The person arrested should be aware of the legal authority of the arresting agent. Accordingly, it is the responsibility of the agent to identify himself or herself both through a display of credentials and a clear, audible announcement of identity ("Federal Agent" or "Officer") and the purpose, immediately prior to the arrest. Arresting agents should also carry their badges in a readily accessible location so as to allow immediate display if challenged.

Where time permits and the arrest will in no way be jeopardized, the arresting Special Agents should have the warrant of arrest in their possession in order that it may be exhibited to the subject. Where this is not practical, arresting agents need not have the arrest warrant in their possession at the time of the arrest, but upon request they shall show the warrant to the defendant as soon as possible (Rule 4(d)(3) of the FRCP). In addition, the Special Agent will orally inform the person under arrest of the charges against him as soon as practicable. An arrest warrant (or a summons) may be executed at any place within the jurisdiction of the United States (Rule 4(d)(2) of the FRCP). Therefore, when a warrant has been issued and is outstanding, it is unnecessary to file another complaint in another jurisdiction for the same offense.

When a Special Agent has probable cause to believe that a person is the subject of an outstanding arrest warrant for an environmental offense committed in another district, or that such person is a fugitive following indictment in another district for such an offense, the Special Agent will arrest the person and proceed in accordance with Rule 40 of the FRCP pertaining to removal.

#### Service of Summons

In most environmental cases, charges will be initiated by the filing of an information (in the case of misdemeanors) or an indictment (in the case of felonies and/or misdemeanors), rather than by the making of an arrest. Based on these charges, either a summons or an arrest warrant may issue (Rule 9 of the FRCP).

A summons shall be served upon the defendant by delivering a copy to him personally, by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the defendant's last known address. A summons to a corporation shall be served by delivering a copy to an officer, a managing or general agent, or any other agent authorized by appointment of law to receive service of process. If the agent is one authorized by statute to receive service and the statute so allows, the summons may also be served by mailing a copy to the corporation's last known address within the district or at its principal place of business elsewhere in the United States.

A natural defendant is expected to surrender himself when a summons for his appearance is served upon him. If the defendant does not comply with the summons, a warrant will be issued (Rule 9(a) of FRCP).

#### Use of Force

Special Agents will use whatever force is reasonable and necessary to make an arrest. The Special Agent will not resort to the use of firearms to prevent a subject's escape unless there is reasonable cause to believe that the fleeing person poses an immediate threat to the life of the agent or others. Only necessary force will be used. As with a citizen, the use of force in self defense by a Special Agent is generally justified when a cautious and prudent person would believe that life is in jeopardy or bodily harm is imminent.

Absent exigent circumstances, forcible entry to make an arrest may be used only where the Special Agent has probable cause to believe that the defendant is inside the premises, the Special Agent has an arrest warrant, and all other means of gaining access have been frustrated. Special Agents seeking to

make an arrest of a person within premises must first announce their authority (i.e., "Federal Agent") and purpose in an audible, distinctive manner and wait a "reasonable time" for the door to open. "Reasonable time" will depend on the facts and circumstances of each case. It is generally considered to be that amount of time necessary to reach the door from the furthest part of the premises.

This general rule does not apply in situations where there is danger to the Special Agent or another person, danger of flight or destruction of evidence, or in "hot pursuit" situations where Special Agents have pursued the suspect into the dwelling.

#### Search Incident to Arrest

At the time of arrest, Special Agents should conduct a search of the area within the defendant's immediate custody and control for weapons, means of escape and evidence. In joint arrests, this search should be conducted by the Special Agent of the EPA. During this search, caution will be exercised by Special Agents coming into immediate contact with the defendant(s). The Special Agents' firearms will be safeguarded at all times.

A more thorough search of the defendant will be conducted as soon thereafter as possible, normally in the place of local detention. This search should include a bodily search of the defendant and a thorough examination of every article of clothing. When a body search of a prisoner is conducted, the search should be performed by a Special Agent of the same sex as the defendant or by an official of the same sex as the defendant. If neither is available, a trustworthy adult of the same sex as the defendant should be requested to be present during the search.

Property seized during any search incident to arrest shall be inventoried and a copy of the inventory will be initialed by the prisoner. If the prisoner refuses to initial the inventory, a witness to the search should be asked to sign.

#### Arrests for Violations Outside EPA Jurisdiction

A Special Agent who makes an arrest for a federal offense for which he or she does not have statutory arrest authority, makes a citizen's arrest. In the absence of a federal arrest statute, the law of the state in which the arrest took place will control. Unless the law of the state in question confers peace officer status upon federal agents, the arrest will be judged by the standards which apply to citizen's arrests. Special Agents should also read and become familiar with the section on citizen arrest authority contained in the legal guidance on law enforcement powers which has been prepared by the CED legal staff.

Where a Special Agent makes an arrest for a violation outside EPA's jurisdiction, the agent must immediately turn the suspect over to the appropriate federal, state or local law enforcement agency. In such a situation, immediate notification will be given to the SAIC, who will, in turn, notify the Assistant Director, OGI. A complete written report of the incident will be submitted on EPA Form 2720-9 to the SAIC within 2 days of the arrest.

#### Transportation of Prisoners

Prisoners will normally be transported in EPA vehicles. If specially equipped vehicles such as police vans or caged vehicles are available, these should be used in lieu of the EPA vehicle.

Whenever possible, two Special Agents should be present to transport a prisoner in an EPA vehicle. When a prisoner is transported in the presence of two Special Agents, the prisoner should be placed in the right rear seat of the vehicle. The second Special Agent will sit directly behind the driver and, if armed, will wear his or her weapon on the left side away from the prisoner. Where the prisoner is accompanied by three Special Agents, the prisoner will be placed in the rear seat between two agents.

In making arrests, Special Agents will be expected to employ those proper restraints deemed necessary in the exercise of good judgment. Generally, handcuffs will be worn behind the prisoner for trips of short duration, and in front for longer trips. This rule will vary, however, depending on considerations such as the number of Special Agents present, the physique and stature of the arrested person, evidence of violent behavior, known arrest record or lack thereof, and standing of the person in the community. When a person is handcuffed to the front, a belt holding hands to the body should be used in order to eliminate the use of the handcuffs as a weapon.

In all arrest situations, the prisoner will be transported directly, and without detour, to a location for processing, a federally approved confinement facility or to appear before a U.S. Magistrate. Further, where a warrantless arrest has been made, the United States Attorney or a designated Assistant United States Attorney will be contacted immediately for authorization of prosecution and to arrange for a hearing before the nearest U.S. Magistrate in accordance with Rule 5(a) of the FRCP.

Female prisoners should not be transported without an accompanying female law enforcement officer. If this is impossible, arresting Special Agents should ensure that the SAIC or, in his or her absence another responsible official, is aware of the time of departure and the time of arrival at the destination.

As a last resort, prisoners may be transported by public transportation. Special Agents must familiarize themselves completely with special regulations that apply to transportation of prisoners on public conveyances.

After the initial appearance before a U.S. Magistrate, the transportation of persons under arrest becomes the responsibility of the U.S. Marshals Service. It is the responsibility of the SAIC to have a clear understanding with the U.S. Marshal offices within his or her jurisdiction on the procedures to be followed.

As a general rule, the transportation of prisoner by air will be the responsibility of the U.S. Marshals Service. However, in the rare instances where a Special Agent is required to transport a prisoner by air, the agent must review the most current regulations and procedures promulgated by the Federal Aviation Administration and the particular air carrier(s) in question concerning the transportation of prisoners aboard scheduled airlines. Special Agents should also review the procedures for transporting firearms aboard a commercial aircraft.

Transportation of a prisoner aboard a commercial aircraft should be coordinated with the airline as far in advance as possible. At a minimum, the following security precautions will be followed:

- a. Whenever possible, at least two Special Agents should be assigned to escort duty.
- b. The prisoner will be thoroughly searched before the flight to ensure that there is no article on or about the prisoner's person which could be used as a weapon.
- c. The prisoner and accompanying Special Agents should board before and deplane after any other passengers.
- d. Special Agents will keep the prisoner under constant surveillance while on the aircraft.
- e. Absolutely no alcoholic beverages will be consumed by either the prisoner or the Special Agents.

#### Processing Prisoners

As soon as practicable in the arrest procedure, Special Agents will process the prisoner to obtain a personal history statement, fingerprints (to be taken on FBI Form FD 249, Arrest and Fingerprint Card), and any statements the prisoner may wish to make. A defendant's statement--beyond information necessary for the personal history form--will be taken after administration of Miranda rights. Agents will also complete FBI Form R-84,



Final Disposition Report. Only the left side of this form will be completed prior to final disposition of the case.

A query will be made of the National Crime Information Index (NCIC) on each person arrested by EPA. This query will be the responsibility of the arresting Special Agent and should be made prior to the prisoner's release. Results of the query should be shown on EPA Form 2720-9, Report of Investigation.

Each person arrested will be photographed in color, full face and profile. The official photograph should be taken with a negative-producing camera. An identification card (mug board) containing the case number will be placed below the defendant's face. The photograph should be taken against a blank wall with no EPA equipment or materials in view. The photograph should be pasted--not stapled--to the fingerprint card.

#### Medical Attention for Prisoners

When any person in custody complains of sickness or ill health, or where such condition is reasonably apparent to Special Agents present, arrangements should be made to afford such persons emergency medical attention without delay. If it becomes necessary for a prisoner to spend time confined to a hospital, prompt arrangements should be made with the U.S. Marshals Service, when possible, to ensure an appropriate security detail for the duration of the stay.

#### Initial Appearance Before Magistrates

When an arrest has been made, the Special Agent must take the prisoner, without unnecessary delay, before the nearest available U.S. Magistrate or other officer empowered to commit persons charged with offenses against the laws of the United States. When circumstances prevent an immediate hearing, as where the arrest is made at night or on a Sunday, the Special Agent may take the prisoner to an approved detention facility. Detention will last no longer than absolutely necessary. Special Agents are authorized to testify at the commitment or preliminary hearing and, in the absence of the U. S. Attorney or an Assistant U. S. Attorney, to represent the United States government for the purpose of having the offender held for a grand jury.

The Special Agent's responsibility for custody of the prisoner normally terminates when the Magistrate releases the prisoner on bail for the action of the grand jury or when the Magistrate commits the prisoner to jail for failure to post bond. However, when the prisoner cannot post bond and no U.S. Marshal is present at the hearing, the Special Agent will deliver the prisoner to the nearest authorized detention facility.

Ms. POZSGAI-KHOURY. They came after they arrested my father. We didn't even know who had arrested my father. A group of agents had come into our place of business and basically shanghaied him and took him off to the Philadelphia courthouse. He was never permitted to wash his hands, tell his wife, call us or make any type of call.

Basically, my mother had an employee come running in the house and said someone had grabbed your father. I called the local police, the State police. I asked them if they had known. No one knew. But we had this civil court case pending in Philadelphia, so I had called them and they had basically told me that the Army Corps had turned over our case to the EPA and that now my father was being criminally sued.

So I managed to get there during the arraignment, in which they informed me my—I informed them I had yet to find a civil attorney, and they basically informed me that I didn't need one, just bring a blank check.

I did that. We went to the arraignment. They insisted that we allow them to search our home. We testified under oath—again we told them anyway, we knew that we did not own firearms, or that we would turn them over as they requested. They basically forced us to agree to the search.

I had brought my dad home, and the EPA agents subsequently searched our home. They went through everything, all of our paperwork, our drawers, in search of weapons, and left when they didn't find any.

Mrs. CHENOWETH-HAGE. I would like to also call the committee's attention to exhibit No. 28 and then exhibit No. 29.

[Exhibits 28 and 29 follow:]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED

SEP 28 1988

## BAIL STATUS SHEET

MAGISTRATE: ☐ LEOMPORRA  
☐ POWERS  
☐ NAYTHONS  
☐ SCUDERI  
☒ HALL

UNITED STATES OF AMERICA

DATE: 9-12-88 By: MICHAEL E. KUNZ, Clerk

Reported by: E. Recording  
Official Court ReporterSeth Weber, Esq.  
Asst. U.S. Atty.

Crim. No. 88-00450

vs.

or

FILED

SEP 29 1988 Mag. No. on Pre-Indictment

John Pozsgai  
DefendantBY: MICHAEL E. KUNZ, Clerk  
Dep. Clerk

Counsel for Defendant

After hearing held this day pursuant to the Federal Rules of Criminal Procedure, Rule 9 (c) (1), or after hearing held pursuant to defendant's motion, the bail status as to the above-named defendant is as follows:

\$ 10,000; 10% cash SET  
Bail is continued

Bail is reduced to \$

Other change or conditions: not transfer, encumber "Wetland" property pending completion of these proceedings; no contact w/ witness to include Sevrin and Y. Kaleyvich; not dump, bulldoze, or allow anyone to do same on wetland property; report to PITS for initial interview, and thereafter by phone once a week; surrender firearms and allow U.S. Marshal or EPA to search the defendant's residence and garage for weapons.  
By: HALL



CONSENT TO SEARCH

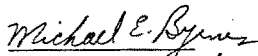

September 13, 1988  
Morrisville, Pa.

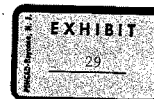
I, John Pozsgai, hereby authorize Monica A. Elodgett and Michael E. Byrnes, Special Agents of the U. S. Environmental Protection Agency, Office of Criminal Investigations, to conduct a complete search of my residence and business located on W. Bridge Street, Morrisville, Pa., as well as the property located in Falls Township, Bucks County, Pa., which I own, to search for any and all weapons in compliance with bail requirements set by U. S. Judge William F. Hall on September 12, 1988.

This written permission is being given by me to the above-named persons voluntarily and without threats or promises of any kind.

  
John Pozsgai

Witnesses:



Mr. BURTON. I will now yield to the gentlelady for her time.

Mrs. CHENOWETH-HAGE. Thank you. This is what they call a bail status sheet dated September 12, 1988. Is this the day that—can you remember, is this the day that you went to the Eastern District Court of Pennsylvania to try to get your father released on bail? Is this the date, September 12, 1988, do you remember?

Ms. POZSGAI-KHOURY. As far as I know, yes.

Mrs. CHENOWETH-HAGE. Would you look at the last two lines of the handprinted document? It looks there to me like the bail is contingent upon surrender of firearms, and allows U.S. Marshals or EPA to search the defendant's residence and garage for weapons.

Now, on September 13, there is a signed consent to search which says at the end of the first paragraph, I allow them to search for any and all weapons in compliance with bail requirements set by Judge William Hall on September 12, 1988.

Had you been advised ahead of time that anyone, the judge—was this an administrative judge?

Ms. POZSGAI-KHOURY. I am not sure, but the key is that this was not voluntary. They said if I—the release was contingent upon us agreeing to them—allowing to this search; I wouldn't be able to take my father home, and that was about 5 p.m. on a Friday. They would have held him all weekend until I agreed to allow them to search.

Mrs. CHENOWETH-HAGE. Mr. Chairman, this seems extraordinarily out of order with regards to the agency's own guidelines that the committee was presented with. Without objection, I would like to enter these exhibits into the record.

I would like to ask Gloria—I would like to have us turn to exhibit No. 64, the picture. It is a picture of a hole with some type of tube in it.

[Exhibit 64 follows:]



Ms. POZSGAI-HEATER. Exhibit No. 64 is the drainage—the sewer sanitary line that was placed in there back in 1934 by Morrisville Burrough. It is over 40 years old, and as a result of the excavation and the restoration of the Army Corps, we had mentioned the possibility of this old pipe caving in on another property across the street, and it eventually caved in.

Mrs. CHENOWETH-HAGE. Let me interrupt you, and let's also go to exhibit No. 65. I think it shows the tube in a little more detail.  
[Exhibit 65 follows:]





Ms. POZSGAI-HEATER. This is the storm sewer line, and that directly empties into the ditch on the property that they claimed was wetland.

Mrs. CHENOWETH-HAGE. So this is how the EPA and the Army Corps bootstrapped their jurisdiction into your property?

Ms. POZSGAI-HEATER. Right.

Mrs. CHENOWETH-HAGE. The dump that you acquired?

Ms. POZSGAI-HEATER. Yes.

Mrs. CHENOWETH-HAGE. They claimed this was a navigable stream?

Ms. POZSGAI-HEATER. Yes.

Mrs. CHENOWETH-HAGE. Was your father ever held in contempt—

Ms. POZSGAI-HEATER. Yes.

Mrs. CHENOWETH-HAGE [continuing]. In the court during the hearing?

Ms. POZSGAI-HEATER. Yes, at one point.

Mrs. CHENOWETH-HAGE. I wonder if we can show these pictures, and I will pass the other pictures around.

Now, I do want to say, wasn't your attorney disbarred?

Ms. POZSGAI-HEATER. He was not disbarred. He was reprimanded, and he was almost disbarred for drunken and disorderly conduct within a court presentation; not my present lawyer.

Mr. KAMENAR. Thank you.

Mrs. CHENOWETH-HAGE. Sorry about that.

Now, I understand that the judge said, in trying to prove that that was John Pozsgai on his property in that piece of equipment, that the judge said, "We know that's you in the video; we have the technology to blow it up and identify you."

Mr. Chairman, I would like to pass to you copies of these pictures of the video.

Now, since then, the video has been destroyed by the Department of Justice?

Ms. POZSGAI-HEATER. I defer that to my sister.

Mrs. CHENOWETH-HAGE. But to that allegation, isn't it true that when the judge said, "We know that's you in the video, we have the technology to blow it up and identify you," then your father responded, "I would like to see you do that"; isn't that correct?

Ms. POZSGAI-KHOURY. Yes, he did.

Mrs. CHENOWETH-HAGE. I would have said the same thing. And that, at that point, the judge held your father in contempt?

Ms. POZSGAI-KHOURY. Yes, he did.

Mrs. CHENOWETH-HAGE. Unfortunately, as I said earlier, the Department of Justice has somehow lost or displaced or destroyed the video. That's just another chapter in this dark book involving John Pozsgai.

I yield back the balance of my time.

Mr. BURTON. Mr. Sanford.

Mr. SANFORD. Yes, sir. Are any of you all familiar with a land planner by the name of, Andres Duany? It is currently talked about. It is called "smart growth." In fact, it is one of the things that Vice President Gore is talking about in his Presidential race and that is the issue of, "smart growth." It is really premised on what Andres Duany talked about, and that is the idea, if you look

at the old cities of the East Coast, if you look at Charleston, SC, if you look at Savannah, GA, if you look at Philadelphia or Boston, what you see there is a very tight grid of town streets very close to each other; not what you would see as the modern, "sprawl model," where you see roads and sewer lines laid out across the countryside and a house here and a house there.

Now, what Andres Duany talks about is if you build that way, you really destroy a lot less in the way of the environment because you are not building across a wide geographic area. And what I would like to suggest is, our current wetlands policy prevents that very kind of growth because rather than being able to build on a tight—in other words, the towns of Charleston, or Savannah, GA, could never be built today because you would have to skip a spot, go across, lay sewer line, lay water line, lay more pavement, all of which causes more environmental degradation, to be able—in other words, to build now versus the filling of different small wetlands and building a compact city.

So I would like to, one, lay out the premise—for those of you not familiar with it, it is worth looking at—Andres Duany's work. It is fascinating work. It is called Neotraditional Town Planning. It is based on the idea of building on old, and it causes a lot less in the way of use of resources and use of land; but our current environmental policy, our current wetland policy, prevents that kind of development.

Two, I would like to—I guess, Mr. Kamenar, you talked about the commerce clause—well, before I get to that, let me lay out another important thing, though. When you talk about wetlands, I am not talking about Charleston destroying the Congaree River Basin. What I am talking about is a very—in other words, when we say wetland, I think we get confused about what wetland is.

I want to ask you, Mr. Kamenar, if you can look out and see no water on a piece of land, could it still be a wetland?

Mr. KAMENAR. Absolutely. In fact—

Mr. SANFORD. OK. Let me carry it a little further. If you can ride a bicycle across a piece of land, could it still be a wetland?

Mr. KAMENAR. Yes.

Mr. SANDERS. If you could get out—would you have to wear boots or waders if you were going to cross a, "wetland," or tennis shoes or go barefoot for that matter?

Mr. KAMENAR. Go barefoot, right.

Mr. SANFORD. OK. Could you run like a 35-ton tractor across the top of a wetland?

Mr. KAMENAR. Sure.

Mr. SANFORD. Could you run a 50-ton caterpillar D-8 across the top of a wetland?

Mr. KAMENAR. Absolutely.

Mr. SANDERS. I mean, if it was a wetland, I would think that a 50-ton machine would sink.

Mr. KAMENAR. You would think so.

Mr. SANFORD. In other words, that is precisely the problem we have in current environmental law. There is a—I mean, people think wetland and they think about Congaree River Basin; and yet the way that Charleston developed or Savannah developed 200 and

150 years ago, with little pockets, are very, very different than what I think a lot of people think in their minds as a wetland.

Toward that end, I think in your testimony you talked about the commerce clause. I had seen some strange interpretation of the commerce clause, such that the only way in which the EPA or other organizations use the commerce clause is by suggesting that ducks fly across State lines and therefore it makes it jurisdictional to the commerce clause. Could you elaborate on that just a little?

Mr. KAMENAR. Yes. That is exactly the case that is before the Supreme Court that is going to be argued on October 31st. The case is the Solid Waste Agency of Northern Cook County versus the Corps of Engineers, and the only assertion of jurisdiction over that wetland is that a migratory bird flies and lands on your property. We call it the "glancing duck" theory of interstate commerce.

Mr. SANDERS. Although in many of the wetlands I am describing, no duck could land; is that not correct?

Mr. KAMENAR. That's true. So, you know, the question is whether that is sufficient power for the Federal Government to regulate it, and the Supreme Court will finally get involved in that and it will have a big impact on not only wetland jurisdiction but also Endangered Species Act jurisdiction and so forth and so on. So it is a very important case.

The other part of the argument in the case is whether or not, even under the definition, the Corps' definition of wetlands, assuming they had commerce clause jurisdiction, is this a wetland under their own regulation?

Again, I go back to Riverside Bayview Homes where the Supreme Court said you can regulate: here is the open water; there is a continuum, and then you have the dry land. Where in this continuum is the wetland? The Supreme Court said, we will give that tie to the Corps of Engineers; we will give them the expertise.

They were only talking about wetlands adjacent to these open body of waters. What the Corps of Engineers did was take that decision and ran with it by going way inland where there is no adjacency at all. They start making up these hydrological connection-type of theories of jurisdiction to be sure they can get lower court decisions to buy into their power grab there. But I think the Supreme Court will also address that statutory definition issue as well.

Mr. BURTON. Mr. Sanford, if you like, we are going to have the Corps of Engineers and the EPA up here when we come back, we would love to have you come back because I know you probably have questions for them.

Mrs. Biggert, we have about 8 minutes.

Mrs. BIGGERT. I have just two short questions for Mr. Pozsgai's daughters.

Some have said that your father knew that the property was a wetland before he bought it. Before he bought it. Is that true?

Ms. POZSGAI-KHOURY. No.

Mrs. BIGGERT. That is not true.

Do you think that your property is a wetland?

Ms. POZSGAI-KHOURY. Absolutely not. No.

Ms. POZSGAI-HEATER. No.

Mrs. BIGGERT. Do you have any scientific findings that prove that your property is not a wetland?

Ms. POZSGAI-HEATER. Yes.

Mrs. BIGGERT. Could you state those?

Ms. POZSGAI-KHOURY. If I could just have a moment.

Dr. Kirkham's report. This was a soil scientist who we hired.

Mr. BURTON. Hold the microphone up closer to you and turn it on.

Ms. POZSGAI-KHOURY. It is on.

We had hired a soil scientist, Mr. Wendell Kirkham, and his soil scientist analysis on our property was that we have never had a wetlands, or that he could not find any wetlands parameters that have ever been scientifically proven in any court that existed on our property; and that's Exhibit 20.

Mrs. BIGGERT. Exhibit 20?

Ms. POZSGAI-KHOURY. Exhibit 20.

Mrs. BIGGERT. Could we put that in the record?

Mr. BURTON. Yes, we will put that in the record, and if you like we could recess now and we will come back and conclude with this panel and then go right to the EPA.

[Exhibit 20 follows:]

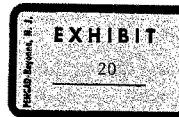
SOIL INVESTIGATION OF JOHN POZSGAI PROPERTY  
BLOCK 93, LOTS 4 AND 5  
FALLS TOWNSHIP, BUCKS COUNTY  
PENNSYLVANIA

June 29, 1991

PREPARED BY

PROFESSIONAL SOIL INVESTIGATIONS, INC.  
24 RITTENHOUSE CIRCLE  
FLEMINGTON, NEW JERSEY 08822  
PHONE: (908) 782-6228

Wendell C. Kirkham  
WENDELL C. KIRKHAM, CPSS/SC/SS



ENCLOSURE 3

## TABLE OF CONTENTS

	Page No.
Purpose of the Soil Investigation .....	1.
Field Investigation .....	2.
Soils .....	3.
Hydrology .....	5.
Summary and Conclusion .....	6.
 APPENDIX	
A. Soil Pit No. 1 .....	9.
Soil Pit No. 2 .....	10.
Soil Pit No. 3 .....	11.
Soil Pit No. 4 .....	12.
Soil Pit No. 5 .....	13.
Soil Pit No. 6 .....	14.
B. Soil Boring No. 1 .....	15.
Soil Boring No. 2 .....	16.
Soil Boring No. 3 .....	17.
C. Maps	
Figure 1. Soil Borings and pit Locations	
Figure 2. Soil Borings and Pit Locations	
Figure 3. Cross section of site showing fill area and water level	
Figure 4. Cross section of site showing fill area and water level	
D. Attachment, page 26 and 27 of Corp of Engineers Wetland Manual	
E. Laboratory Water Quality Test Results	
F. Photographs	
G. Resume	

**Purpose of the Soil Investigation**

To determine the nature of the undisturbed soil, its substratum and depth to free water, the extent of the fill material in specific areas of the site, the thickness and nature of the fill material on Block 93, Lots 4 and 5, (Tax partial 13028083) Falls Township, Bucks County, Pennsylvania. This investigative report includes the soil profile (soil log) descriptions and interpretations of the soil pits. Data was recorded by Wendell C. Kirkham, CPSS/SC/SS, June 10 and 11, 1991.

On June 11, 1991 Sam Reynolds of the Corp of Engineers, Philadelphia, Pennsylvania, Richard C. Shannon, Environmental Scientist and William S. Sneath, Chief Counsel, Pennsylvania Department of Environmental Resources inspected the pits, took notes of their observations and photographed the soil pits and surrounding area.

**Field Investigation**

On Monday, June 10, 1991, six soil pits were excavated in fill areas on Block 93, Lots 4 and 5 (Tax partial 13028083) in Falls Township, Bucks County Pennsylvania. Two soil pits were excavated in a fill area of undetermined age near the southeast corner of the property. The remaining four pits were dug in fill material south of West Bridge Street within 200 feet of the north property line.

In addition, three soil borings were made, in undisturbed soil areas, to determine the nature of the soil and to classify the soil profile into soil series and phase. The soil borings were evaluated along with the hydric soil criteria and the hydrology parameter for wetlands on this date and time of year. The approximate location of the soil pits and soil borings are shown on the attached map.



## Soils

The Bucks County Soil Survey Report shows this area mapped as DoA-Doylestown silt loam, 0 to 2 percent slopes and Ub-Urban land. The Doylestown series consists of deep, poorly drained, nearly level soils developed in argillite bedrock of the Lockatong Formation (Triassic).

Soil pits No. 1 and 2, in the southwest corner of the property, have approximately 24 to 28 inches of fill material over undisturbed soil of the Weeksville series (Figure 1). The weeksville soils have a thick very gray to very dark grayish brown surface silty clay loam horizon with a light gray loamy to sandy loam subsoil. The Weeksville soils have developed in thick sandy deposits of marine origin. Weeksville soils are hydric soils and appear on the National Hydric Soil List prepared by the National Technical Hydric Soil Committee.

The depth to saturation for pits 1 and 2 was measured to 66 and 71 inches from top of fill or 42 and 43 inches from the top of the undisturbed soil. The fill material was described as consisting of building debris, such as concrete and bricks with rounded river gravel, and cobbles forming the upper surface layer.

Soil pits 3, 4, 5 and 6, were dug in the northeast corner of the property (Figure 2). The pits were excavated to depth of free water or to the original soil surface. In Pit No. 3 water was encountered at approximately 42 inches from ground surface and the thickness of the fill material is of unknown depth but greater than five feet. The nature of the fill material is building and road debris to a depth of 28 inches. At 28 inches, there appears to be a distinct zone or root layer. Below 28 inches the fill consisted of bricks, concrete, planks, boards and buried woody debris. Foul smelling water was encountered at 42 inches and the pit filled with 1.5 feet of water. The stench was most pronounced and remained as long as the pit was open. An oily scum had developed on the water surface by Tuesday morning and was definitely obvious when the pits were inspected by the state and federal officials.

Pit No. 4 was dug to a depth of 48 inches and water was encountered at about 30 inches. An oily film developed on the water surface, however the stench was less pronounced. The fill material consisted of concrete, bricks, road debris, building debris, boards, logs, and other woody material and river gravel. No original surface soil was encountered at 4 feet.

Pit No. 5 was excavated to a depth of 5 feet. The fill material consisted of road debris, concrete, bricks, woody debris and buried lumber. Water entered the pit near the five foot depth and a small seepage area developed near the bottom along the north side of the pit. The original soil surface, which was very dark gray to black, was encountered at 5.5 feet. The color, texture and structure was similar to the surface horizon in Soil Boring No. 3 approximately 100 feet south of this pit. Water accumulated in the bottom of the pit after excavation but by Tuesday morning only moist soil was observed in the pit.

Pit No. 6 was excavated to a depth of 5 feet. The consistency of the fill material was road debris, concrete, bricks, rounded river gravel and buried scrap lumber. Water was encountered at about 36 inches. A pronounced oily film and stench was not obvious as seen in other pits. Fill material was encountered to the bottom of the pit and no evidence to original surface soil was observed.

Three soil borings were made in undisturbed soils in the eastern half of the property and each was classified as Weeksville series. Weeksville soils are classified as hydric soils and are included on the hydric soil list prepared by the National Technical Hydric Soils Committee.

## Hydrology

A zone of saturation was observed and recorded in pits 1 and 2 at a depth of 70 and 71 inches from ground surface. Two soil borings and a pipe reading, in the surrounding area, indicates a zone of saturation at 28 inches below ground surface in undisturbed soil (Weeksville) on June 11, 1991 (Figure 3).

Water levels in the four soil pits near Bridge Street ranged from 30 inches in Pit No. 4, 42 inches in Pit No. 3 and 36 inches in Pit No. 6. Pit No. 5 had no free water on June 11 and the depth to free water was recorded as more than 5 feet, however water entered the pit at approximately a 4.5 foot depth on the afternoon of June 10, but had percolated through the fill material by Tuesday morning.

Surface water was observed at the edge of the fill area south of Soil Pit No. 4. in undisturbed soil. Soil Boring No. 3, about 120 feet south of Soil Pit No. 4, was made in undisturbed soil. The water level in Soil Boring No. 3 was recorded at greater than 28 inches (Figure 4).

Storm water runoff enters the property at the northeast corner which flows south along the east property line. The channel turns west and follows the south property line approximately midway through the property. The ditch turns south and flows under Route 1. The estimated volume flowing from the storm sewers is less than 2 cfs. Runoff water enters the property along the west property line. This water enters a ditch that drains south to the Route 1 right-of-way and turns east and merges with the main ditch and flows under Route 1. The estimated volume of runoff water from this smaller ditch is about 1 cfs. This channel is almost filled with discarded automobile and truck tires.

## Summary and Conclusion

The extent and thickness of fill material surrounding Pits 1 and 2 in the southeast corner is about 2 feet in depth and consists of river gravel, bricks, concrete pipe, some wood and asphalt. The original soil horizons are clearly evident and old roots are easily observed in the A horizon of the original soil profile. The fill material appears to be of two different layers, the lower layer is primarily building debris while the surface layer is composed of rounded stones, gravel and road material. There is some evidence that the lower layer has been in place for a sufficient period of time to develop some soil structure, with movement of clay and silt particles along structure faces and fractures and a sparse vegetative cover. This evidence supports the concept that the southeast corner of the property was filled many years previous to the ownership of John Pozsgai. how thick

The fill material, in the area of pits 1 and 2, is compacted and roots are evident along rock faces. Some movement of fine earth can be seen along these cleavages. Soil development of this degree strongly suggests that the fill material has been in place several years. The old photographs, used by the Soil Conservation Service, to prepare the soil survey map shows a light area in this portion of the site. It appears that this area may have been filled more than 40 years ago when the railroad owned the property. Natural revegetation of the area would have occurred and woody vegetation would be expected to dominate the area being idle for forty years. This would strongly indicate that the light colored area did not have suitable site conditions for the growth of perennial vegetation such as shrub and tree species.

The thickness of fill material is greater than 5 feet in the areas around Pits 3, 4, 5 and 6. In some areas, the fill material rests directly over an original surface soil. In Pit 5, the original surface horizon is at a depth of nearly 5 feet and is described as a thick very dark gray to black horizon. The underlying soil would be classified as poorly drained and most likely would be hydric. The other Pits, 3, 4, and 6 did not reveal natural soil horizons to the depth excavated nor obvious vegetative layers. Consequently, the underlying soil material could not be identified. Water filled several pits to a depth of 1.5 feet or more and no attempt was made to extend the excavation to below the water level.

The nature of the water in these pits was foul smelling and believed to be contaminated with sewage effluent. An obvious oily film soon covered the surface of the water and the odor was offensive and detected by all observers. The water level in these pits was much higher than the water level in the undisturbed Weeksville soils, which occupy the lowest position in the landscape. The elevation of Pit No. 3 is approximately 47 feet with a water level at 42.5 feet elevation. Soil boring No. 3 is at 41 feet elevation and the depth to free water was at elevation 38.5 feet (Figure 4). The water level is 4 feet higher near West Bridge Street, which is most unusual. Water test results now confirm that the foul smelling water is high in coliform bacteria and that fecal coliform is also present in significant numbers (See Appendix A for laboratory test results). The test results strongly suggest a break in the sewer line or other means of waste water disposal. This would account for the elevated water level and the stench permeating the pit.

The undisturbed natural soil on this site meets the criteria for the Weeksville series and was mapped as Weeksville during the field mapping of the Bucks County Soil Survey by the USDA, Soil Conservation Service. Sometime during the preparation of the soil survey report, the soil mapping unit was changed to Doylestown. Both Weeksville and Doylestown are hydric soils (b2b) and appear on the Hydric Soil List prepared by the National Technical Hydric Soil Committee.

Soil borings in natural soil and soil pits excavated to natural soil material verify that the hydrology parameter for wetlands was not present at the time of the investigation and most likely will not meet the hydrology parameter criteria, free water at 18 inches below the surface, for the remainder of the growing season. The Corps of Engineers Wetland Delineation Manual, January 1987, requires that poorly drained hydric soils with permeability less than 6 in/hr must have a water table at 1.5 feet (see attached sheets).

Some free water was observed at the soil surface down slope of Soil Pit No. 4. This elevated water level, in my opinion, results from lateral movement of sewage down slope to the edge of the fill material. Consequently, the property is severely impacted by sewage effluent and elevated water levels due to unnatural causes. The suspected source of this contamination is the sewer line along West Bridge Street. Essentially, the fill material

serves as a filter field to renovate and improve the water quality as the sewage plume moves it laterally to the undisturbed soil area.

APPENDIX

BLOCK 93, LOTS 4 AND 5  
FALLS TOWNSHIP  
BUCKS COUNTY, NEW JERSEY  
JUNE 11, 1991

SOIL PIT NO. 1

0-24 INCHES, FILL MATERIAL, STONES, CONCRETE AND  
BRICKS; SURFACE LAYER PRIMARILY ROUNDED  
RIVER GRAVEL

24-40 INCHES, VERY DARK GRAY (10YR 4/1-3/1) OLD SURFACE  
HORIZON (A1); SILTY CLAY LOAM; COMMON DEAD  
ROOTS, MASSIVE STRUCTURE;

40-48 INCHES, LIGHT GRAY (10YR 6/1) LOAM TO SANDY LOAM;  
STRUCTURELESS; MARINE SEDIMENTS BOTTOM OF  
PIT.

AUGER HOLE TO 72 INCHES

48-72 INCHES, LIGHT GRAY (10YR 6/1-6/2) SANDY LOAM;  
STRUCTURELESS; WET TO VERY MOIST; 5 PERCENT  
ROUNDED GRAVEL.

NOTES: FREE WATER AT 66 INCHES.

GROUNDWATER AT 66 INCHES AFTER 3 HOURS.

MAPPED - DoA - DOYLETOWN SILT LOAM, 0 TO 2% SLOPES,

CLASSIFIES - WEEKSVILLE SILT LOAM, 0 TO 2% SLOPES.

*Typic Homagept* <sup>*plow - 16% slope*</sup> *Drainage class VP*  
*High water table 0 - 1.0 Dec-Mar*  
*Perm within 20" < 6.0 Hydric criteria 2B3*



SOIL PIT NO. 2

- 0-24 INCHES, FILL MATERIAL, UPPER PART PRIMARILY ROUNDED  
WATER WORKED GRAVEL OVER STONES, CONCRETE  
AND BRICKS AND OTHER BUILDING MATERIAL  
DEBRIS.
- 24-40 INCHES, BLACK (10YR 3/1) OLD SURFACE HORIZON (A1);  
SILTY CLAY LOAM; COMMON DEAD ROOTS, MASSIVE  
STRUCTURE;
- 40-83 INCHES, LIGHT GRAY (10YR 6/1) SANDY LOAM;  
STRUCTURELESS; MARINE SEDIMENTS; AUGER HOLE  
TO 83 INCHES

NOTES: FREE WATER AT 65 INCHES.

GROUNDWATER AT 65 INCHES AFTER 3 HOURS.

MAPPED - DoA - DOYLETOWN SILT LOAM, 0 TO 2% SLOPES,

CLASSIFIES - WEEKSVILLE SILT LOAM, 0 TO 2% SLOPES.

SOIL PIT NO. 3

0-28 INCHES, FILL MATERIAL, STONES, CONCRETE AND BRICKS  
AND ROAD MATERIALS.

28 INCHES, OLD ROOT LAYER.

28-60 INCHES, FILL MATERIAL, BRICK, STONES, CONCRETE,  
WOOD, BOARDS AND OTHER BUILDING MATERIAL  
DEBRIS.

NOTES: FREE WATER AT 42 INCHES.

GROUNDWATER AT 42 INCHES AFTER 24 HOURS.

STRONG SMELL OF SEWAGE, OILY FILM ON SURFACE.

MAPPED - DoA - DOYLETOWN SILT LOAM, 0 TO 2% SLOPES,

CLASSIFIES - WEEKSVILLE SILT LOAM, 0 TO 2% SLOPES.

SOIL PIT NO. 4

0-48 INCHES, FILL MATERIAL, STONES, CONCRETE, WOOD,  
BRICKS, AND ROAD MATERIALS.

NOTES: FREE WATER AT 30 INCHES.

GROUNDWATER AT 30 INCHES AFTER 24 HOURS.

STRONG SMELL OF SEWAGE, OILY FILM ON SURFACE.

MAPPED - Ub - URBAN LAND

CLASSIFIED - Ub - URBAN LAND, DISTURBED.

SOIL PIT NO. 5

0-55 INCHES, FILL MATERIAL, BRICKS, CONCRETE, LOGS,  
WOOD, STONES, BUILDING DEBRIS AND ROAD  
MATERIALS.

55-60 INCHES, BLACK (10YR 3/1) SILTY CLAY LOAM BURIED A  
HORIZON.

NOTES: WATER ENTERING PIT AT 55 INCHES.

GROUNDWATER BELOW 60 INCHES AFTER 24 HOURS.

MAPPED - DcA - DOYLETOWN SILT LOAM, 0 TO 2% SLOPES,

CLASSIFIES - Ub - URBAN LAND, DISTURBED.

SOIL PIT NO. 6

0-60 INCHES, FILL MATERIAL, STONES, CONCRETE AND BRICKS  
PLYWOOD AND ROAD MATERIALS.

NOTES: FREE WATER AT 36 INCHES.

GROUNDWATER AT 36 INCHES AFTER 24 HOURS.

SMELL OF SEWAGE FAINT.

MAPPED - DoA - DOYLETOWN SILT LOAM, 0 TO 2% SLOPES,

CLASSIFIES - Ub - URBAN LAND, DISTURBED.

SOIL BORING NO. 1

0-12 INCHES, VERY DARK GRAY (10YR 3/1) SILTY CLAY LOAM;  
GRANULAR STRUCTURE; VERY FRIABLE; COMMON  
ROOTS.

12-30+ INCHES, LIGHT GRAY (10YR 6/1) SANDY LOAM;  
WEAK SUBANGULAR BLOCKY STRUCTURE; VERY  
FRIABLE; 5 PERCENT ROUNDED GRAVEL BELOW 28  
INCHES.

NOTES: SATURATED AT 22 INCHES (CAPILLARY FRINGE)

GROUNDWATER AT 28 INCHES AFTER 24 HOURS.

MAPPED - DoA - DOYLETOWN SILT LOAM, 0 TO 2% SLOPES,

CLASSIFIES - WEEKSVILLE SILT LOAM, 0 TO 2% SLOPES.

SOIL BORING NO. 2

- 0-15 INCHES, DARK GRAYISH BROWN TO BROWN (10YR 4/2-4/3) LOAM; GRANULAR STRUCTURE; FRIABLE; COMMON ROOTS.
- 15-25 INCHES, VERY DARK GRAY (10YR 3/1) CLAY LOAM; WEAK SUBANGULAR STRUCTURE; FRIABLE; COMMON ROOTS.
- 25-40 INCHES, LIGHT GRAY (10YR 6/1) SANDY LOAM; WEAK BLOCKY STRUCTURE; VERY FRIABLE; 10 PERCENT ROUNDED GRAVEL BELOW 35 INCHES.

NOTES: SATURATED AT 32 INCHES (CAPILLARY FRINGE)

GROUNDWATER AT 40 INCHES AFTER 24 HOURS.

MAPPED - DoA - DOYLETOWN SILT LOAM, 0 TO 2% SLOPES,

CLASSIFIES - WEEKSVILLE SILT LOAM, 0 TO 2% SLOPES.

SOIL BORING NO. 3

0-12 INCHES, VERY DARK GRAY (10YR 3/1) GRAYISH BROWN  
SILTY CLAY LOAM; GRANULAR STRUCTURE;  
FRIABLE; COMMON ROOTS.

12-20 INCHES, GRAYISH BROWN (10YR 5/2) SANDY LOAM; WEAK  
SUBANGULAR BLOCKY STRUCTURE; FRIABLE;  
FEW ROOTS.

20-30 INCHES, LIGHT GRAY (10YR 6/1) SANDY LOAM;  
STRUCTURELESS; VERY FRIABLE; 5 PERCENT  
ROUNDED GRAVEL BELOW 30 INCHES.

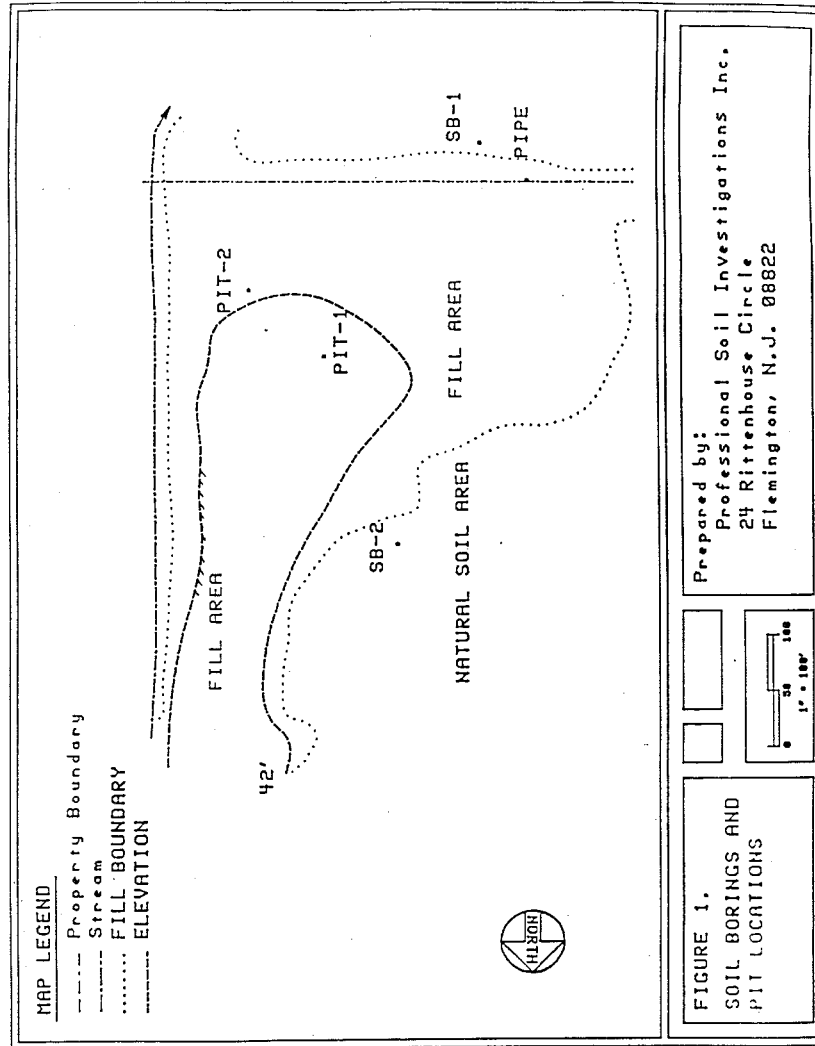
NOTES: MOIST AT 24 INCHES (CAPILLARY FRINGE)

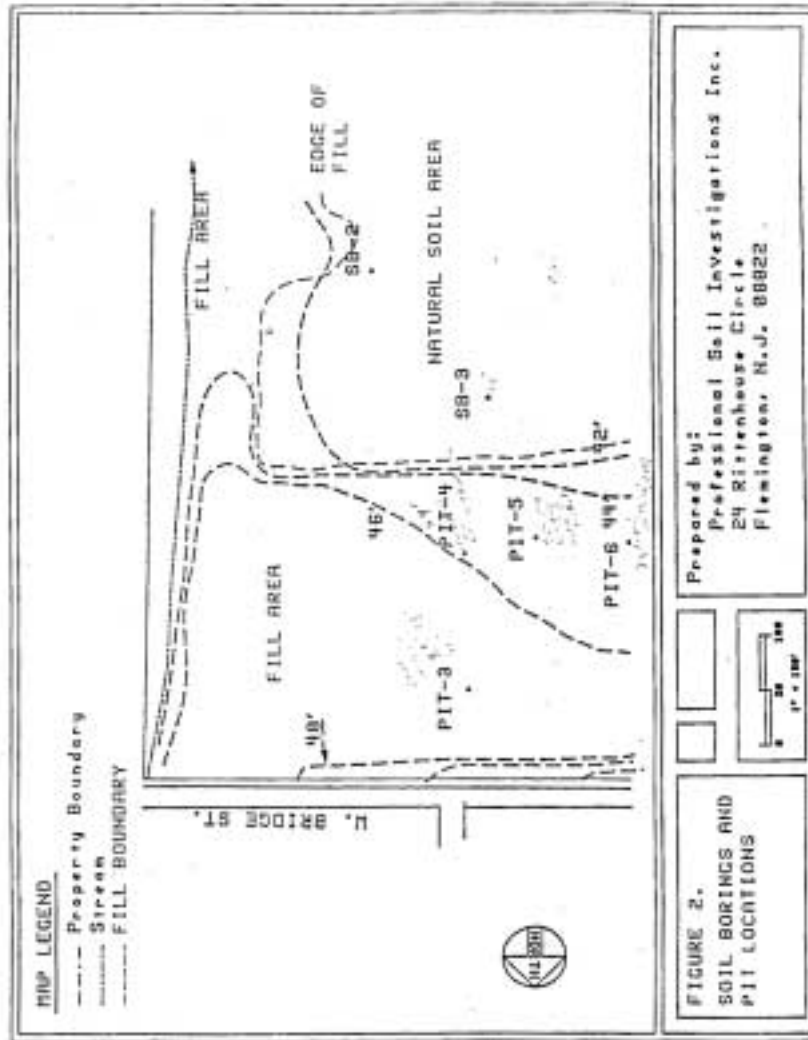
GROUNDWATER AT 28+ INCHES AFTER 24 HOURS.

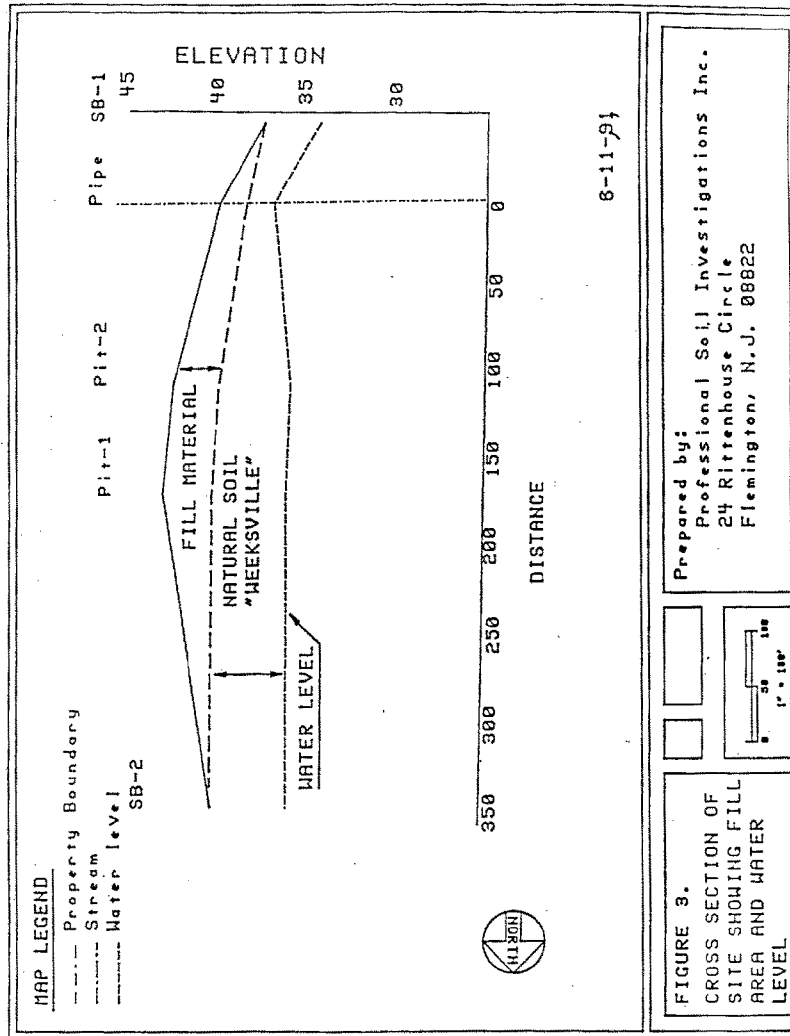
MAPPED - DoA - DOYLETOWN SILT LOAM, 0 TO 2% SLOPES,

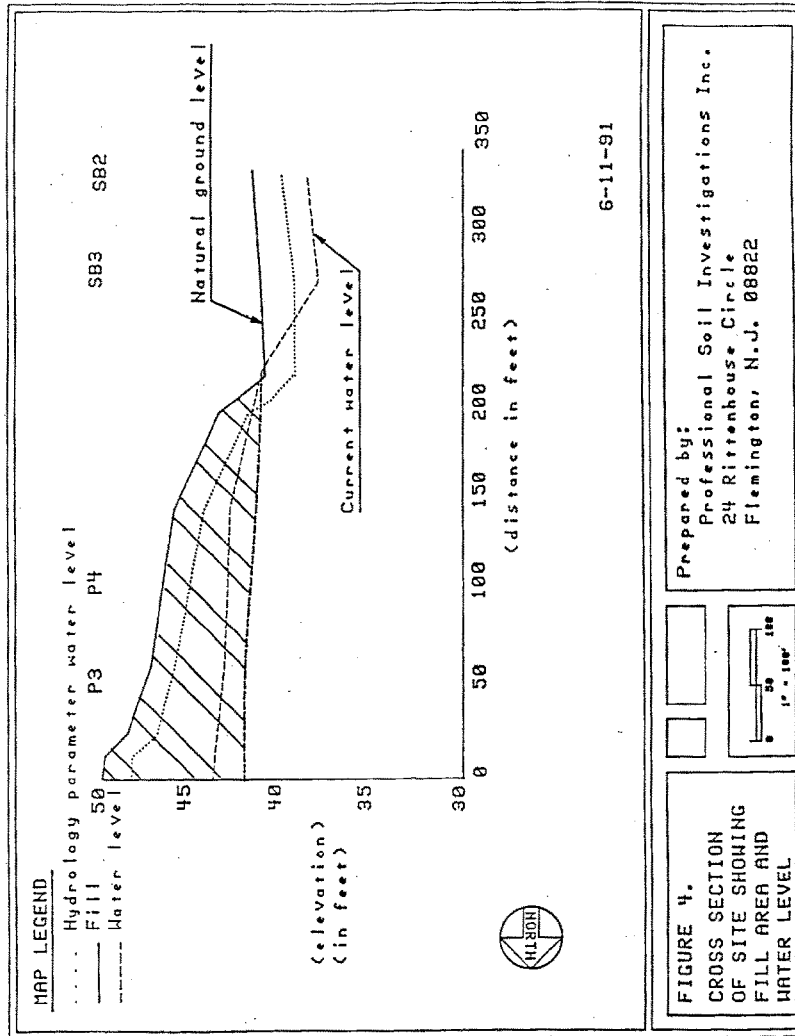
CLASSIFIES - WEEKSVILLE SILT LOAM, 0 TO 2% SLOPES.











- (4) Physiological adaptations. Physiological adaptations include any features of the metabolic processes of plants that make them particularly fitted for life in saturated soil conditions. *NOTE: It is impossible to detect the presence of physiological adaptations in plant species during onsite visits.* Physiological adaptations known for hydrophytic species and species known to exhibit these adaptations are listed and discussed in Appendix C, Section 3.
- (5) Reproductive adaptations. Some plant species have reproductive features that enable them to become established and grow in saturated soil conditions. Reproductive adaptations known for hydrophytic species are presented in Appendix C, Section 3.

#### Hydric Soils

##### Definition

36. A hydric soil is a soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation (US Department of Agriculture (USDA) Soil Conservation Service (SCS) 1985, as amended by the National Technical Committee for Hydric Soils (NTCHS) in December 1986).

##### Criteria for hydric soils

37. Based on the above definition, the NTCHS developed the following criteria for hydric soils:

- a. "All Histosols\* except Folists;
- b. Soils in Aquic suborders, Aquic subgroups, Albolls suborder, Salorthids great group, or Pell great groups of Vertisols that are:
  - (1) Somewhat poorly drained and have a water table less than 0.5 ft\*\* from the surface for a significant period (usually a week or more) during the growing season, or
  - (2) Poorly drained or very poorly drained and have either:
    - (a) A water table at less than 1.0 ft from the surface for a significant period (usually a week or more) during the growing season if permeability is equal to or greater than 6.0 in/hr in all layers within 20 inches; or

---

\* Soil nomenclature follows USDA-SCS (1975).

\*\* A table of factors for converting non-SI units of measurement to SI (metric) units is presented on page 4.

- \* (b) A water table at less than 1.5 ft from the surface for a significant period (usually a week or more) during the growing season if permeability is less than 6.0 in/hr in any layer within 20 inches; or
- c. Soils that are ponded for long or very long duration during the growing season; or
- d. Soils that are frequently flooded for long duration or very long duration during the growing season."

A hydric soil may be either drained or undrained, and a drained hydric soil may not continue to support hydrophytic vegetation. Therefore, not all areas having hydric soils will qualify as wetlands. Only when a hydric soil supports hydrophytic vegetation and the area has indicators of wetland hydrology may the soil be referred to as a "wetland" soil.

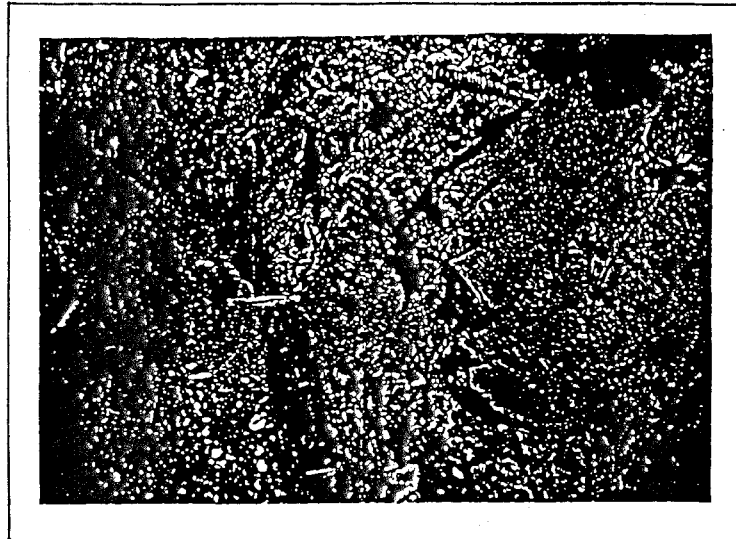
38. A drained hydric soil is one in which sufficient ground or surface water has been removed by artificial means such that the area will no longer support hydrophyte vegetation. Onsite evidence of drained soils includes:

- a. Presence of ditches or canals of sufficient depth to lower the water table below the major portion of the root zone of the prevalent vegetation.
- b. Presence of dikes, levees, or similar structures that obstruct normal inundation of an area.
- c. Presence of a tile system to promote subsurface drainage.
- d. Diversion of upland surface runoff from an area.

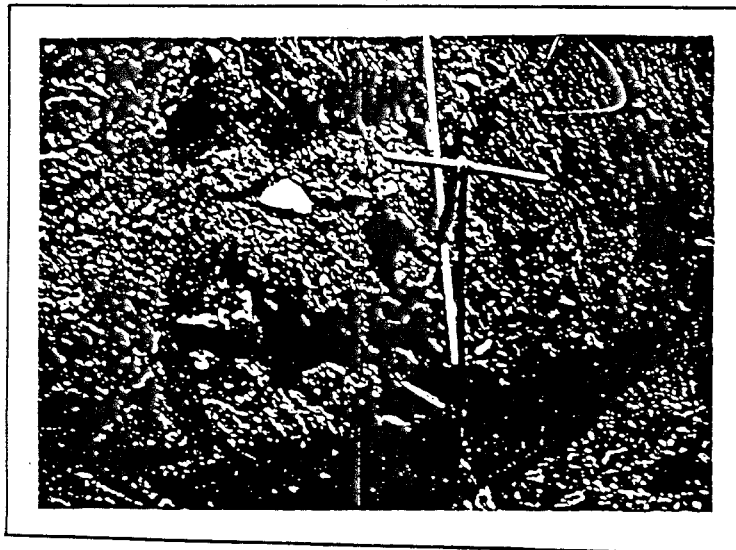
17 Although it is important to record such evidence of drainage of an area, a hydric soil that has been drained or partially drained still allows the soil parameter to be met. However, the area will not qualify as a wetland if the degree of drainage has been sufficient to preclude the presence of either hydrophytic vegetation or a hydrologic regime that occurs in wetlands. *NOTE: the mere presence of drainage structures in an area is not sufficient basis for concluding that a hydric soil has been drained; such areas may continue to have wetland hydrology.*

#### General information

39. Soils consist of unconsolidated, natural material that supports, or is capable of supporting, plant life. The upper limit is air and the lower limit is either bedrock or the limit of biological activity. Some soils have very little organic matter (mineral soils), while others are composed primarily of organic matter (Histosols). The relative proportions of particles (sand, silt, clay, and organic matter) in a soil are influenced by many



1. DATE: June 10, 1991 - Pit #1  
DESCRIPTION: More than two feet of fill over buried Weeksville hydric soil which lacks free water above 1½ ft.



2. DATE: June 10, 1991 - Pit #1  
DESCRIPTION: Two feet of fill material over undisturbed Weeksville silty clay loam. No water in bottom of pit.

REPORT DATE : 05/20/71

SAMPLE DATE : 06/14/71

SAMPLE TIME : 12:23PM

SAMPLE TEMP : 11A F

COLLECTED BY : SH

ANALYSIS DATE : 06/14/71

P.O. NUMBER :

PMS-ID NUMBER :

ACCOUNT NO. 24312

**CAC Inc.**

1205 INDUSTRIAL HIGHWAY • P.O. BOX 514  
SOUTHAMPTON, PA. 18966 • (215) 355-3900

MAE MALLOY DIVISION  
WILMINGTON, NJ • (609) 322-9006

RITCHIESON DIVISION  
PITMAN, NJ • (609) 382-1819

AMBER DIVISION  
AMBER, PA. • (215) 846-1057

VICTORIA CURT  
538 W BRIDGE ST  
HONOLULU, HI 96813

TEST NUMBER	TEST NAME	UNIT MEASURE	TEST NUMBER	TEST NAME	UNIT MEASURE
W0001-PHL	W0005-HFH	W0006-HFH	W0005-HFH	W0006-HFH	W0006-HFH
COLI	COLI	FECAL COLI	COLI	FECAL COLI	FECAL COLI
SPC	SPC	SPC	SPC	SPC	SPC
/HL	/HL	/HL	/HL	/HL	/HL
15000	1600	1600	1600	1600	1600
1600	1600	1600	1600	1600	1600

IT 401021 QC SUPPLIED CONTAINER

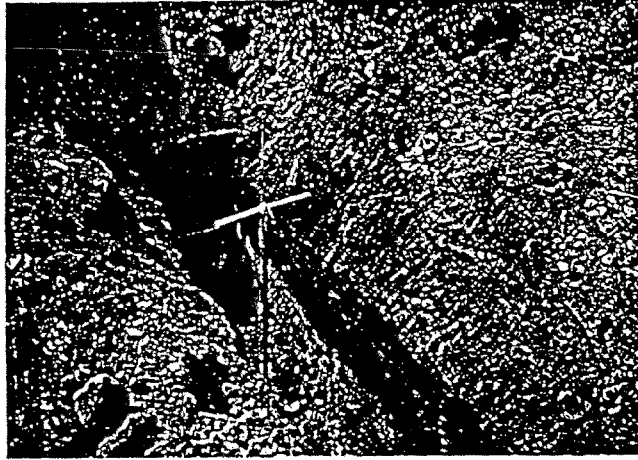
ANALYST CORRECTION NOTE: EACH SAMPLE ABOVE IS GIVEN A UNIQUE ID# (PRINTED JUST BELOW THE SAMPLE)

01021 POSSIBLE SEWAGE CONTAMINATION.  
01021 ALL TESTING IS CONDUCTED IN ACCORDANCE WITH E.P.A. METHODOLOGY.

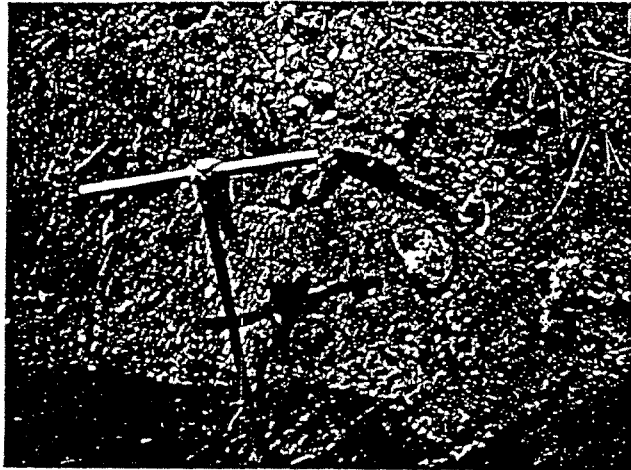
RESULTS INDICATE POSSIBLE SEWAGE CONTAMINATION.

*Allen D. Schepbach*  
Allen D. Schepbach, President





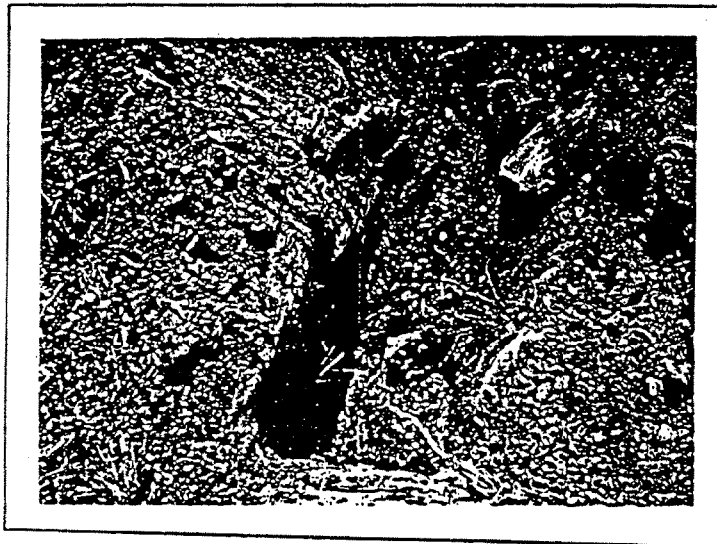
3. DATE: June 10, 1991 - Pit #2  
DESCRIPTION: Fill material over buried Weeksville silty clay loam hydric soil (b2b). No water in bottom of pit.



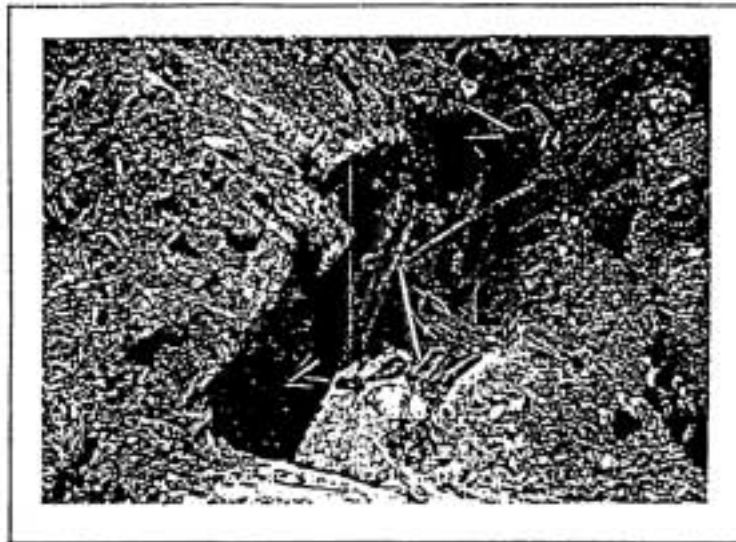
4. DATE: June 10, 1991 - Pit #2  
DESCRIPTION: Fill material, more than two feet thick, over thick black surface horizon.



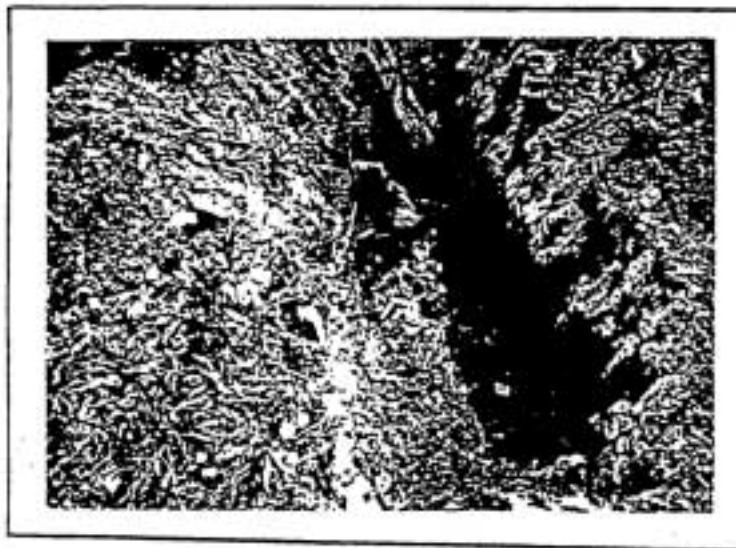
5. DATE: June 10, 1991 - Pit #3  
DESCRIPTION: Fill material over older fill material with water at 42 inches. Root layer at 28 inches.



6. DATE: June 10, 1991 - Pit #3  
DESCRIPTION: Fill material with more than 1½ feet of foul smelling water in pit.



7. DATE: June 10, 1991 - Pit #3  
DESCRIPTION: Mixed debris in fill area with oily film on water surface.



8. DATE: June 10, 1991 - Pit #4  
DESCRIPTION: Fill material showing mixed debris. Water at 30 inches with oily film.



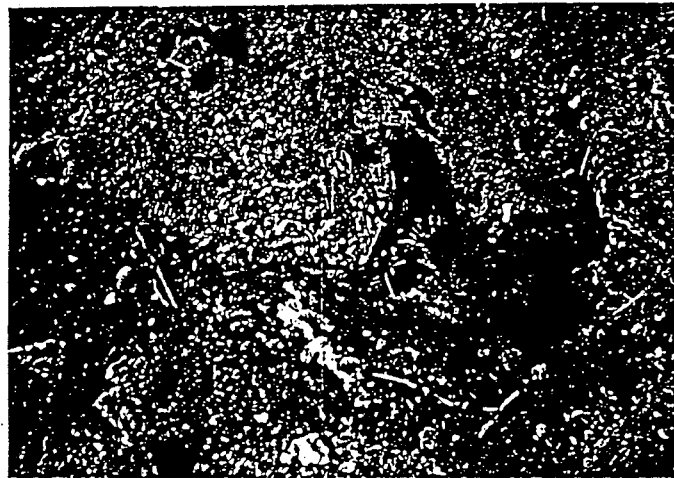
9. DATE: June 10, 1991 - Pit #4  
DESCRIPTION: Mixed debris fill material.



10. DATE: June 10, 1991 - Pit #5  
DESCRIPTION: Mixed debris fill with buried woody material, original soil surface at bottom of pit.



11. DATE: June 10, 1991 - Pit #5  
DESCRIPTION: Mixed fill debris.



12. DATE: June 10, 1991  
DESCRIPTION: Fill material to more than 5 feet. Water with oily film and unpleasant odor.

Wendell C. Kirkham CPSS/SC/SS  
 24 Rittenhouse Circle  
 Flemington, NJ 08822  
 (908) 782-6228

Positions	
Sept. 1, 1985 to Present	<p><i>Owner</i>, Professional Soil Investigations Inc.          24 Rittenhouse Circle, Flemington, NJ 08822</p> <p>Provides detailed on-site soil investigations to clients in the following areas</p> <ul style="list-style-type: none"> <li>Wetland Mapping</li> <li>Land Evaluation for Residential Development</li> <li>On-Site Septic System Suitability</li> <li>Land Evaluation and Analysis for Specific Agricultural Uses</li> <li>Environmental Constraint Reports</li> <li>Detailed Soil Mapping and Classification</li> </ul>
January 1978 to Sept. 1, 1985	<p><i>State Soil Scientist</i>, Soil Conservation Service          U.S. Department of Agriculture          1370 Hamilton Street, Somerset, NJ 08873</p> <p>Responsible for providing technical leadership and guidance in the overall soils program of the Soil Conservation Service in New Jersey. Served as a principal member of the program staff, formulated and recommended state policies and procedures for the mapping, classification and publication of soil survey reports.</p> <p>Collaborated with the New Jersey Agricultural Experiment Stations, New Jersey Department of Agriculture, Department of Environmental Protection and other interested agencies in planning and carrying out the National Cooperative Soil Survey program.</p> <p>Directed the classification and correlation of the soils in the state and the development and testing of soil interpretations for agricultural and non-agricultural uses.</p> <p>Collaborated with the Environmental Protection Agency in establishing procedures for an "acid rain study".</p> <p>Directed an "Acid Rain Study" for the Soil Conservation Service in New Jersey to determine the effects of acid rain on agricultural crop production.</p> <p>Developed soil potentials for agricultural crops, recreation and engineering uses of soils.</p>
January 1970 to January 1978	<p><i>Assistant State Soil Scientist</i>, Soil Conservation Service          U.S. Department of Agriculture, Somerset, New Jersey</p>
June 1956 to January 1970	<p><i>Area Soil Scientist and Soil Survey Party Member</i>          Various locations in Indiana and New Jersey</p>
Education	<p><i>University of Missouri</i>, Columbia, Missouri          B.S. Agriculture - 1952          B.S. Education - 1954</p> <p><i>Iowa State University</i>, Ames, Iowa          Soil Science Institute, Graduate School - 1974</p>

Wendell C. Kirkham

page 2

**Publications**     *Author*  
                          Somerset County, New Jersey - Soil Survey Report, USDA, SCS

*Co-Author*  
                          Madison County, Indiana - Soil Survey Report, USDA, SCS  
                          Hunterdon County, New Jersey - Soil Survey Report, USDA, SCS  
                          Cape May County, New Jersey - Soil Survey Report, USDA, SCS  
                          Land Evaluation and Site Assessment Computer Program  
                          Soils Potentials for Tomato Production, Cumberland County, New Jersey

**Conferences and Workshops**

*Instructor*  
                          Soil Seminars and Workshops for Health Officers, Sanitarians, Engineers and  
                          Municipal Officials, presented numerous times at various locations throughout New Jersey  
                          Soil and Site Evaluation for Septic Evaluation for Septic Disposal Systems,  
                          Cook College Short Course, Rutgers University.  
                          Understanding Soil Conditions of Wetlands - Cook College Short Course,  
                          Rutgers University.  
                          Turf Grass Management - Cook College Short Course, Rutgers University.  
                          Environmental Commission Workshops, Princeton, New Jersey

**Organizational and Professional Organizations**

*Member and Past President*  
                          Firman E. Bear Chapter of Soil Conservation Society of America.

*Member and Past President*  
                          New Jersey Association of Professional Soil Scientist

*Member*  
                          Soil Science Society of America

*Member*  
                          International Soil Science Society

*Member*  
                          Ad hoc committee for the revision of Chapter 199 Standards for Individual Subsurface  
                          Sewage Disposal Systems - N.J.A.C. 7:9-2.1 et seq

*Liaison*  
                          Raritan Township Environmental Commission

*Certified Professional Soil Scientist/Soil Classifier*

*Certified Professional Soil Specialist*  
                          American Registry of Certified Professionals in Agronomy, Crops, and Soil

Mrs. BIGGERT. Thank you. That's all the questions that I have.

Mr. BURTON. We will be back in about 10 minutes. We have another vote. We apologize for that. We will try to wrap up with this panel as soon as we get back so we can get the EPA and the Corps of Engineers. We stand in recess.

[Recess.]

Mr. BURTON. The committee will come to order. I talked to the rest of the panelists, and I don't believe we have any more questions for this panel, but I hope that maybe you will stay around and listen to what the people from the Corps of Engineers and the EPA say. I want to thank you very much for being here.

Mr. Pozsgai, I didn't get a chance to say hello to you but perhaps I will get a chance to talk to you before the end of the hearing.

I want to thank you all for your testimony. It was very interesting, very interesting from East St. Louis' perspective as well. So thank you very much.

We will now have the next panel come forward. Our second panel will consist of Mr. Michael Davis and Mr. Robert Wayland. Mr. Davis is from the Corps of Engineers and Mr. Wayland is from the EPA.

Before you sit down, if we could, we would like to have you sworn, please.

Please raise your right hands.

[Witnesses sworn.]

Mr. BURTON. Have a seat. Do either one of you have an opening statement? If so, you will be recognized, Mr. Davis, Mr. Wayland.

Mr. Davis, you are recognized.

**STATEMENTS OF MICHAEL DAVIS, DEPUTY ASSISTANT SECRETARY FOR POLICY AND LEGISLATION, OFFICE OF CIVIL WORKS, DEPARTMENT OF THE ARMY; AND ROBERT WAYLAND III, DIRECTOR, OFFICE OF THE WETLANDS, OCEANS, AND WATERSHEDS, ENVIRONMENTAL PROTECTION AGENCY**

Mr. DAVIS. Mr. Chairman, members of the committee, I am Michael Davis, Deputy Assistant Secretary of the Army for Civil Works. Thank you for the opportunity to provide information on the Department of the Army's regulatory program.

In my detailed statement, I provided an overview of the Clean Water Act Section 404 regulatory program, including the Corps' enforcement responsibilities and recent changes made by the administration to improve the program.

I will provide a brief summary of my statement. Specifically, I will emphasize three key points: that the Army's regulatory program considers fully private property rights; that both permitting and enforcement arms of the program are administered in a professional and respectful manner; and that the program is important if we are to protect the property rights of the public at large.

To say that the protection of wetlands through regulation has engendered considerable controversy in the past 28 years may be one of the few points of common ground between those who believe that the Section 404 program is no more than a Federal rubber stamp allowing the destruction of wetlands and those who suggest that the program tramples on the rights of private property owners.



We in the administration, however, believe that this dichotomy between private property rights and environmental protection does not reflect the way the program really works. In fact, through the administration's initiative, the Section 404 program has been successful in reconciling the interests of all property owners, allowing reasonable development to proceed while protecting our Nation's aquatic resources and reducing the loss of wetlands.

When evaluating how a program affects the public, it is important to understand why the program was established, how it developed and how it has operated over the years. Recent statistics and information on key administration wetland initiatives show that the Army's regulatory program is, on the whole, fair, flexible and effective, and that property rights are protected.

One of the successful aspects of the Section 404 program is the ability of the Corps to reconcile the often conflicting objectives of an individual landowner with the interests of other landowners that could be adversely affected by the disruption of aquatic areas and by other development related impacts. Because most applicants are willing to work with the Corps, in over 99 percent of the cases, permit applicants are allowed to accomplish their objectives in a manner that protects the interests of other landowners and the environment.

It is standard procedure for the Corps to consider fully how proposed activities could affect the environment and other people and their property. For example, the loss of important wetlands may harm the quality of water in the Chesapeake Bay which in turn could reduce blue crab and oyster populations, resulting in economic harm to the region.

In addition, we have observed firsthand numerous examples where the Section 404 program has protected the rights of property owners. For example, in Georgia, through the Section 404 program, a developer was required to mitigate for the illegal unauthorized filling of wetlands that resulted in the flooding of adjacent property owners.

The homeowners in the affected subdivision expected and, Mr. Chairman, demanded that the Corps of Engineers and EPA enforce the Section 404 program.

The statistics accompanying my written statement support our belief that the Army has been successful in providing necessary environmental protection and allowing landowners to realize their development goals. During fiscal year 1999, over 74,000 landowners asked the Corps of Engineers for a Section 404 permit. This was the largest number of Section 404 permitting decisions made during any 1 year since the program's enactment in 1972. Of those decisions, 90 percent of the authorizations were made through a general permit in an average time of 18 days. Only 5 percent of the applications were evaluated using the more detailed, timely, standard individual permit evaluation process.

The average process time, though, for these more detailed evaluations was 118 days.

Mr. Chairman, less than 1 percent of those 74,000 permit applications were actually denied. With your permission, I would like to highlight some of these statistics on a graphic or two, if we could have the graphic put up.

This one demonstrates the overall universe of permitting activities that the Corps of Engineers had; this is that 74,000 people who walk into a Corps of Engineers office somewhere across the country. What this shows in this big purple piece of the pie is that 90 percent of these applicants got their permits under an abbreviated general permit process in an average time of 18 days.

The next graphic, please.

This is just a slightly different way of looking at some of the same data, but I call your attention to the last bar, the one on the far right. If you look at all of these 74,000 individuals who were subjected to this process in fiscal year 1999, the average time to get a permit decision was 23 days. The main point of this is that in the vast majority of cases, the Corps regulatory program authorizes owners of private property to use their land subject to reasonable conditions to protect the rights and property values of others.

Mr. Chairman, you have heard a lot today about one wetlands enforcement case. It is regretful that the Federal Government was forced to take such action in a situation that could have been avoided. It is important to note, however, that this case does not in any way illustrate how enforcement of wetland laws really works.

For example, the philosophy underlying the Corps' enforcement of its regulatory responsibility is to resolve enforcement actions by gaining compliance in the least confrontational and burdensome manner. A decision to bring an enforcement action is based on consideration of three factors: No. 1, the legal requirements; the nature of the violation; and the extent to which the violator was aware of Clean Water Act requirements.

The basic Corps enforcement practice is to gain compliance with the least amount of conflict, seeking stronger enforcement measures only when a violation is severe or the violation is willful, flagrant or knowing.

Much has been said and written about a very few highly publicized wetland enforcement cases. You have heard testimony of one of those today. As noted in the statistics provided in with my testimony, the reality is that less than 2 percent, less than 2 percent, of all enforcement actions result in any kind of civil or criminal penalty. After-the-fact permits and voluntary actions resolve the vast majority of violations by landowners.

Only in extreme cases does the government pursue litigation and fines. It is significant that there have been fewer than a dozen enforcement cases that have been so highly publicized out of the tens of thousands of enforcement actions that have occurred since enactment of Section 404 in 1972.

Looking at alleged violations reported to the Corps, 60 percent resulted in a finding that there was no violation or that a permit had already been issued. Over 38 percent of the cases turn out to be violations that are resolved through administrative actions such as acceptance of a restoration plan or the acceptance of an after-the-fact permit application.

While we believe that the program works well overall, we recognize that it is not perfect and that we can always make improvements, and we should make improvements. Shortly after coming into office, the administration convened an interagency working

group to address concerns with Federal wetlands policy. After hearing from States, tribes, developers, farmers, environmental interests, Members of Congress and scientists, the White House Wetlands Working Group developed a 40-point comprehensive plan to enhance wetlands protection while making wetlands regulations more fair, flexible and effective for everyone.

For example, a successful regulatory initiative is an interagency mitigation banking program. Mitigation banking is a market-based alternative for landowners to effectively and efficiently compensate for wetlands impacts.

Mr. BURTON. Excuse me, Mr. Davis. Everything you are saying is very interesting, but would it be possible for you to summarize the rest of it so we can get to some questions with you and your colleague, Mr. Wayland?

Mr. DAVIS. Certainly, Mr. Chairman. I do think these are very important points. There has been a lot of information.

Mr. BURTON. We will be happy to submit those for the record and the committee members will read them.

Mr. DAVIS. In conclusion, Mr. Chairman, as indicated by the facts presented in my statement, we strongly believe that the Corps implements the Section 404 program in a manner that respects the rights of the Nation's property owners. The vast majority of landowners are allowed to use their property and realize their development expectations in a manner that protects important aquatic resources.

An often overlooked aspect of the property rights debate is the impact on other property owners of filling wetlands. We have observed firsthand where the Section 404 program has protected the rights of adjacent and downstream property owners from flooding and other problems. In this regard, we must recognize that fairness to landowners extends to all landowners, and that individuals do not have a right to harm their neighbors or the environment.

This administration, like no other before it, has taken the initiative to address the legitimate concerns of all landowners. The right to own, reasonably use, and enjoy private property is vital to our Nation's economic strength and to our constitutional heritage. Our efforts at regulatory reform have been directed at new practices to make wetlands regulations more fair, flexible and effective for everyone. We believe that we have been successful in meeting these objectives.

Mr. Chairman, thank you for the additional time. That concludes my statement. We would be happy to answer any questions.

Mr. BURTON. Thank you, Mr. Davis.

[The prepared statement of Mr. Davis follows:]

**COMPLETE STATEMENT OF  
MICHAEL L. DAVIS  
DEPUTY ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS**

**BEFORE THE  
COMMITTEE ON GOVERNMENT REFORM  
UNITED STATES HOUSE OF REPRESENTATIVES**

**FEDERAL WETLANDS POLICY: PROTECTING THE ENVIRONMENT OR BREACHING  
CONSTITUTIONAL RIGHTS**

**INTRODUCTION**

Mr. Chairman and members of the Committee, thank you for the opportunity to provide information on the Department of the Army Regulatory Program. I am Michael Davis, Deputy Assistant Secretary of the Army for Civil Works. As the Deputy Assistant Secretary responsible for Army Civil Works policy and legislation, I am directly involved in the regulatory initiatives of the Army Corps of Engineers, which has full responsibility for the administration of Sections 9 and 10 of the Rivers and Harbors Act of 1899 and primary responsibility, along with the U.S. Environmental Protection Agency (EPA), for implementing Section 404 of the Clean Water Act (CWA).

In this statement I will provide an overview of the Section 404 regulatory program, including enforcement responsibilities and recent changes to improve the program. Throughout the testimony I will address how the Army manages the regulatory program to protect the rights of all property owners.

To say that the protection of wetlands through regulation has engendered considerable controversy in the past 28 years may be one of the few points of common ground between those who believe that the Section 404 program is no more than a Federal rubber stamp allowing the destruction of wetlands and those who suggest that the program tramples on the rights of private property owners. We believe however, that this dichotomy between property rights and environmental protection does not reflect the way the program really works --- and reflects opinions based on anecdotes instead of the facts. In fact, through this Administration's initiatives, the Section 404 program has been successful in reconciling the interests of all property owners, allowing reasonable development to proceed, while protecting our Nation's aquatic resources.

When evaluating how a program affects the public, it is important to understand why the program was established, how it developed, and how it has operated over the years. With this background information we can assess objectively and fairly program performance and whether landowners are affected in beneficial or adverse ways. Recent statistics and information on key Administration wetlands initiatives show that the regulatory program is, on the whole, fair, flexible, and effective, and that property rights are protected.

## SECTION 404 OF THE CLEAN WATER ACT

## HISTORICAL CONTEXT

Section 404 of the CWA provides that discharges of dredged or fill material into waters of the United States, including wetlands, require a permit from the Corps. The Army has been administering the Section 404 program since 1972. The Corps has a long history of protecting the Nation's water resources, and promoting their responsible use through the regulatory program established under Section 10 of the Rivers and Harbors Act of 1899. Protecting the rights of applicants, adjacent property owners and other waterway users is a keystone principle in the regulatory decision-making process. Allowing public involvement in the Corps decision-making process is one way that principle has been put into practice. Since 1912, the Corps' administration of the Section 10 regulatory program has included public notices to adjacent property owners and surrounding communities as a way to collect information upon which to formulate permit decisions. This practice was just the beginning of the many changes that have been made to improve the Corps permit evaluation process for all property owners.

In 1968, the Corps added a public interest review to its evaluation process. This review requires an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. It also predicates any decision to authorize a proposal on the outcome of a general balancing process reflecting the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In short, the benefits that are expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. At the conclusion of this evaluation a permit may be granted unless the district engineer determines that it would be contrary to the public interest, or in non-compliance with the environmental criteria contained in the CWA section 404(b)(1) Guidelines.

With the passage of the National Environmental Policy Act in 1969, and the CWA in 1972, the regulatory process was again enhanced by requiring the full consideration of all short-term and long-term environmental consequences of proposed discharges. The practices from the Section 10 program formed the basis for the program to implement the new responsibilities established by Section 404 of the CWA. The Army recognizes that water resource management, in the CWA regulatory context, involves more than just issuing or denying permits based on an evaluation of the materials to be discharged into the water. The Section 404 regulatory program also is responsive to the broad range of public interest factors including property ownership,

along with the requirements found in other environmental protection laws. Even though the Corps operates its regulatory program in a manner that is highly respectful of the rights of private property owners, upon rare occasion an incident may occur where landowners have been treated unfairly or in an untimely manner. The Corps regrets those rare deviations from the normal operation of the program, and corrects them whenever they are discovered.

One of the successful aspects of the Section 404 program is the ability of the Corps to reconcile the objectives of an individual landowner with the interests of other landowners that could be adversely affected by the destruction of aquatic areas, and by other development-related impacts. In over 99 percent of cases, permit applicants are allowed to accomplish their objectives in a manner that protects the interests of other landowners and the public. It is standard procedure for the Corps to consider fully how proposed activities could affect the environment, and other people and their properties. For example, the loss of important wetlands may harm the quality of water in the Chesapeake Bay, which in turn could reduce blue crab and oyster populations, resulting in economic harm to the region. In addition, we have observed first hand numerous examples around this Nation where the Section 404 program has protected the rights of property owners. For example, in Georgia, through the Section 404 program, a developer was required to avoid, minimize, and compensate for the illegal, unauthorized filling of wetlands that resulted in the flooding of adjacent property owners. The homeowners in the affected subdivision expected, and in fact demanded, that the Corps and EPA enforce the Section 404 program in this case.

Experience with challenges in the Federal Claims court demonstrates that only in very rare and exceptional cases has a Corps regulatory permit decision been determined to have deprived property owners of the use of their land, so as to constitute a constitutional "regulatory taking." Furthermore, in practically every other case, the Corps regulatory decision has been determined to allow property owners to carry out proposed projects and to make economically viable use of their land. For any case where a landowner feels aggrieved, the Tucker Act and the U.S. Constitution guarantee the right to bring suit in the Federal courts to seek compensation under the Fifth Amendment, or other legal relief. If the property owner's claim of a "regulatory taking" is meritorious, the owner will not only receive just compensation, with interest, but also reimbursement for reasonable attorneys' fees and costs under 42 U.S.C. 4654(c). Clearly, the Tucker Act, the U.S. Constitution, 42 U.S.C. 4654(c), and the Federal courts protect property owners. The fact that over the years very few court decisions have held that the Corps regulatory permit decisions resulted in a constitutional taking reflects the fact that the Army has balanced successfully legitimate development goals of the regulated public and important environmental protection mandates of the CWA.

While a case can be made that generally the program is fair and working well from a landowner's perspective, some continue to criticize the Corps for issuing too many permits. While the Corps recognizes the need to continue to improve

environmental protection, it disagrees with this claim. Through the regulatory evaluation and conditioning process, including the general permit process, the Corps has been very successful in reducing impacts to the Nation's waters, including wetlands, as well as reducing adverse effects on other landowners. Most applicants are willing to "avoid, minimize, and/or compensate" for the adverse effects that their projects could cause on waters of the U.S., including wetlands. Additionally, most applicants are willing to work with the Corps to avoid causing impacts to other landowners. Through effective application of the environmental criteria and the public interest review, the Corps believes that it has been successful in striking the correct balance between protection of the overall public interest and reasonable development of private property.

#### SECTION 404 PROGRAM STATISTICS

The statistics accompanying this statement regarding the performance of the Section 404 program support our belief that the Army has been successful in balancing environmental protection and development goals. During Fiscal Year (FY) 1999, over 74,000 landowners asked the Corps for a Section 404 permit to discharge dredged or fill material into the waters of the United States, including wetlands. This was the largest number of Section 404 permitting decisions made during one year since the program's enactment in 1972. Of those decisions, 90 percent received an authorization through a general permit in an average time of 18 days. Only 5 percent of applications were evaluated using the more detailed standard individual permit evaluation process. The average processing time for these applications was 118 days. Less than one percent of the 74,000 applications were denied. It may be that in a few cases the Corps subjected landowners to an unnecessarily lengthy evaluation process. However, those cases are very rare, compared to the number that proceed in a timely manner with minimal regulatory. Finally, it is estimated that there are tens of thousands of additional landowners who could proceed with their projects under the authority of general permits that do not require them to notify the Corps.

In FY 1999, the Section 404 general permit program authorized over 66,000 activities, most with little or no delay or expense to the regulated public. Even for the larger-scale proposals that must be authorized by individual permits, the Corps granted over 4,100 individual permits, and denied only 165 applications. The majority of those denials are made "without prejudice." "Without prejudice" means that if applicants can make necessary modifications to their projects, or obtain required permits from the State, the Corps could make favorable decisions and authorize the proposed activities. Denials "without prejudice" typically occur when the State denies a water quality certification or coastal zone management certification. Thus, in the vast majority of cases, the Corps regulatory decision authorizes owners of private property to use their land profitably, subject to reasonable conditions to protect the rights and property values of others, and the overall public interest. Only rarely is a project so detrimental to the environment that the Corps denies the project "with prejudice".

## SECTION 404 ENFORCEMENT PROGRAM

The philosophy underlying the Corps enforcement of its regulatory responsibilities is to resolve enforcement actions by gaining compliance in the least confrontational and burdensome manner. The decision to proceed with enforcement measures is based on three factors, the legal requirements, the nature of the violation, and the extent to which the violator was aware of CWA requirements. The basic Corps enforcement practice is to gain compliance, with the least amount of conflict, seeking civil or criminal action when a violation is willful, flagrant, or of substantial impact.

As noted in the statistics provided with this statement less than 2 percent of all enforcement actions result in any kind of civil or criminal penalty. However, much has been said and written about a few highly publicized wetland enforcement cases. These are cases that mostly involved individuals who intentionally challenged the validity of the Federal Government's right to regulate activities in wetlands, or to regulate activities on private property in general. In these cases the Corps, EPA, and Department of Justice have acted in ways that they believe are appropriate.

The Army shares CWA Section 404 enforcement responsibilities with the EPA. The EPA has authority to issue Administrative Civil Penalties for violations of Section 404 and exercises its authority to pursue violations of the CWA. The Army also has available Administrative Civil Penalties, for use when there are violations of Corps Section 404 permit conditions. The Army Corps of Engineers' enforcement regulations were originally for the enforcement of Section 10 of the Rivers and Harbors Act of 1899. The enforcement practice that grew out of the Section 10 program was adopted for the Section 404 program and is very flexible. Army enforcement policies are focused on ways to bring the violation into compliance without reliance on the judicial system. The Department of Justice acts as the Government's attorney in court actions involving Corps regulatory program cases.

The Corps' enforcement regulations provide the necessary flexibility to accept restoration, or accept other measures that resolve the violation to the satisfaction of the Corps District Engineer, or to accept applications for after-the-fact permits. The Corps typically does not pursue fines or penalties, unless the case involves a willful, flagrant, or knowing violation. As shown in statistics accompanying this statement, less than 1 percent of all violations known to the Corps result in litigation. Another 1 per cent result in a civil penalty. These usually involve repeat offenders, or those who have been involved in an activity or enterprise where knowledge of the Corps regulatory program is widespread or the need for permits is common. Looking at alleged violations reported to the Corps, 60 percent resulted in a finding that there was no violation or that a permit had been issued. Over 38 per cent of the cases turn out to be violations that are resolved through an administrative action, such as the acceptance of restoration or the acceptance and processing of an after-the-fact permit application. These administrative resolutions result in environmentally responsible projects that allow landowners to use their property in compliance with the law. The Army believes that administrative



resolutions are in the public interest and further environmental goals. Legal action is generally undertaken when there is a genuine concern about the integrity of the government's program, the need for a deterrent, or there are particularly egregious environmental impacts associated with the violation.

#### PROGRAM IMPROVEMENTS

Shortly after coming into office, the Clinton Administration convened an interagency working group to address concerns with Federal wetlands policy. After hearing from States, tribes, developers, farmers, environmental interests, members of Congress, and scientists, the White House Wetlands Working Group developed a 40-point comprehensive plan to enhance wetlands protection, while making wetlands regulations more fair, flexible, and effective for everyone, including America's small landowners. The plan emphasized improving Federal wetlands policies for all Federal programs. For the Corps regulatory program the challenge has been to improve environmental protection while maintaining program efficiency. The regulatory initiatives in the President's plan, which have been successful in meeting this challenge, include improvements to the nationwide permit program, an interagency mitigation banking policy and an administrative appeals process. All of these new program initiatives provide benefits for landowners seeking to use their properties while promoting protection of environment and other landowner's rights.

A central tenet of the Administration's wetlands plan is to ensure that the Section 404 program is administered in a manner that is fair to all landowners and to the general public. There are some who believe that the Corps treats all wetlands the same or that the Corps regulates all wetlands with the same rigor. While neither of these notions is true, those misunderstandings have led some to believe that we permit the destruction of too many wetlands, and led others to call for less regulation of wetlands. This administration has been unequivocal in stating that all wetlands are not the same and that regulatory responses to a proposed project in wetlands should be commensurate with the relative functions and values of the resource and with the nature of the impacts associated with the particular project. For example, if a project involves a low-value wetland resource and has minor impacts, we should not require as rigorous an evaluation of a permit application. In the alternative, if moderate to high value wetland resources are involved and the project impacts are substantial, we should require a detailed evaluation. This approach has been emphasized through regulatory guidance, and is the way the program currently works.

#### NATIONWIDE PERMITS (NWP)

No facet of the program reflects this basic fairness approach to resource management better than the contrast between the activities authorized through the nationwide general permit program and those authorized by standard permits. The use of general permits to authorize activities having minimal impacts on the environment was authorized in the 1977 amendments to CWA. General permits, which authorized

90 percent of all Section 404-regulated activities during FY 1999, did so through an abbreviated process, in order to provide streamlined decisions. This is possible because the standards are set in advance, and environmental considerations have been made in advance of the issuance of the general permit. Individual permits take into account the specifics of the resource and the development project. This evaluation process facilitates more informed decision making which takes into account specific project impacts and risks to environmental resources.

Recently, the Corps put into place new and revised nationwide permits to increase environmental protection and reduce flooding from development in the Nation's flood plains. Specifically, after reviewing thousands of public and agency comments, on March 9, 2000, the Corps issued five new Nationwide Permits, modified six of the existing Nationwide Permits, modified nine NWP conditions, and added two new NWP conditions. These new and modified NWPs imposed several new requirements or restrictions which include: a one-half acre upper limit on impacts, a one-tenth acre threshold for the requirement of a Pre-construction Notification to the Corps, a '100 year floodplain' restriction, and a 300 linear foot limit on loss of perennial or intermittent stream beds. Such changes reflect our commitment to making decisions that consider fully property rights and environmental impacts. While these changes will increase the Corps workload, we believe this is justified by the additional protection provided to the environment and the public, especially landowners.

#### MITIGATION BANKING

Another successful regulatory initiative is the interagency mitigation banking program. Mitigation banking is an innovative, market-based alternative enabling landowners to compensate effectively and efficiently for unavoidable wetland impacts. Mitigation banking provides the regulated public additional flexibility in meeting their mitigation requirements.

Most landowners applying for permits do not wish to become wetland experts or to undertake the long-term management efforts needed to ensure the success of wetlands compensatory mitigation projects. Rather, they are simply seeking authorization to move forward with their development projects. Mitigation banks provide an option for the regulated community when compensatory mitigation at development sites is not practicable or when use of a mitigation bank is environmentally preferable to on-site compensation. In practice, restored or created wetlands are expressed as "credits," which may subsequently be withdrawn to offset wetlands impacts, or "debits," incurred at a development site. This flexibility for complying with mitigation requirements often has advantages over individual on-site mitigation projects.

#### ADMINISTRATIVE APPEALS

Perhaps one of the most far-reaching initiatives for improving the regulatory programs fairness is the development of an administrative appeal process. Over the

years, some have suggested that the few individuals denied permits had no course of action available short of Federal court, which can be expensive and time consuming. To address this concern, the Corps has established an administrative appeals process. Under this process, there is opportunity to appeal denied permits, permit conditions, and jurisdictional determinations. The process allows for some third party participation. The process provides a "one-step" review by the Corps division commander. Upon receiving a permit denial, a proffered individual permit or an approved jurisdictional determination the applicant or landowner has 60 days to request an appeal. The division commander then has 90 days to evaluate the issues, conduct a site visit and appeal conference, and reach a decision on the merits of the appeal. The division commander will either uphold the district commander's decision or instruct the district commander on correcting policy or procedural errors and to make a new decision. If the applicant is still dissatisfied, he/she may sue the Corps.

The appeals program for permit denials is underway in all division offices. Annually there are about 200 permit denials, 60,000 jurisdiction determinations and 5,000 standard individual permits issued. Not all of these are appealable decisions, and most will not be appealed. We have estimated that about 40 to 50 person years of effort will be utilized per year for the full appeals process. To date there have been 21 requests for appeals. Of these, 5 have been found to have merit, 7 have been found to have no merit and 9 are pending. The program is still relatively new and the numbers are lower than expected. We do expect that there will be an increase in the appeal of permit and jurisdiction decisions.

#### CONCLUSION

As indicated by the facts presented in this statement, we strongly believe that the administration of the Section 404 program occurs in a manner that respects the rights of the Nation's property owners. The program helps the vast majority of landowners to use their property and realize their development expectations in a manner that protects important aquatic resources. An often overlooked aspect of the "property rights" debate is the impact on other property owners of filling wetlands. We have observed first hand where the Section 404 program has protected the rights of adjacent and downstream property owners from flooding and other problems. In this regard, we must recognize that fairness to landowners extends to all landowners and that individuals do not have a right to harm their neighbors or the environment.

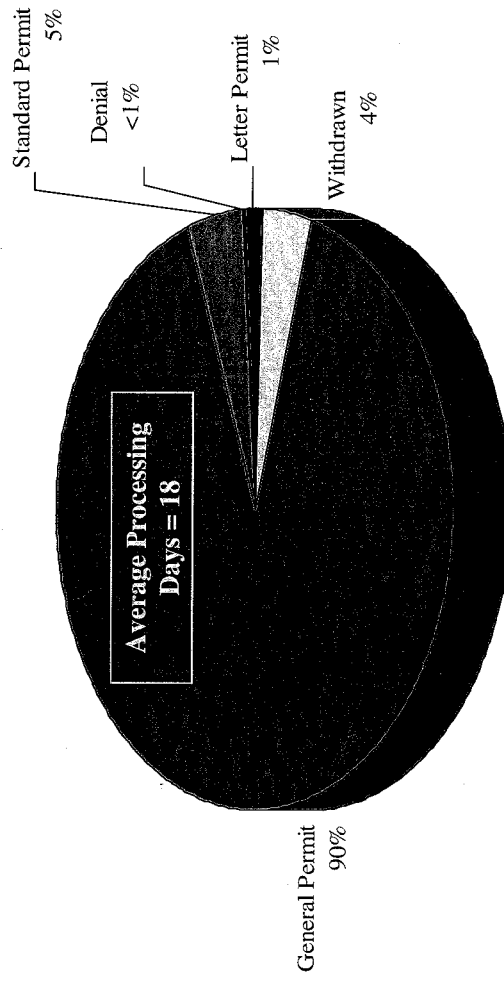
As previously discussed, the philosophy underlying the Corps enforcement of its regulatory responsibilities is to resolve potential enforcement actions by seeking compliance in the least confrontational manner. Effective enforcement is based on consideration of three factors, the legal requirements, the nature of the violation, and the extent to which the violator was aware of CWA requirements. The Corps seeks strong enforcement options when a violation is severe, or the violation is willful, flagrant or knowing.

This Administration, like no other before it, has taken the initiative to address the legitimate concerns of all landowners. Our efforts at regulatory reform have been directed at making wetlands regulations more fair, flexible, and effective for everyone. We believe that we have been successful in meeting these objectives. Mr. Chairman that concludes my statement. I will be happy to answer any questions you or the Committee members may have.

# Corps of Engineers Regulatory Program

## TYPES OF DECISIONS - FY 1999

PERCENT ALL 404 PERMIT ACTIONS

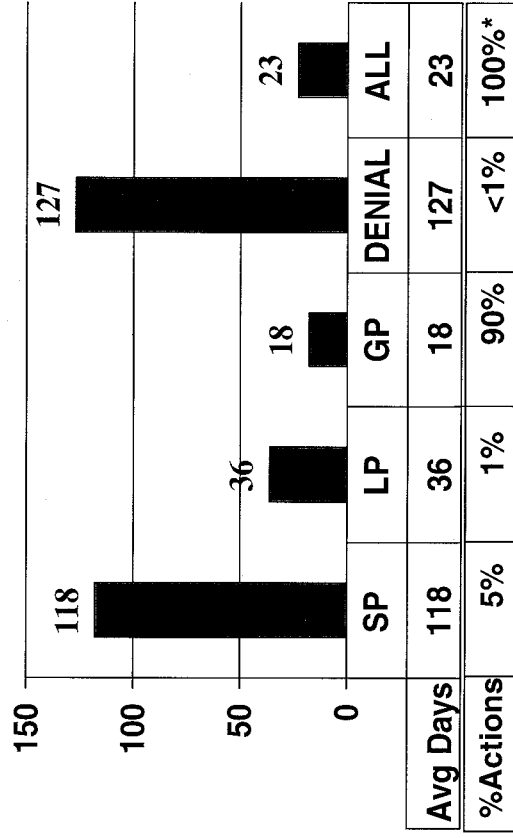


Total Number Evaluated: General Permit 66,674, Standard Permit 3,394, Letter of Permission 935, Withdrawn 2,991, Denial 165

# Corps of Engineers Regulatory Program

## Average Evaluation Days

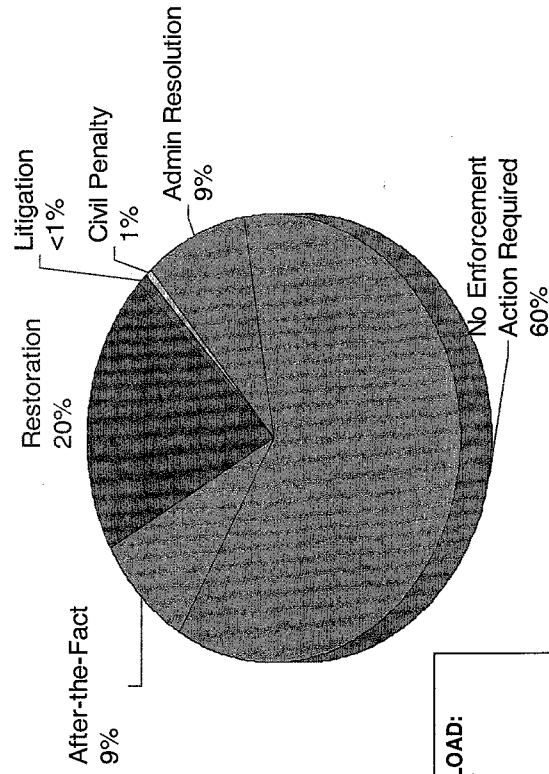
FY 1999 - 404 Applications



Total Number Evaluated: General Permit 66,674, Standard Permit 3,394, Letter of Permission 935, Denial 165, \*Withdrawn Not Included in Total

# Corps of Engineers Regulatory Program

## FY 1999 - 404 Enforcement Cases Resolved



**TOTAL 404 WORKLOAD:**  
After-the-Fact= 437  
Restored = 1,037  
Litigation = 5  
Penalty = 33  
Admin Resolution = 447  
No Enforcement Action  
Required = 3,099

Mr. BURTON. Mr. Wayland.

Mr. WAYLAND. Good afternoon, Mr. Chairman and members of the committee. I am Robert Wayland, Director of the Environmental Protection Agency's Office of Wetlands, Oceans and Watersheds, and I welcome the opportunity to join my colleague, Michael Davis, in describing the strong commitment of EPA and our executive branch partners to protecting and restoring wetlands with fairness, flexibility and effectiveness.

Since you indicated my entire statement will be included in the record, I will gladly summarize it for you.

Wetlands are among our Nation's most critical and productive natural resources, protecting private property from flooding and providing shoreline erosion control. They help protect water quality, support commercially valuable fisheries, and provide primary habitat for wildlife, fish and waterfowl.

Flood-prone areas of the United States cover approximately 15,000 square miles and at least 9.6 million households, and \$390 billion in property are at risk. Direct flood damage in the United States in 1999 has been approximated at \$5.4 billion. Because wetlands serve as natural storage areas for flood water, they can help prevent or reduce the severity of flooding. Wetlands also play an important role in recharging groundwater used to irrigate crops or in manufacturing, such as playa lakes, a form of wetlands, in west Texas and New Mexico, which recharge the Midwest's Ogallala aquifer.

Wetlands are important to commercial and recreational fisheries, a multibillion dollar industry that employs hundreds of thousands of people and contributes billions in State and Federal taxes. Wetlands also provide important habitat for migratory birds and waterfowl.

A national survey of wildlife-related recreation prepared by the Bureau of Census and the Fish and Wildlife Service indicated that overall in 1996, activities associated with hunting, fishing and wildlife watching amounted to \$101 billion.

Since the time of the European settlement, more than half of the wetlands in the lower 48 States have been lost. Over the past 28 years, since its enactment, the Section 404 program, along with the Swampbuster provisions of the farm program, ongoing public and private wetlands restoration programs, and active State, local and private wetlands protection efforts, have prevented the destruction of hundreds of thousands of acres of wetlands and the degradation of thousands of miles of rivers and streams.

The annual rate of wetland loss has been reduced from over 460,000 acres a year during the 1950's to the 1970's, to 60,000 acres from 1986 to 1997 annually. This has reduced property damage and loss of lives from flooding, and protected fish and wildlife habitat and water quality, all vital to our Nation's economy and overall health.

Because they are waters of the United States, all of the protections applicable to rivers, lakes and estuaries established in the Clean Water Act apply to wetlands. Under Section 404, any person planning to discharge dredged or fill material to wetlands or other waters of the United States must first obtain authorization from



the Corps of Engineers, either through issuance of an individual permit or as authorized under a general permit.

The vast majority of authorizations for discharges take the form of general permits which usually have fewer procedural requirements, as my colleague mentioned, and are usually accomplished in a matter of days.

The Federal agencies strive to minimize the imposition of Section 404 program burdens on landowners and other dischargers consistent with our mandate to protect, restore and maintain the physical, chemical and biological integrity of the Nation's waters. During fiscal year 1999 the Corps of Engineers regulatory program provided authorization to over 74,000 activities. Administering the 404 program in a fair, flexible and effective manner is and long has been a priority of this administration.

In a comprehensive 1993 plan developed by several Federal agencies, we set out a blueprint for actions to be responsive to landowner concerns with the Section 404 program while enhancing the effectiveness of protecting wetlands and other waters. The plan includes over 40 specific actions and their implementation by EPA, the Corps and other agencies, have resulted in many improvements on those we regulate, while the rate of wetland loss has declined.

A few of the highlights include our guidance clarifying the need for flexibility in processing permit requests and emphasizing that small projects with minor impacts do not need the same detailed level of review as large projects. EPA and the Corps amended our jurisdictional regulations to make clear that prior converted crop lands are excluded from the Clean Water Act jurisdiction. We entered into a memorandum of agreement with the Corps and the Departments of Agriculture and Interior regarding the delineation of wetlands on agricultural lands in order to increase certainty for farmers by providing a single reliable wetland determination.

EPA and the Corps had earlier, in 1991, adopted the use of the Corps 1987 Manual for Wetland Delineation Purposes. So there is a single wetland delineation manual for the 404 program.

To reduce regulatory burdens on persons wishing to build a home, or for their family, the Corps issued nationwide permit 29 for single family homes, impacting less than a quarter acre of non-tidal wetlands. EPA, along with four other agencies, issued joint Federal guidance concerning the establishment of wetland mitigation banks. The Corps published final rules establishing an administrative appeal process for jurisdictional determinations, permit denials, and declined individual permits.

We continue to emphasize the importance of nonregulatory programs such as advanced watershed planning, voluntary participation in the wetlands reserve program, partners for wildlife program, the five-star restoration program and other public and private cooperative programs to protect and restore wetlands. In addition, we have increased funding to States, tribes and local governments for their wetland programs.

The EPA also provides information and coordinates extensively with the public to help landowners understand and comply with the requirements of the Clean Water Act. We provide a toll-free wetlands information helpline that has assisted tens of thousands of callers. We offer extensive information on wetland programs,

policies, and regulations on the World Wide Web. We keep many active lines of communication with organizations representing landowner interests.

The Clean Water Act provides the Corps and EPA may bring enforcement actions for violations of Section 404 and may bring criminal violations to the attention of the Department of Justice.

A vital part of effective wetlands protection is the enforcement of those cases that involve serious harm to the environment and/or adjacent property owners as a result of unauthorized dredging or filling or involve flagrant or knowing violations of the law.

Some aspects of the Pozsgai case which were not developed in previous testimony include the fact that the trial record established that Mr. Pozsgai was advised by three consulting firms he retained, prior to his purchase of the property in question, that much or all of the parcel consisted of protected wetlands. Those were the J.G. Park Engineering Co., Mr. Ezra Golub and the Majors Engineering Co. Over 400 truckloads of rock and concrete filling in at least 4 acres of wetland resulted in flooding of the neighbors' property in this case.

During the course of the proceedings, Mr. Pozsgai violated a temporary restraining order issued by the court for which the court ordered Mr. Pozsgai in contempt.

In conclusion, Mr. Chairman, in carrying out the Section 404 program, both the Corps and EPA are sensitive to the issue of property rights. Implementation of the 404 program often requires balancing of environmental protection, public interests and individual interests. We have made much progress but we continue to strive toward the fair, flexible and effective implementation of the program.

Thank you very much.

[The prepared statement of Mr. Wayland follows:]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

**TESTIMONY OF  
ROBERT H. WAYLAND, III  
DIRECTOR, OFFICE OF WETLANDS, OCEANS, AND  
WATERSHEDS  
OFFICE OF WATER  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE  
COMMITTEE ON GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES**

**October 6, 2000**

**TESTIMONY OF  
ROBERT H. WAYLAND, III  
DIRECTOR, OFFICE OF WETLANDS, OCEANS, AND WATERSHEDS  
OFFICE OF WATER  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE  
COMMITTEE ON GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES**

**October 6, 2000**

Good morning, Mr. Chairman and members of the Committee. I am Robert H. Wayland, III, Director of the Environmental Protection Agency's (EPA's) Office of Wetlands, Oceans, and Watersheds. I welcome the opportunity to join my colleague Michael Davis in describing the strong commitment of EPA and our Executive Branch partners to protecting and restoring wetlands with fairness, flexibility and effectiveness. We will describe many improvements to our policies and programs that have been initiated and completed over the last several years and which are being implemented today. These actions have changed the landscape, literally and figuratively, for protecting and restoring our Nation's aquatic resources. My testimony will describe the importance of wetlands to our nation, the history of destruction of these resources before their many values were recognized and protections enacted, and the Clean Water Act provisions pertaining to wetlands, and will elaborate on the policy initiatives developed and undertaken as a consequence of the Administration's 1993 wetlands plan.

You have heard testimony about the enforcement action taken against John Pozsgai. A jury convicted Mr. Pozsgai on all 40 counts of violating the Clean Water Act for illegally filling wetlands and the judge sentenced him to imprisonment and a \$200,000 fine. I will provide more

details about the case later in my testimony.

**Importance of wetlands**

Wetlands are among our Nation's most critical and productive natural resources, protecting private property from flooding and providing shoreline erosion control. They help protect water quality, support commercially valuable fisheries, and provide primary habitat for wildlife, fish, and waterfowl.

Flood prone areas of the U.S. cover approximately 15,000 square miles, and at least 9.6 million households and \$390 billion in property are at risk according to the Federal Emergency Management Agency. Direct flood damage in the U.S. in 1999 has been approximated at \$5.4 billion dollars. Because wetlands serve as natural storage areas for flood water, they can help prevent or reduce the severity of flooding. A one acre wetland flooded to a depth of one foot of water holds 325,840 gallons of water, and the loss of upstream wetlands and their storage capacity has an escalating influence on flood peaks.

Wetlands also play a key role in protecting water quality by processing dissolved and suspended materials, accumulating nutrients, trapping sediments, and transforming a variety of pollutants. For example, one study found a riparian forest in a predominantly agricultural watershed removed approximately 80% of the phosphorus and 89% of the nitrogen from the water before it entered a tributary of the Chesapeake Bay. Excess loadings of phosphorus and nitrogen can cause dead zones and kill fish.

Wetlands also play an important role in recharging groundwater used to irrigate crops or in manufacturing. For example, playa lakes (a form of wetland) in West Texas and New Mexico are a major source of the water recharging the Ogallala aquifer, which underlies 174,000 square miles in 8 states and is an important water resource for agriculture, industry, and human consumption.

Wetlands are important to commercial and recreational fisheries. In 1993, commercial and recreational fishing was a \$40 billion dollar industry, employing hundreds of thousands of people and contributing billions in State and federal taxes. Over 70 percent of this value is derived from fish species that during their life cycles depend directly or indirectly on wetlands. In the Southeastern United States, for example, over 90 percent of the commercial catch of fish and shellfish depend on coastal wetland systems.

Wetlands provide important habitat for migratory birds and waterfowl. Of the more than 1,900 bird species that breed in North America, about 138 are wetland dependent, and one-third of North American bird species use wetlands for food, shelter, and/or breeding. Migratory waterfowl and nearly one-half of all threatened or endangered species depend on wetlands and associated habitat for survival. In 1996, waterfowl hunters spent approximately \$1.3 billion annually in pursuit of ducks, geese and other birds dependent on wetlands located throughout the United States. In addition, wetlands provide important wildlife habitat, and thus help support wildlife watching activities which accounted for another \$29.2 billion dollars in expenditures in 1996. A national survey of all wildlife-related recreation prepared by the Bureau of the Census

and the U.S. Fish and Wildlife Service indicates that overall in 1996, activities associated with hunting, fishing, and wildlife watching amounted to \$101 *billion*.

#### **Wetlands Losses**

Wetlands destruction and degradation can lead to serious consequences, including increased flooding, declining water quality, and species decline. As previously indicated, the Nation's remaining wetlands provide a multitude of services to society, are the basis of many thousands of jobs, and contribute billions of dollars to the economy. On a more individual basis, the unrestricted ability of a property owner to fill or otherwise destroy wetlands on his property can adversely affect nearby landowners, for example, by increasing flooding to neighboring or downstream property, thereby reducing or even eliminating the property values of others.

At the time of European settlement, what is now the lower 48 states contained about 220 million acres of wetlands, or about 9 percent of the landscape. Between then and the 1980's, more than one-half of those wetlands (or 117 million acres) were converted to other uses according to the National Research Council. The Fish and Wildlife Service states that during the 1950's to the 1970's approximately 460,000 acres of wetlands were lost annually. From the 70's to the mid 80's, that figure dropped to 290,000 acres of wetlands lost per year, and more recently, from the mid 80's to the mid 90's, the rate of loss dropped to approximately 100,000 acres of wetlands per year. Over the past 28 years since its enactment, the Section 404 program, along with U.S.D.A.'s Swampbuster, on going public and private wetlands restoration programs, and active State, local and private wetlands protection efforts, has prevented the destruction of

hundreds of thousands of acres of wetlands and the degradation of thousands of miles of rivers and streams. This has reduced property damage and loss of lives from flooding and protected fish and wildlife habitat and water quality - - all vital to the Nation's economy and overall health.

#### **Overview of Clean Water Act Section 404**

Because they are waters of the United States, all of the protections applicable to rivers, lakes and estuaries established in the Clean Water Act apply to wetlands. And the Act's provisions to regulate conversion of wetlands to uplands, primarily found in Section 404, also apply to conversion of rivers, lakes, or coastal waters.

Under Section 404, any person planning to discharge dredged or fill material to wetlands or other waters of the United States must first obtain authorization from the U.S. Army Corps of Engineers (or a State approved to administer the Section 404 program), through issuance of an individual permit, or must be authorized to undertake that activity under a general permit. General permits can be issued on a nationwide, Regional, or State level, and generally provide authorization with fewer procedural requirements. In addition, certain activities as specified in Section 404(f) of the statute are exempted from the requirement to obtain a permit. The vast majority of authorizations (90 percent) for discharges of dredged or fill material take the form of general permits. For those discharges not authorized by a general permit, the discharger must apply to the Corps for an individual Section 404 permit.

Although the U.S. Army Corps of Engineers (Corps) is responsible for the day-to-day



administration of the program, including reviewing permit applications and deciding whether to issue or deny permits, EPA has a number of Section 404 responsibilities. In consultation with the Corps, we develop the Section 404(b)(1) Guidelines, which are the environmental criteria that the Corps must apply when deciding whether to issue permits. Under the Guidelines, a discharge is not allowed if there are practicable alternatives with less adverse effects on the aquatic ecosystem, and appropriate steps must be taken to minimize potential adverse effects to the aquatic ecosystem and mitigate for unavoidable impacts. Under Section 404(c), EPA is authorized to veto or otherwise restrict a Corps decision to issue a permit if EPA finds there would be unacceptable adverse impacts to specified environmental resources. EPA and the Corps share Section 404 enforcement authority. Other EPA Section 404 responsibilities include determining the geographic scope of the program, determining the applicability of the exemptions for certain agricultural and forestry activities, and approving and overseeing State assumption of the program.

**Property Rights and Takings Issues**

By protecting wetlands, the Section 404 program maintains the environmental and economic benefits provided by these valuable natural resources. The program also helps ensure that private landowners do not use their property in a manner that will damage or destroy the value of neighboring and downstream property. Section 404 permits contain appropriate and necessary terms and conditions to limit potential impacts and to ensure losses of wetlands functions and values, such as floodwater storage and habitat, are adequately mitigated.

Many activities undertaken on wetlands either are not regulated at all, are explicitly exempted from regulation, or are authorized by general permits, eliminating or reducing the regulatory burden for tens of thousands of landowners each year. In situations where individual permits are required, the Federal agencies are prepared to work with permit applicants to design projects that meet the requirements of the law and protect the environment and public safety. However, in some instances the law restricts the actions of the property owners in order to protect the property rights, safety, environmental or economic interests of other individuals and landowners or the community at large.

In those rare situations where the necessary restrictions on use amount to a Fifth Amendment taking of the property, the owner will, of course, be entitled to compensation. Moreover, where a property owner believes that government action amounts to a taking, the courts are available to review such claims and to determine whether compensation is due. Due to the unique nature of each situation, these issues must be considered on a case-by-case basis.

Ultimately, the courts decide whether a compensable taking of private property has occurred by applying a longstanding test which is intended to balance the competing interests of the property owner with those of society as a whole. In deciding if a taking has occurred, courts often use a multi-factor test, considering such things as the character of the government activity, the economic impact of the government action on the landowner, and the extent to which the government action interferes with reasonable investment-backed expectations.

The federal agencies strive to minimize the imposition of Section 404 program burdens on landowners and other dischargers, consistent with our statutory mandate to protect, restore, and maintain the physical, chemical, and biological integrity of the Nation's waters. During FY 1999, the Corps regulatory program provided written authorization for over 74,000 activities, and over 90 percent of all those actions were authorized through a general permit in an average of 18 days. The Corps received an average of 74,500 Section 404 permit requests per year from FY 1996 to FY 1999. Of those requests, 90 percent were authorized through a general permit. Only 6.7 percent of all permit applications were subject to the more detailed individual permit evaluation, through which impacts are avoided and compensated. Less than 1 percent of all Section 404 requests were denied.

#### **Program Improvements Over the Past Decade**

Administering the Section 404 program in a fair, flexible and effective manner has been a major priority of this Administration. In this regard, EPA was centrally involved in developing the 1993 Wetlands Plan and in implementing many of the actions it laid out. The Plan reflects a federal commitment to be responsive to landowners' concerns with the Section 404 Program, without compromising protection of wetlands and other waters. It reflects five principles that serve as the framework for the Administration's comprehensive wetlands policy. First, the Administration supports the interim goal of no overall net loss of the Nation's remaining wetlands, and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base. Second, the Administration continues to emphasize the importance of non-regulatory programs, such as advance watershed-based planning, voluntary participation in the

Wetlands Reserve, Partners for Wildlife, and 5 Star Restoration programs, and other public/private cooperation to protect and restore wetlands. Third, expanding and improving Federal partnerships with State, Tribal, and local governments is essential to protecting and restoring wetlands in an ecosystem/watershed context. Fourth, wetlands regulatory programs must be efficient, fair, flexible and predictable, and avoid duplication among regulatory agencies, while providing effective resource protection. Finally, wetland policy must be based on the best scientific information available.

The Administration's Wetlands Plan includes over 40 specific initiatives, and their implementation by EPA, the Corps, and other agencies has resulted in many improvements for those we regulate:

- In 1993, and also in 1995, the Corps and EPA issued guidance (Regulatory Guidance Letters (RGL) 93-2 and 95-1) clarifying the need for flexibility in processing permit requests, emphasizing that small projects with minor impacts do not need the same detailed review as large projects. This guidance directs field staff to use the flexibility that exists in the Section 404 program to ensure that the level of permit review reflects variations in the wetlands functions and the nature of the project's impacts.
- In June 1993, EPA and the Corps amended their jurisdictional regulations to make clear that "prior converted croplands," as defined by the Food Security Act, are

excluded from CWA jurisdiction. An estimated 53,000,000 acres of prior converted croplands exist, and are areas that, prior to December 23, 1985, were hydrologically manipulated and cropped to the extent that they no longer perform the wetlands functions they did in their natural condition. Prior converted cropland is exempt from Swampbuster and this change ensured a similar exemption from the CWA, simplifying farmers' regulatory burdens.

- In January 1994, we entered into a Memorandum of Agreement with the Corps and Departments of Agriculture and Interior regarding the delineation of wetlands on agricultural lands. In order to increase certainty for farmers by providing for single reliable wetlands determinations on agricultural lands, the agreement clarified the agencies' roles and responsibilities for such delineations and provided for acceptance for Clean Water Act purposes of wetlands delineations made by the Natural Resources Conservation Service. This agreement also includes provisions to ensure that Federal agency personnel conducting wetlands delineations are properly trained and that standard, agreed-upon methods will be used in making such determinations.
- In June of 1995, in order to reduce regulatory burdens on persons wishing to build a home for their family, the Corps issued Nationwide Permit 29 for single family homes impacting less than 1/4 acre of non-tidal wetlands.

- In November of 1995, recognizing that use of mitigation banks may reduce permit processing times for projects that qualify and provide more cost-effective and flexible compensatory mitigation opportunities, EPA, along with four other agencies, issued joint Federal guidance concerning the establishment of wetland mitigation banks. The guidance encourages the use of mitigation banks where appropriate and sets national policy for establishment and management of these banks for the purpose of providing compensatory mitigation for adverse impacts to wetlands and other aquatic resources.
  
- In March 1999, the Corps published a final rule establishing an administrative appeal process for permit denials. That rule became effective on August 6, 1999. The administrative appeals process was subsequently revised on March 28, 2000 to also allow for appeals from Corps jurisdictional determinations.

Since the Plan, we also have increased funding to States, Tribes and local governments for wetlands programs. EPA recognizes the advantages of implementing environmental programs at a level close to the affected public and has long encouraged states and tribes to become more active partners in wetlands regulation, management and restoration. EPA has provided grants to many states to develop permitting programs that eliminate or reduce the federal role in Section 404 decisions, and some of them are now administering their own permitting programs, primarily through State Programmatic General Permits.

To help landowners understand and comply with the requirements of the Clean Water Act, EPA has a contractor-operated toll-free Wetlands Information Helpline that has assisted tens of thousands of callers. Extensive information on wetlands programs, policies, and regulations has been made available on the World Wide Web. EPA also engages in dialogues with those regulated, such as the forestry industry, the golf industry, and corporate interests, to better understand their concerns and to develop mutually-supported, voluntary or incentive based programs to protect and restore wetlands. We keep many active lines of communication with organizations representing landowners' interests. We have made substantial progress towards achieving the Administration's goal of providing for a fair, flexible and effective wetlands protection program. We will continue in our efforts to make further improvements.

#### **Compliance and Enforcement**

Section 301 of the Clean Water Act prohibits the discharge of pollutants into waters of the United States except in compliance with permit and regulatory requirements. As previously noted, Clean Water Act Section 404 creates a regulatory and permit program for the discharge of dredged or fill material. Both the Corps and EPA may bring enforcement actions for violations of Section 404, and may bring criminal violations to the attention of the Department of Justice. The Water Quality Act of 1987 amended Section 309(c) of the Clean Water Act to make it a felony crime, punishable by three years imprisonment and fines, to knowingly violate the Clean Water Act.

In the last six years, EPA has pursued 31 civil judicial referrals and entered into 51

judicial settlements involving wetlands. Since 1995, EPA has pursued 49 criminal actions involving wetlands.

A vital part of effective wetlands protection is the enforcement of those cases that involve serious harm to the environment and/or adjacent property as a result of unauthorized dredging or filling, or involve flagrant or knowing violations of the law. Enforcement actions are brought against violators for many reasons, including: 1) to protect water quality, including maintaining water quality for commercial, recreational, and subsistence fishing; 2) to protect private property since wetlands act as natural equalization basins that reduce the effects of flooding; and 3) to protect environmental values such as wildlife habitat.

The government brings enforcement actions to require alleged violators to promptly correct their violations and to remedy any harm caused by those violations. As part of an enforcement action, we sometimes also seek monetary penalties that promote environmental compliance by deterring future violations by the same violator and by other members of the regulated community. Penalties help to ensure a level playing field within the regulated community by ensuring that violators do not obtain an unfair economic advantage over competitors who have complied with the Act. At the same time, our policies always take into account the violator's good faith efforts and other reasonable issues such as financial conditions.

In light of the interest your letter of invitation expressed in the John Pozsgai case, I would like to set out a brief history and its current status for your information. The wetlands in question



provide storage capacity for flood waters produced as a result of runoff from extensive paved areas north of this site. The record of the case established that Mr. Pozsgai purchased the property at a reduced price because of his knowledge of the presence of regulated wetlands. In addition, he was specifically warned by the Corps not to deposit fill material at the site. He deposited over four hundred truckloads of rocks and concrete, filling in at least four acres of the wetland, which resulted in flooding of neighbors' property.

During the course of the court proceedings, Mr. Pozsgai violated a temporary restraining order issued by the court, for which the court ordered Mr. Pozsgai in contempt. In December 1988 a jury found Mr. Pozsgai guilty of 40 counts of violating the Clean Water Act for illegally filling wetlands. In July 1989, the district court sentenced Mr. Pozsgai to 27 months imprisonment without parole for those violations occurring after the effective date of the U.S. Sentencing Guidelines (11/1/87), three years imprisonment for those violations occurring when parole was still possible, five years probation, and a \$200,000 fine. He was also ordered to restore the wetlands in accordance with specifications in a plan submitted by the Army Corps of Engineers. After Mr. Pozgai's two appeals to the Third Circuit, his conviction and sentence still stand, although the court reduced the \$200,000 fine to \$5,000 based upon inability to pay. Mr. Davis can provide information on the status of Mr. Pozsgai's more recent interactions with the Corps District.

#### **Conclusion**

In carrying out the Section 404 program, both the Corps and EPA are sensitive to the

interests and concerns of landowners. The equitable administration of any Federal regulatory program involves more than strict technical considerations and must include sensitivity to the rights and expectations of all of our citizens. Implementation of the Section 404 program often requires a balancing of environmental protection, public interests, and individual interests. We have made much progress, but continue to strive towards the fair, flexible, and effective implementation of the Section 404 program. That concludes my testimony, and I hope that the information I have provided has been useful to you. I would be pleased to answer any questions you might have.

Mr. BURTON. Thank you. I was just informed that the Pozsgais never hired any of those firms; that the realtor who sold it to them was concerned about possible litigation against him if he sold a wetland and so he hired one of those firms, who did a very cursory look at the wetland—or at the property. He walked around it and really didn't do a very thorough investigation.

One of the things that concerns me is, Mr. Davis, I think you said that it is really impressive, the number of people that you have helped and the very small percentage of people who have had problems. That may be true, but we are, by the Constitution, supposed to protect the minority as well as the majority. And if a person who doesn't speak English well, who is a Hungarian freedom fighter who came over and here and didn't understand some of these problems, is put in that kind of a position, it seems to me that the Corps of Engineers and the EPA and the Justice Department ought to do everything they can to make sure, before legal action is taken, that they make sure that that person is apprised of the problems that they face.

One of the things I asked one of the counsels for the Pozsgais awhile ago was if they thought it might be a good idea to have an ombudsman for those cases where there is a problem with EPA or the Corps of Engineers for these people to be able to go to, especially those who may not understand all of the ramifications that you are talking about, to talk to them and to be able to explain their problems before they are hauled off to jail.

What do you think about an ombudsman for that kind of a situation?

Mr. DAVIS. Mr. Chairman, we would certainly consider that, and we would want to understand exactly what it meant from a legal perspective, but I think that's something that we would take—under advisement. In fact, we have a record of doing something, I think, that's similar. In some Corps districts, we have what we call tribal coordinators to help us communicate better with tribes and understand more fully their issues, and so we do have—

Mr. BURTON. You are talking about Indian tribes?

Mr. DAVIS. Yes, sir, Indian tribes.

Let me just say, though, that I actually started my career in the Federal Government over 20 years ago as an enforcer in this program, out in the trenches, if you will, and my experience is that we work very hard to try to avoid any type of criminal or civil action. It is extremely rare.

We work with landowners. We try to address the environmental problem. That's fundamentally all we are interested in, is taking care of the environment.

Mr. BURTON. Sure, I understand. Let me just ask you this: Have you ever heard of a more severe penalty than Mr. Pozsgai went through for this kind of a problem?

Mr. DAVIS. Penalties in the program are very rare.

Mr. BURTON. Have you ever heard of a more severe penalty, 3 years in jail, \$200,000 in civil penalties, \$202,000 in criminal penalties, 18 months in a halfway house? For this kind of a problem, have you ever seen a more severe penalty?

Mr. DAVIS. I am not aware of one.

Mr. BURTON. How about you, Mr. Wayland?

Mr. WAYLAND. I am not—Mr. Chairman, I think there may very well be penalties that have resulted in more lengthy incarcerations, and there certainly have been many money penalties that greatly exceed those that were imposed in this case.

Mr. BURTON. For a man who was a truck mechanic, who just had a small house, who bought 14 acres across the street from him? I mean, shouldn't the penalty fit the crime if there is a crime?

Mr. WAYLAND. It is my understanding that the money penalty was significantly reduced as a result of—

Mr. BURTON. I know, but that's not the point. The point is that it was initially levied at over \$200,000.

Mr. WAYLAND. And that the—and that the period of incarceration was significantly affected by mandatory sentencing guidelines.

Mr. BURTON. It went from 3 years to 18 months. Well, let's just say the 18 months. Don't you think that's a little severe for that?

Mr. WAYLAND. It is certainly very unusual for a penalty of that magnitude to be imposed. However, I think that the contributing circumstances were the continued violations after a restraining order had been issued by a court.

Mr. BURTON. One of the reasons, Mr. Wayland and Mr. Davis, that I think that there needs to be some kind of an ombudsman for these people to go to is Mr. Pozsgai, a Hungarian freedom fighter who still doesn't speak English all that well, was not—he thought when you talked about mitigating funds, he thought that was a bribe and he went to the FBI, I understand, to report that they were trying to—he was trying to be coerced into doing something, because that's what he had to live with in a Communist country where he fought the Russians in the streets of Budapest.

It seems to me before you start throwing somebody like that in the slammer, if he thought he was being—they were trying to blackmail him, it seems like somebody would have sat down and said, hey, hold it, we aren't trying to blackmail you; we are talking about using some funds to go straighten out the mess that's been created.

But it just went on and on and on, and even though this is a very rare situation—I don't know if it is or not. I am sure we are going to have other cases because I intend to have more hearings about this because I believe this thing needs to be streamlined and corrected. I mean, I understand what you are saying, that things are a lot better than they were, but it seems to me that there is more improvement that can be made.

And so it just seems like to me—just 1 second. It just seems like to me that when you have somebody who is not conversant with the English language like they should be, and we have a lot of those, a growing number, especially Hispanics that are coming into the country, it seems to me that there should be extra care taken to make sure they understand their rights under the law and the penalties that they might face if they don't concur. And I don't believe in the case of Mr. Pozsgai that he understood that.

With that—I don't have any more questions, but if you want to make a quick comment.

Mr. WAYLAND. I just wanted to respond to the suggestion about an ombudsman being a useful position to help people understand

what the legal and regulatory requirements are, because EPA has established a small business ombudsman. I believe that position has been established for some years now.

Now, it may be that in 1988, when these violations occurred, that position had not been established. I am not sure. I will have to look at when we established that, but we do have a small business ombudsman.

Mr. BURTON. OK. Let me just followup on that. If a person of foreign descent like Mr. Pozsgai has a problem, are they informed that there is an ombudsman they can go to now or is this something they are just supposed to figure out for themselves? Because I think if there is a legal question or a problem, in addition to other things that they are informed about, they ought to be informed that there is a place they can go without hiring private counsel that's going to cost them an arm and a leg, within the governmental process, so they can sit down and understand the ramifications of the problems that they face instead of having to face incarceration and all of these other things.

Did you have any comments?

Mr. KUCINICH. Yes, Mr. Chairman. I have some questions.

I want to welcome the witnesses and thank you for serving our country in your respective capacities.

Some questions for Mr. Davis. During the first panel, we heard concerns that applicants don't have the resources to go up against the Corps when they disagree with Corps decisions. However, my understanding is that citizens who are negatively impacted by a Corps decision to grant an application have no recourse at all.

Now, isn't it true that the applicant can appeal a decision to deny a permit, but neighbors who might be flooded because of the loss of wetlands have no right to appeal the Corps decision to grant an application?

Mr. DAVIS. Congressman, it is true. We were very concerned, as we put together the President's wetlands plan, that landowners who had permits denied or jurisdictional determinations that they disagreed with had no recourse short of going to Federal court, which we know is time-consuming and very expensive. So we have established an administrative appeals process for individuals who have permits denied, individuals who have permit conditions imposed that they disagree with, and individuals who disagree with jurisdictional wetlands determinations.

It is true that this appeals process does not extend to third parties who would challenge the issuance of a permit. We debated that and concluded that we couldn't do that at this time.

Third parties are allowed to participate in the appeal process, however. If a permit is denied and the applicant appeals that, third parties can participate in that process.

Mr. KUCINICH. Thank you. Now, either panelist. Ms. Andria testified about the manner in which some developers have beat the system. Some applied for permits in a piecemeal fashion. Others mischaracterized their needs. Yet these developers continue to obtain permits from the Corps and successfully develop their sites. Would you comment on this?

Mr. DAVIS. I am not familiar with the particular case that Ms. Andria mentioned. We will certainly look—

Mr. KUCINICH. Just generally, just generally what about this idea of developers obtaining permits, developing their sites even though they mischaracterize their needs?

Mr. DAVIS. We don't see that as a systemic problem throughout the program. We think most developers and applicants are honest with us and they correctly provide the information that we need to do a good evaluation.

Mr. KUCINICH. Mr. Wayland.

Mr. WAYLAND. I think as a general matter we do, through the 404(b)(1) guidelines that EPA has developed in consultation with the Corps, call for applications that address full and complete projects. It is the case that sometimes someone will expand their business and then at a later stage, when circumstances change, undertake different or additional activities and we can't completely rule that out, but I believe the Corps routinely considers what the prior permit history has been on a particular parcel when examining new permits.

Mr. KUCINICH. OK. A followup now. Do either of you believe that private property rights of landowners where negatively affected by development should be considered when developing and implementing wetlands policy?

Mr. DAVIS. Yes, we absolutely do, and we think the property rights debate is, in fact, about everybody's property rights.

Mr. KUCINICH. Mr. Wayland.

Mr. WAYLAND. I concur.

Mr. KUCINICH. Do you believe there is room for improvement in this area?

Mr. DAVIS. Yes, I think so.

Mr. WAYLAND. We continually strive to improve the program. We are continuing to supplement the actions that were taken at the time of the 1993 wetlands plan with additional efforts to improve our programs, and I think we are enjoying considerable success in doing that.

Mr. KUCINICH. Now earlier, I mentioned Ohio's no-net-loss policy which resulted in an 18 percent loss of wetlands between 1990 and 1995. What has been done since 1995 and what do you propose to do in the future to ensure that a no-net-loss policy is implemented successfully?

Mr. DAVIS. We continue to make improvements in this program both from the perspective of protecting the resources and protecting the landowner, the applicants, who have had to apply for permits. I think we have done a fair amount since 1995. One of the most important things that we have done is modify our nationwide general permit program to tighten up, if you will, those things that are allowed to occur under the general permit program.

Mr. KUCINICH. Now the study also found that the Ohio wetland program seemed to be biased toward deepwater wetlands that house game species like ducks and fish, while shallow water wetlands were being destroyed. Do you believe that both types of wetlands are important, and what policies are in place to prevent any kind of a bias?

Mr. DAVIS. Our policy is to replicate, to the best we can, the functions that are lost, and we ought to be first looking toward what we call in-kind mitigation. If we have a marsh, we ought to create

or restore a marsh for each wetland type. That's our first choice. Sometimes there are exceptions where it is actually better for the environment to deviate from that policy.

Mr. KUCINICH. Well, I also discussed a study—if I may, Madam Chair, ask one more question. I also discussed a study where the EPA found that the wetlands that had been created as part of a developer's attempt to mitigate impacts are not as useful as the wetlands they replaced. Would you care to, either of you, comment on that, Mr. Wayland?

Mr. WAYLAND. Mr. Kucinich, I think one of the Achilles' heels of the regulatory program has been the lack of success in wetland mitigation. The National Academy of Sciences now has underway a study to look at mitigation policies and practices, to look in particular at mitigation banking which has been the source of some controversy. But I think that the mitigation banking policy of the agencies and the significant increase in this market-based approach to wetland restoration has, in fact—and I don't want to prejudge the National Academy's work—but I think there are some good indications to date that mitigation banking, because professionals undertake it, rather than people who may be trying to deal with a single project, enjoys a much greater rate of success in replicating the functions and values of wetlands that have been lost through permitting.

Mr. KUCINICH. Thank you, Mr. Wayland.

Thank you, Madam Chair. I appreciate it.

Mrs. CHENOWETH-HAGE [presiding]. Mr. Sanford, you are recognized.

Mr. SANFORD. I thank the chairwoman. I guess my first question would be to you, Mr. Davis. You may have heard my comments earlier on impoundments on the coast of South Carolina. Would you consider them to be wetlands or nonwetlands?

Mr. DAVIS. Congressman, you have asked a very fact-specific question. I think there is—it could be either one, depending on the actual facts of that particular case. If you have an issue, we can certainly look into it and get back to you for the record and get back to you individually.

Mr. SANFORD. Let's think about what you just said. It could be either one. I mean, that fundamentally is what this hearing is all about. In other words, in a lot of different circumstances the same situation can be looked upon by one regulator and viewed one way, and by another regulator and viewed the other way.

Mr. DAVIS. Congressman, that's not what I said. That's not what I said. What I said was—

Mr. SANDERS. Well, you said either one; it could be either one.

Mr. DAVIS. Well, what I—I do not have the facts before me, the data that I would need, to make that determination. I believe—

Mr. SANDERS. Well, the facts would change based on what the landowner chose to do with his trunk. The trunk controls the water flow in or out of an impoundment. He could flood it with saltwater. He could drain it and keep it with a one-way flap forever dry and literally grow pine trees in there. He could flood it with saltwater, fresh water. In other words, you could—because it is a man-made environment, it could be any of the above, but oddly enough these things are regulated as wetlands by the Corps currently.

I think that that is a very weird position for the Corps to be in because it is all based on a use that could literally change from week to week.

Second, I guess I would say I guess to Mr. Wayland—it is a pleasure to see you again—first of all I would say you didn't really answer the chairman's question. When he asked in this particular situation did you know of a bigger penalty, you said you thought there certainly were, but—

Mr. WAYLAND. There are larger money penalties under the Clean Water Act, substantially larger.

Mr. SANDERS. I understand. In other words, you could have Valdez with Exxon, but I am saying in a private landowner case who would be bigger?

Mr. WAYLAND. The number of wetland criminal actions is a very small number, spanning many, many years.

Mr. SANDERS. I am just asking you—

Mr. WAYLAND. You are testing my recollection beyond its limits to ask me about things that have happened in the history of the program.

Mr. SANDERS. His question was did you know of a bigger case. That's all I am asking.

Mr. WAYLAND. No.

Mr. SANFORD. OK. Second, I think what you said in your testimony unfortunately was not true, in that if you look on page 5 of your testimony it says, Overview of Clean Water Act, Section 404, "Because they are waters of the United States," you begin your phrase with, "all the protections applicable to rivers, lakes and estuaries established," and so on. Could you show me the water on some of these wetlands that you referred to in this paragraph?

Mr. WAYLAND. All wetlands have to be saturated or inundated for a period of time sufficient to allow the growth of a preponderance of wetland vegetation, and there needs to be the presence of hydric soil. So it is a time—

Mr. SANFORD. No, no, that's not true. It could be hydric soils solely.

Mr. WAYLAND. It is a three-part test in our regulations for the presence of a wetland.

Mr. SANFORD. One of which could be hydric soil solely?

Mr. WAYLAND. No, that is not the case. That is not the case.

Mr. SANFORD. You are saying all three have to be determined; it couldn't be one of the three?

Mr. WAYLAND. That's correct.

Mr. SANFORD. All three?

Mr. WAYLAND. All of the parameters; not just one as the basis for making a jurisdictional determination.

Mr. SANFORD. All three.

Mr. DAVIS. Congressman, may I answer?

Mr. SANFORD. How many days a year would water have to be covered—cover the land?

Mr. WAYLAND. It is a percentage of the growing season that is specific to the region of the country that you are looking at.

Mr. SANFORD. So how many days?



Mr. WAYLAND. So the growing seasons vary, and the delineation manual calls for the presence of water through saturation or inundation for a percentage of the growing season.

Mr. SANFORD. So how many days would the land have to be covered?

Mr. DAVIS. Five to 12½ percent of the growing season. So it varies from the growing season. In the Southeast, it would be a longer period than it would be in the North.

Mr. SANFORD. I am sorry? Say again.

Mr. DAVIS. It is 5 to 12½ percent of the growing season. So it would vary. In the Southeast where the growing season is long, the requirement would be longer. In the Northeast where it is colder and the growing season is shorter, it would be shorter.

Let me make a point, Congressman.

Mr. SANDERS. Let me just come back. I just found out that I was right. In other words, we are both right on our query. If it is an undisturbed wetland, you go to the second parameter, but if it was a—if it is a disturbed wetland, it is a different check. In other words, you have a number of different things—tools, if you will, that you can use in determining wetland. But it could well be my case wherein you could never see any water on the land whatsoever but based on vegetative content have it classified as a wetland.

Yes? I am sorry.

Mr. DAVIS. Along those same lines, Congressman, you are absolutely right. We use what we call secondary indicators, and it is not necessary to actually see water every time you are out there doing a delineation.

Now, we could do that but it would force us to wait until the water is there, and applicants wouldn't like that.

Mr. SANFORD. But wouldn't you admit, then, that very problem causes some real problems with unsophisticated landowners in determining whether or not they have a wetland?

Mr. DAVIS. I think there is some problem. There have been problems in the past, about our general understanding of wetlands, what they are, and the importance of wetlands. If you look at well-known wetlands like the Everglades in south Florida that we are trying to restore, parts of the Everglades are completely dry at times, dry to the extent that they actually burn. The Dismal Swamp in south Virginia is another example, many parts of the Dismal Swamp that everybody recognizes as a wetland, you could drive a tractor across that.

Mr. SANFORD. I readily acknowledge those are wetlands. I will be the first to acknowledge that. I think that's a very different animal than a quarter-acre wetland in a pine barren in South Carolina.

Mr. DAVIS. If you go to the Midwest where the prairie potholes are, these are tenth-acre, quarter-acre, half-acre, 1-acre, 2-acre potholes that are actually farmed many times of the year. They are dusty many times of the year, but they also provide almost the sole breeding grounds for our waterfowl in this country.

Mr. SANFORD. I see I am out of time. My one last question is smart growth; would you agree that our current wetland policy prevents smart growth?

Mr. DAVIS. No.

Mr. WAYLAND. No.

Mr. SANFORD. Why?

Mr. DAVIS. Actually——

Mr. SANFORD. You would admit, then, based on current environmental policy you could never build a Charleston, which Andres Duany would argue is smart growth?

Mr. DAVIS. Congressman, I disagree. I think the statistics that I pointed to in this chart indicates——

Mr. SANFORD. Wait, wait, wait. Do you think you could currently get permitted a Charleston, SC, on that same geography?

Mr. DAVIS. I don't know. Again, it would be a very fact-specific situation.

Mr. SANFORD. I am sorry. I am burning through time.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Sanford.

Mr. McHugh, you are recognized.

Mr. MCHUGH. Thank you, Madam Chair.

Gentlemen, a couple of quick questions. You mentioned your three-part test. Many States, under their wetland regulations, have minimal-size standards. The State of New York, I believe, is about 12.4 acres. Do you have a similar size qualification or criteria by which you decide whether or not to even go in and to assess a program or not? Does size matter?

Mr. DAVIS. Yes, Congressman, we do. As indicated on this graphic, about 90 percent of the activities are covered by a general permit. These are very minor things, and if they are under a certain size they go forward with little or no review from the Corps.

Mr. MCHUGH. What is that size?

Mr. DAVIS. Right now it is a half acre.

Mr. MCHUGH. Let me ask you, do you have a standard by which you set your regulatory timeframe? In other words, do you have a criteria of, well, we shall process a permit in so many months? And if so, what is that?

Mr. DAVIS. We have some statutory requirements that require us, for example, to issue a public notice within 15 days of a complete application. I think we generally meet that. We also have internal, within the Corps, goals that we try to meet in evaluating permits. I think it is 100—120 days; 120 days is our goal. But that 120-day goal is for those detailed individual permits. That's not the big purple piece of this pie that we are looking at here. That's that little——

Mr. MCHUGH. I am concerned about the more difficult cases. I understand that.

Mr. DAVIS. Right. That's—120 days is our goal. The average time is 118 days. That's what we did in 1999.

Mr. MCHUGH. Also, help me to understand the process whereby—and I am thinking of a specific case in my district—before the permit would be issued, the permit applicant was required to make a \$60,000 donation to the Fish and Wildlife Service to some unnamed project for environmental restoration offsite, what is that about?

Mr. DAVIS. I am not familiar with that.

Mr. MCHUGH. I see Mr. Wayland is nodding.

Mr. WAYLAND. Well, I think this could be, and I don't know the facts in that case——

Mr. MCHUGH. I understand.

Mr. WAYLAND [continuing]. So I have to put that caveat out, but some States and some Corps districts permit a form of mitigation known as "in-lieu fee mitigation," where the impacts are very small and rather than undertaking direct mitigation onsite or offsite, the applicant can, in effect, buy into an ongoing mitigation project.

Now, the mitigation banking approach, which is guided by much clearer interagency policy, draws a direct link between the wetlands that are being permitted for destruction and the wetlands that are being created or restored for mitigation.

In-lieu fee lacks that direct sort of one-for-one connection, and as a result, a number of people, including mitigation bankers, question whether it should be permitted, should be authorized. That's one of the issues being examined in the National Academy of Sciences study that I referred to earlier.

Mr. MCHUGH. I appreciate that. The reason I am asking, rather than sit here and vent—which I could do, because we have a very specific case that occurred in my district involving Wal-Mart, a very savvy organization with what I think most Americans would consider deep pockets. They had a project to establish, and ultimately did establish, a processing center in my district, where the unemployment rate is often double digits, that eventually created over 200 jobs.

That project, the application for wetlands ultimately came down to two-tenths of an acre. It took 10 months to process and it cost them \$3 million in processing fees additional to the project, and they were required, because—

Mrs. CHENOWETH-HAGE. Will the gentleman yield?

Mr. MCHUGH. I would like to finish this one—

Mrs. CHENOWETH-HAGE. I just wanted to let you know, we have 3 minutes left on the vote.

Mr. MCHUGH. I will be finished in 20 seconds.

Mrs. CHENOWETH-HAGE. Thank you.

Mr. MCHUGH. At the end of the day, and I know this to be a fact because we negotiated it, based on nothing to do with the wetlands remediation program or the permit, they were forced in what I think can fairly be described as an administrative bribe, to pay \$60,000 to an unnamed project for unnamed purposes.

I would like to send you gentlemen the records of this. The county involved did a very extensive report that they shared with me, a lot of time and effort, and I would appreciate your responding to it because I think it illustrates the worst of this program that I take you gentlemen at your word that you want to make better, and I think this is what we need to look at. Can I count on you to do that?

Mr. DAVIS. Yes, Congressman.

Mr. MCHUGH. Thank you, gentleman.

Thank you, Madam Chair.

Mrs. CHENOWETH-HAGE. We will now recess the committee subject to the call of the Chair. We will be back as soon as we finish our votes. Thank you.

[Recess.]

Mrs. CHENOWETH-HAGE. We will now reconvene the hearing.

I am a little bit out of breath. I just ran to the Capitol and back. So bear with me here.

Mr. Wayland, I wanted to do just one followup question to Mr. Sanford's questions with regards to permitting on nonpoint sources. Isn't it true, though, that EPA has exempted the Forest Service and government lands from nonpoint source pollution?

Mr. WAYLAND. Actually, what we did in our final TMDL rule was delete the provisions that had been proposed that would have potentially involved permitting for either the forest—either activities on Forest Service lands or activities on private lands.

So, in fact, the very interesting meeting that Congressman Sanford and I had had, as part of its upshot, a decision by the agency that we would not apply those permitting requirements to public—to activities on public or private forest lands.

Mrs. CHENOWETH-HAGE. My concern is that we have suffered millions of board feet of fire out in the West and it is creating a tremendous sediment load in our streams and it just does seem inconsistent that forests on the Federal lands are exempted from stream pollution while—

Mr. WAYLAND. We thought that was a pretty persuasive argument and decided we wouldn't go that way.

Mrs. CHENOWETH-HAGE. Good. Thank you.

Mr. Davis, I hope that what you reflected in your testimony just now is a real change and a new face for the Corps of Engineers and a new face for the EPA. The reason we are holding this hearing is that we are afraid the old face still looms, especially in cases like the Pozsgai case.

Now, when our majority staff, our staff counsel, called the legislative liaison for the Army Corps, he said he wasn't excited about bringing down people from Philadelphia. He said that it might cost too much. I wonder, Mr. Davis, if you might have all the people that are with you from Washington or from Pennsylvania please stand.

Mr. DAVIS. I would certainly be glad to do that. We actually do have somebody from the Corps' Philadelphia District and we have folks from the Corps of Engineers headquarters as well. They can raise their hand or stand if they want.

Mrs. CHENOWETH-HAGE. I wonder if you would all please stand.

Now, I wonder, Mr. Wayland, if you would ask all of those who are from your office to please stand.

Mr. WAYLAND. Anybody who is with the Environmental Protection Agency?

Mrs. CHENOWETH-HAGE. Yes. OK. I wonder how much this costs. In fact, I wonder, gentlemen, if both of you could produce for the record how much the entire Pozsgai costs have been from the beginning of your work with them until now. Would you please produce that for the record, the costs for both the Army Corps of Engineers and for the EPA?

Mr. DAVIS. Madam Chairwoman, we will do it to the best of our ability. I don't know what bookkeeping procedures are in place to track that sort of thing but to the extent that we have this information we will certainly provide it to you.

[The information referred to follows:]

INSERT page 144 line 3328

The Philadelphia District has been involved in investigating and resolving violations of the Clean Water Act committed by Mr. Pozsgai on his property since April 21, 1987. The property, approximately 14 acres in size, is located in Falls Township, Bucks County, Pennsylvania.

Over the nearly 14 year period, Philadelphia District's involvement with Mr. Pozsgai and with the above noted site has included numerous actions, including investigation and determination of unauthorized work; pursuit of a civil action against Mr. Pozsgai; support of a criminal case undertaken by Region III, U.S. Environmental Protection Agency; and support of EPA during Mr. Pozsgai's appeal of the criminal action. Subsequent to court actions and the judge's order that Mr. Pozsgai restore areas subject to Federal jurisdiction, this office has investigated multiple episodes of unauthorized work performed by Mr. Pozsgai. This effort has involved site inspections, preparation of records for the file, issuance of multiple Cease and Desist letters, and coordination with other agencies. More recently, on December 7, 1998, the Philadelphia District completed denial of an individual permit application submitted by Mr. Pozsgai; investigated and coordinated continuing instances of unauthorized work performed by Mr. Pozsgai; referred the Pozsgai case to the U.S. Attorney's Office, Philadelphia, Pennsylvania, for restoration of areas subject to Federal jurisdiction; and responded to inquiries from Congressman Dan Burton and his staff with regard to the above noted actions.

Due to the age of many of the actions taken in this matter, the absence of individuals who were once involved, and the absence of a specific accounting of time spent dealing with the above noted actions, it is not possible to provide an accurate estimate of the hours spent, and the dollars expended, to pursue Mr. Pozsgai's repeated violations of the Clean Water Act. Review of the case suggests that approximately one full time equivalent (FTE) workyear of effort has been devoted to pursuing the above noted actions over the past 14 years. The average cost for an FTE workyear of effort over the past 14 years is approximately \$80,000. The Philadelphia District estimates that a figure of approximately \$100,000.00 would reflect the staff time and other costs of pursuing Mr. Pozsgai's on-going violations of the Clean Water Act.

Should you have any further questions concerning the above matter, you may contact Mr. Frank J. Cianfrani, Chief, Regulatory Branch, Philadelphia District at 100 Penn Square East, 6th Floor Wanamaker Building, Philadelphia, PA 19107 or by telephone at (215) 656-6725.

Mrs. CHENOWETH-HAGE. Mr. Davis, well, before I go on to that, I wonder if all of the lawyers presently representing Mr. Pozsgai would please stand.

You know, there is the picture, and I think that it was testified to that this gentleman works for the Pozsgais on a pro bono basis. He also has a law firm to run. That's the reason for the hearing today, the full force of the government coming down on one individual and not just Mr. Pozsgai but other individuals who have to suffer under trying to understand the plethora of laws as well as regulations.

You heard it testified to that Mr. Pozsgai was sentenced to 3 years, of which he spent 1½ years in the Federal penitentiary. He was initially subjected to a fine of \$202,000, which was subsequently reduced. But I would like to put in the record a number of other fines that the EPA has imposed on companies.

Occidental Chemical Corp., October 13, 1998, they were fined for storing methylene chloride, chloroform and carbon tetrachloride in open containers; storing carbon tetrachloride and chloroform sump waste outdoors and failing to properly track manifests. Failing to properly track manifests is huge, as well as the storage. They were fined \$244,000. That's Occidental Chemical Co. That is just a little bit more than what Mr. Pozsgai was fined for cleaning up a dump.

Vacation Charters Limited out of Kidder, PA, has agreed to pay a fine of \$10,000; Catenary Coal Co. for unlawful discharges of blackwater will pay a penalty of \$5,000; Bobcat Oil and Gas, Inc., will pay a fine of \$6,000, and it goes on and on.

Without objection, I would like to enter these into the record because it precisely points out the reason why we are here.

[The information referred to follows:]

NewsWire Article: Bobcat Oil & Gas To Pay \$6,400 Penalty for Oil Spill 06/27/2000semita.epa.gov/r3/press.nsf/7f3...2f0a8d8c7c38525690b006e653a?OpenDocument



[\[Contents\]](#)[\[Next\]](#)[\[Previous\]](#)[\[Region 3 Home\]](#)[\[EPA Home\]](#)



**REGION 3  
PRESS RELEASES**

## News Release

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

**For Immediate Release: June 27, 2000**

***Bobcat Oil & Gas To Pay \$6,400 Penalty for Oil Spill***

**WAYNE, W.Va.** -- Bobcat Oil & Gas Inc. has signed a consent agreement and will pay a \$6,400 penalty for spilling oil into Whites Creek in Wayne County, W.Va., the U.S. Environmental Protection Agency announced today.

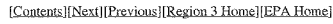
EPA cited Bobcat for violating the Clean Water Act by spilling about 57 barrels (2,394 gallons) of oil into the creek on March 16, 1998. The company cooperated with the West Virginia Department of Environmental Protection by responding to the spill and repairing its leaking pipeline.

The Clean Water Act prohibits discharges of oil into U.S. waterways, shorelines and coastal areas. The law also requires companies to prepare oil spill prevention and response plans, and to report prohibited discharges immediately to a national response center.

#

00-219

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)



[Contents](#) [Previous](#) [Next](#)

**EPA SETTLES BLACKWATER COMPLAINT AGAINST CATENARY COAL CO. - Company to Pay \$5,000 penalty, Spend \$25,000 on Creek Cleanup**

Catenary Coal Co. operates the Campbells Creek Complex, a coal processing complex in Eskdale, W.Va. According to EPA's complaint, this facility violated its permit by discharging blackwater into the Pointlick Fork of Campbells Creek on January 8, February 23-24, and April 28, 1999. As part of the settlement, the company neither admitted nor denied liability for the alleged violations.

井

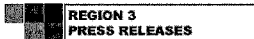
[Contents](#) [Previous](#) [Next](#)



NewsWire Article: VACATION CHARTERS, LTD... TO SETTLE WETLANDS COMPLAINT  
<http://www.epa.gov/region3/pressrel/000918/000918001773...0607b19173285256960004e5d9370OpenDocument>



[\[Contents\]](#)[\[Next\]](#)[\[Previous\]](#)[\[Region 3 Home\]](#)[\[EPA Home\]](#)



## News Release

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

**For Immediate Release: September 18, 2000**

### **VACATION CHARTERS, LTD. TO PAY \$10,000 PENALTY TO SETTLE WETLANDS COMPLAINT**

**KIDDER, Pa. --** The U.S. Environmental Protection Agency announced that Vacation Charters, Ltd. of Kidder Township, Carbon Co., Pa., has agreed to pay a \$10,000 penalty to settle a complaint that the company unlawfully discharged fill material into protected wetlands. As part of the settlement, the company neither admitted nor denied liability for the alleged violation.

EPA's September 1997 complaint alleged that between October 1995 and October 1996, the company filled about 3/4 acre of wetlands at the Split Rock Country Club without a required permit from the U.S. Army Corps of Engineers. The company applied for the permit after the alleged violation, and has mitigated the environmental harm by creating an even larger wetlands area.

Under the Clean Water Act, a Army Corps of Engineers permit is required before dredged or fill material may be discharged into wetlands areas. The permit requirement is designed to minimize the destruction of wetlands, which serve a number of critical environmental and economic functions -- including flood control, water filtration, and wildlife habitat.

#

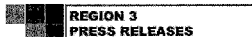
00-296

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

NewsWire Article: PROPOSED \$244,820 PENALTY AGAINST OCCIDENTAL CHEMICAL PLANT IN BELLE W.VA. ... Press.nsf/773...8fe48bdfcf8525669d005ed521?OpenDocument



[\[Contents\]](#)[\[Next\]](#)[\[Previous\]](#)[\[Region 3 Home\]](#)[\[EPA Home\]](#)



## News Release

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

**For Immediate Release: October 13, 1998**

### ***PROPOSED \$244,820 PENALTY AGAINST OCCIDENTAL CHEMICAL PLANT IN BELLE***

PHILADELPHIA -- The U.S. Environmental Protection Agency today announced that it has cited Occidental Chemical Corp. for violating hazardous waste regulations at its chemical manufacturing facility in Belle, W.Va.

EPA's administrative complaint proposes a \$244,820 penalty for several violations of the Resource Conservation and Recovery Act (RCRA), a federal law regulating the treatment, storage, and disposal of hazardous waste.

The alleged violations were documented in inspections by the West Virginia Division of Environmental Protection (WVDEP). In the complaint, EPA alleges that the company violated RCRA by:

- \* storing hazardous wastes (including methylene chloride, chloroform and carbon tetrachloride) in three railcars without a permit from before 1993 through October 1994.
- \* failing to keep records of required inspections of the hazardous waste in the railcars.
- \* storing waste filters contaminated by methylene chloride, chloroform and carbon tetrachloride in open containers without a permit at the time of WVDEP's 1994 inspections.
- \* storing carbon tetrachloride and chloroform sump waste outdoors without a permit from October 24 to November 2, 1994.
- \* failing to properly track manifests of five November 1994 hazardous waste shipments.
- \* storing containers of hazardous waste without appropriate labels or accumulation dates without a permit at the time of WVDEP inspections in early 1995.

The company may request a hearing to contest the alleged violations and the penalty proposed in EPA's complaint.

#

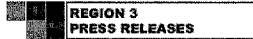
99-13

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

NewsWire Article: EPA Settles Clean Water Case Against Garden State Tanning  
<http://www.epa.gov/r3/press.nsf/713...b98fe49234f852567550063b9c0?OpenDocument>



[\[Contents\]](#)[\[Next\]](#)[\[Previous\]](#)[\[Region 3 Home\]](#)[\[EPA Home\]](#)



## News Release

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

**For Immediate Release: April 15, 1999**

### *EPA Settles Clean Water Case Against Garden State Tanning*

**Williamsport, Md.** - Garden State Tanning (GST), of Williamsport, Md., has agreed to pay a \$54,900 penalty for violating the Clean Water Act, the U.S. Environmental Protection Agency announced.

EPA cited GST last August for Clean Water Act permit violations at the company's cattle hide chrome tanning and finishing plant at 312 W. Conococheague St. in Williamsport. The Maryland Department of the Environment (MDE) also brought an action against GST for violations of Maryland water law. The facility discharges into the Potomac River.

According to the complaints, GST exceeded permit limits for fecal coliform, ammonia and chlorine, used improper analytical procedures and failed to maintain its treatment equipment (including a diffuser through which GST discharged effluent) in good working order. EPA's complaint also alleged that GST unlawfully diverted its effluent to an unpermitted former discharge point into the Conococheague Creek.

"The successful outcome of this case is a result of the cooperative efforts of the state and EPA in safeguarding the quality of Maryland's waterways," said EPA Regional Administrator W. Michael McCabe.

MDE is currently finalizing its settlement negotiations with the company.

#

99-180

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

Newswire Article: EPA Seeks \$44,000 Penalty Against Cranberry Commons  
<http://www.epa.gov/region3/press.nsf/7f3...a1aa1c9ac2585256810006f207f?OpenDocument>



[\[Contents\]](#) [\[Next\]](#) [\[Previous\]](#) [\[Region 3 Home\]](#) [\[EPA Home\]](#)

## REGION 3 PRESS RELEASES

### News Release

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

**For Immediate Release: October 18, 1999**

#### ***EPA Seeks \$44,000 Penalty in Clean Water Act Complaint Against Cranberry Commons***

Donna M. Heron, 215-814-5113

**CRANBERRY Twp., Pa.** -- The U.S. Environmental Protection Agency has cited Cranberry Commons Joint Venture, LP for discharging fill material into wetlands and stream channels near the Cranberry Commons retail facility in Cranberry Township, Pennsylvania.

According to EPA's administrative complaint, starting in May 1999 Cranberry Commons filled in over 3.3 acres of protected wetlands and 2,840 feet of stream channels without a required permit from the U.S. Army Corps of Engineers. EPA seeks a \$44,000 penalty for this alleged violation.

Under the Clean Water Act, a Army Corps of Engineers permit is required before dredged or fill material may be discharged into wetlands areas. The permit requirement is designed to minimize the destruction of wetlands, which serve a number of critical environmental and economic functions including flood control, pollution prevention, and wildlife habitat protection.

Cranberry Common allegedly applied for a permit but started dredging and filling work before the permit was issued. The complaint also alleges that the company violated certain permit requirements, including the need for the company to obtain a surety bond for any necessary wetlands reclamation resulting from this work.

The company has the right to a hearing to contest the alleged violations and proposed penalty.

#

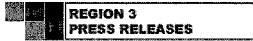
00-28

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

NewsWire Article: EPA Cites Formit Steel...ng Toxic Chemical Reporting Law  
<http://www.epa.gov/r3/press.nsf/7f3...fa75c7f6b75852567dd004c4b4470OpenDocument>



[\[Contents\]](#) [\[Next\]](#) [\[Previous\]](#) [\[Region 3 Home\]](#) [\[EPA Home\]](#)



## News Release

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

**For Immediate Release: August 25, 1999**

***EPA Cites Formit Steel Company For Violating Toxic Chemical Reporting Law***

**RED LION, Pa.** -- The U. S. Environmental Protection Agency has cited Formit Steel Co. for allegedly failing to file required annual reports on the potential release of a toxic chemical that is used at its metal manufacturing plant.

The EPA alleges that the company violated the Emergency Planning and Community Right-to-Know Act (EPCRA) by failing to file required reports for 1995 and 1997 on the usage and potential release of the toxic chemical, toluene, used at the plant. EPA is seeking a penalty of \$8,137 for these violations.

Toluene is a precursor of smog. Excessive exposure of toluene can cause dizziness, nausea, difficulty in breathing, and loss of consciousness. The EPA complaint alleges a reporting violation, and not an unlawful release of this chemical.

EPCRA requires companies that use more than 10,000 pounds of certain toxic chemicals to file an annual "toxic chemical release form" with EPA and the state. Companies must report both routine and accidental releases of toxic chemicals, and the maximum amounts of these chemicals at the facility and the amount contained in wastes transferred off-site.

The reports provide the basis for EPA's annual Toxic Release Inventory, which is provided to the public and regulatory authorities to track pollution and prevent it.

The company has the right to a hearing to contest the alleged violations and proposed penalty.

#

99-387

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

NewsWire Article: EPA Cites Lake Cadjaw Association in Wetlands Complaint  
<http://www.epa.gov/3/press.nsf/7E3...e42eb4c7aa8852567dd004c6caa?OpenDocument>



[\[Contents\]](#)[\[Next\]](#)[\[Previous\]](#)[\[Region 3 Home\]](#)[\[EPA Home\]](#)



## News Release

[Contents](#) [Previous](#) [Next](#)

**For Immediate Release: August 25, 1999**

### *EPA Cites Lake Cadjaw Association in Wetlands Complaint*

**HONESDALE, Pa.** -- The U.S. Environmental Protection Agency today announced that it has cited the Lake Cadjaw Association for unlawfully filling in protected wetlands in Honesdale, Cherry Ridge Township, Wayne County, Pa.

According to EPA's Clean Water Act complaint, Lake Cadjaw Association filled in over a half-acre of wetlands in October 1998 while opening a channel between two halves of Cadjaw Pond. EPA seeks an \$11,000 penalty for the company's failure to obtain a required permit before filling in these protected wetlands.

Under the Clean Water Act, a U.S. Army Corps of Engineers permit is required before dredged or fill material may be discharged into wetlands areas. The permit requirement is designed to minimize the destruction of wetlands, which serve a number of critical environmental and economic functions -- including flood control, water filtration, and wildlife habitat.

Lake Cadjaw Association has the right to a hearing to contest the alleged violation and proposed penalty.

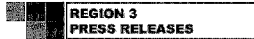
99-388

[Contents](#) [Previous](#) [Next](#)

Newsire Article: Wilmington Company to ...le Stormwater Runoff Violations <http://www.epa.gov/r3/press.nsf/7f3...543aa7cce058525679f005fb13d?OpenDocument>



[\[Contents\]](#)[\[Next\]](#)[\[Previous\]](#)[\[Region 3 Home\]](#)[\[EPA Home\]](#)



## News Release

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

**For Immediate Release: June 28, 1999**

### ***Wilmington Company to Pay \$30,000 Penalty To Settle Stormwater Runoff Violations***

**WILMINGTON, Del.** - The U.S. Environmental Protection Agency announced today that Allied Properties, Inc. of Wilmington, Del. has agreed to pay a \$30,000 penalty for alleged Clean Water Act violations at a Wilmington construction site.

According to EPA, Allied discharged stormwater runoff and sediment into Eagle Run from the 65-acre site on State Road 273, between Eagle Run Road and Brown Lane. EPA's administrative complaint alleged that from May through September 1998, Allied did not implement required pollution control measures or comply with the stormwater permit requirements.

In the settlement announced today, Allied has certified that it is now in compliance with applicable Clean Water Act regulations.

Allied Properties has been cited for similar violations at this location by state and local officials. In May 1998, New Castle County officials issued two violation notices and a Stop work order citing Allied Properties for failure to implement stormwater and erosion controls. On May 28, 1998, the Delaware Department of Natural Resources issued a Notice to comply with Clean Water Act permit and sediment and erosion controls.

Sediment accumulation in waterways eventually destroys aquatic habitat by filling in stream beds.

In the settlement, Allied Properties neither admitted nor denied liability for the alleged violations.

#

99-312

[\[Contents\]](#) [\[Previous\]](#) [\[Next\]](#)

## **United States Reaches Final Settlement in Keystone Landfill Superfund Case**

*Agreement Caps Seven Years of Litigation, Recovers \$16.5 Million*

**UNION TOWNSHIP, Pa.** - The U.S. Environmental Protection Agency and the Justice Department today announced the final settlement of the government's legal claims over the cleanup of the Keystone Sanitation Landfill Superfund site here.

In papers to be filed this week in federal court in Harrisburg, landfill owners Kenneth and Anna Noel, Keystone Sanitation Co., and Keystone's successor Waste Management of Pennsylvania agreed to perform the portion of the cleanup that will control the source of the contamination. Waste Management and the Noels will fund this work, projected to cost \$5.5 million. As part of the overall settlement, Waste Management has also agreed to pay a \$250,000 penalty for failing to comply with a September 30, 1996 cleanup order.

If approved by the court, the proposed consent decree will finally resolve the seven-year-old lawsuit over the cleanup of the 40-acre Superfund site, located about 30 miles from Gettysburg, Pa. Estimates of the total cleanup costs range up to \$21 million.

The government has previously reached settlements with the eight other defendants it sued for cleanup costs, as well as 578 additional defendants brought into this litigation by other parties. Including the settlement announced today, the U.S. has negotiated settlements of the Keystone Superfund litigation totaling \$16.5 million.

"EPA is pleased to conclude this extensive, expensive, contentious litigation. We're eager to shift more of our attention and resources from the courtroom to the cleanup," said EPA Regional Administrator Bradley M. Campbell. "But, Congress still needs to address the basic deficiency in the Superfund law which allowed this huge number of defendants to be sued."

The extraordinary number of parties involved in the Keystone Superfund litigation focused national attention on the case, which was dubbed "The Battle of Gettysburg" in an October 1997 *60 Minutes* report.

### **Keystone Settlement - 10/02 Page Two**

The case began in September 1993, when the United States sued 11 parties, including the Keystone Sanitation Company, the Noels and eight waste generators, seeking reimbursement for the government's cleanup costs. These defendants then sued approximately 130 entities, alleging that these third-party defendants contributed to the contamination and were, thus, also liable for cleanup costs. These third-party defendants, in turn, sued approximately 580 additional fourth parties on the same grounds.

To resolve this unwieldy case, EPA and the Justice Department made full use of the



government's cleanup and cost recovery powers under the Superfund statute, and acted to resolve the liability of third and fourth parties brought into the lawsuit by other defendants. Recognizing that many of these entities are municipalities and small businesses that may have contributed only very small amounts of hazardous waste, the government used its "de micromis" settlement powers to resolve these parties' potential liability. Through \$1 settlements with the government, these de micromis parties were dismissed from the case and shielded from liability.

"Today's settlement reflects the fundamental Superfund reforms which made it fairer to the 'little guys' who never should have been sued by the large polluters in the first place," said Steve Herman, assistant administrator for EPA's Office of Enforcement and Compliance Assurance. "By using these reforms, we protected small waste contributors from costly third-party lawsuits and deterred similar litigation in future cases."

The settlement is the culmination of several steps since the filing of the complaint to clean up the landfill and wrap up the lawsuit.

\*In 1996 and 1998, the U.S. negotiated three sets of "de micromis" \$1.00 settlements, involving a total of 202 third and fourth party defendants that contributed very small amounts of hazardous substances to the site.

\*In October 1997, the U.S. filed a \$4.25 million settlement with 376 third and fourth party defendants, which got these parties out of the litigation and protected them from claims by other parties.

\*In June 1998, the government filed a consent decree with eight of the companies it originally sued in September 1993 for generating the industrial waste contaminating the Keystone site. These eight companies agreed to finance and perform the cleanup of groundwater at the former landfill. The original defendants have already completed construction of the groundwater treatment plant. They also agreed to provide water filters to nearby residences. The estimated cost for these cleanup measures is \$6.5 million.

This proposed settlement of U.S. v. Keystone Sanitation Co. Inc., Civil Action No. 1:CV-93-1482, is subject to a 30-day public comment period and final court approval.

###



Mrs. CHENOWETH-HAGE. We were supposed to be through with this hearing at 2 p.m.

Mr. BURTON. If the gentlelady would yield to me just for a minute?

Mrs. CHENOWETH-HAGE. Yes, Mr. Chairman.

Mr. BURTON. I am just going to take a second because I want you to finish whatever questions you have. I would just like to say to the people both from the Corps of Engineers and the EPA, and the Justice Department if anyone is here, and that is that individual citizens don't understand government. They don't understand regulations.

Even I, as a Member of the Congress of the United States, find that many things that I am supposed to comply with I am not familiar with. Therefore, there ought to be an education process before we start legal action.

I understand Mr. Pozsgai, when people came on his property, he said get off and he forced them off and he may have even threatened them. But, you know, I would have done the same thing. People come on my property, I have a sign that says no trespassing. We have had death threats and all kinds of things, which you might well imagine. So if anybody comes on my property, I am going to run them off. That doesn't necessarily mean that I am doing something that's wrong.

Yet that was one of the reasons why some of this action was taken against him. So I think there needs to be a little more concern about the average citizen and their limited knowledge of these things.

Second, I think there needs to be an explanation process. And, third, if there is a strong difference of opinion, you really need to have some ombudsman for them because, as Helen Chenoweth, Congresswoman Chenoweth has just pointed out, you have unlimited resourcing to go after somebody. You have the power of the government. You have the power of the taxes that are collected to go after anybody you want, and it could be you someday for some other reason. You are citizens as well.

And you go after this guy and he doesn't have an attorney. He hires somebody who is inebriated half the time. He goes into the courtroom, almost gets disbarred. He doesn't know. He doesn't mess with lawyers very much. And so he needs to have some concern.

I really believe if this had been handled a different way it might have been resolved in a much more agreeable manner. So all I would like to say is in the future, and please tell your leaders—I will convey this myself to the head of the EPA; I talk to her on a regular basis, and I will be glad to do that with the head of the Army Corps of Engineers, I will make sure we do that—I believe that there ought to be an office of ombudsman for each one of your agencies and people who are having problems legally with your agencies ought to be told if you don't understand, we will explain it; and if you still have a problem, here is the number for the ombudsman; he represents the individual citizen and you can go to him or her and talk to them about that.

If you had that, I think it would make your jobs easier. It would probably cut down on your overall expenses and you would get these things resolved without major problems like this.

I am kind of angry because of the way this gentleman was treated, especially since I remember back in the 1956 when the Hungarian uprising took place and what they had to go through, and I know these people have fled communism, lived in what we called the captive nations, had to go through things for years and years and years. And all I would like to say is when people come here seeking freedom and they look at that Statue of Liberty, they think heaven has arrived, I am here. And then they go through something like this, and they think, man, what did I leave that other place for? It is just as bad.

So all I am saying is be a little more concerned about these people and try to have someplace where they can get answers and at least some legal answers through an ombudsman so they don't have to go through all the things that he went through.

With that, Madam Chairman, thank you for giving me this time.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Chairman.

Mr. BURTON. I also have some questions I would like to submit to you if you would answer them for the record.

Mrs. CHENOWETH-HAGE. And I have numerous questions I will submit to you for responses.

I do want to say, Mr. Davis, that your testimony represented something unlike what we have to face in the real world. In part, the fact is that the permitting time you testified to was 18 days. In the real world, based on a study that was submitted to Senator Baucus and Senator Chafee, the average lead-in and lead-out time is 262 days.

I am just saying that, again, this just points out the confusion, the frustration, that individuals are feeling out there.

I know that you are both probably husbands and fathers and uncles and, you know, you can see the human face on this whole thing. You are not just nameless, faceless people who have to run agencies.

You heard the testimony that was presented here and I would just ask you, as a member of this body, that you personally give this case your attention, and cases like this. This should be over. This is not good for government. This is not good for your agencies. It discourages the grass-roots out there.

I join the Pozsgais in saying what can we do to make this end? I think it is in your hands at your level, and I thank you very much for being here. Like I say, I do have numerous questions that I wanted to ask you but we must be out of this room. So I will submit them for the record, and for your answers the record will remain open for 10 working days. Should you wish to amend or add to your testimony, you are welcome to do so.

With that, I thank you; and I will be staying in touch with you personally. Mr. Davis.

Mr. DAVIS. Madam Chairwoman, could we perhaps maybe make one point? I wanted to clarify for the record that the individuals with me today from the Army and the Army Corps of Engineers are not necessarily related to Mr. Pozsgai's case; no more than a couple of those. We were invited to come testify about Federal wet-

lands policies so I brought staff that are experts in those areas, and so it is not illustrative or indicative of Mr. Pozsgai's case and the Federal effort on that case.

Mr. BURTON. If the gentlelady would yield. But I have worked with Janet Reno and the Justice Department, as you probably are well aware, for a long time and they have thousands of attorneys. All I am saying is that a lot of this could be eliminated if you had an ombudsman in place they could go.

Mr. DAVIS. You raise some good points.

Mrs. CHENOWETH-HAGE. Gentlemen, I thank you and this hearing is adjourned.

[Whereupon, at 2:20 p.m., the committee was adjourned.]

[NOTE.—The publication entitled, "The Impact of Individual 404 Permits on Ohio Wetlands 1990–1995," may be found in committee files.]

[Additional information submitted for the hearing record follows:]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN 23 2000

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

The Honorable Dan Burton, Chairman  
Committee on Government Reform  
U. S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

I am writing in response to your May 23, 2000 letter to Carol Browner, Administrator of the Environmental Protection Agency, regarding the environmental criminal case against Mr. John Pozsgai and related matters. A copy of your letter is enclosed for your reference.

I would like to set out a brief history of the Pozsgai case for your information. As a background matter, Clean Water Act § 301, 33 U.S.C. 1311(a), prohibits the discharge of pollutants into waters of the United States except in compliance with permit and regulatory requirements. Clean Water Act § 404, 33 U.S.C. 1344, creates a regulatory program for the discharge of dredged or fill material into waters of the U.S., which includes wetlands. This program is administered primarily by the Army Corps of Engineers, with participation by the Environmental Protection Agency. Both the Corps and EPA may bring enforcement actions, and may bring criminal violations to the attention of the Department of Justice. The Water Quality Act of 1987 amended the Clean Water Act § 309(c), 33 U.S.C. 1319(c), to make it a felony crime, punishable by three years imprisonment and fines, to knowingly violate the Clean Water Act. United States Sentencing Guidelines apply to all federal crimes committed by individuals on or after November 1, 1987.

The facts surrounding the Pozsgai criminal case are as follows. Approximately 80% of Mr. Pozsgai's 14-acre property originally was comprised of forested wetlands which provided a variety of functions including flood and storm water storage and water quality maintenance. These wetlands are adjacent to a tributary that flows into the Pennsylvania Canal, which is a navigable water and which flows into the Delaware River. Mr. Pozsgai purchased the property at a reduced price because of his knowledge of the presence of regulated wetlands, and was specifically warned by the Army Corps of Engineers not to deposit fill material at the site. Unfortunately, Mr. Pozsgai was undeterred by Corps warnings, by the Corps' Cease and Desist Order, or by notices of violation issued by both the Corps and EPA. He deposited over four hundred truckloads of rocks and concrete, filling in at least four acres of the wetland, which resulted in flooding of neighbors' property.



The following are EPA's answers to your specific questions:

1. "Was Mr. Pozsgai's case ever officially closed? If not, why not?"

Yes. The EPA Criminal Investigation Division (CID) case was closed March 5, 1991, which was after the Supreme Court had denied Mr. Pozsgai's petition for certiorari.

2. "How often has the Environmental Protection Agency (EPA) inquired into the Pozsgai matter, by contacting Mr. Pozsgai, since the end of Mr. Pozsgai's imprisonment?"

EPA contacted Mr. Pozsgai once after the end of his imprisonment. Based upon suspicions that Mr. Pozsgai may have recommenced his illegal activities at the site, CID opened another investigation on May 10, 1993. A CID Special Agent and Mr. Pozsgai's Probation Officer visited and interviewed him, but allegations of additional violations were not substantiated. Therefore, the investigation was closed on September 17, 1993.

3. "Specifically, is Mr. Pozsgai's case considered currently open?"

No, EPA does not have any open investigation or pending action against Mr. Pozsgai.

4. "How many other environmental investigations of individual private citizens have taken as long as Mr. Pozsgai's?"

Enclosed for your information is a complete listing of all defendants in EPA-investigated environmental criminal prosecutions for the past 13 years. Among other items of information, the listing includes the date each case was opened, the date criminal charges were filed, and the date it was closed.

5. "In the past thirteen years, how many individual private citizens has the EPA investigated to the same extent as Mr. Pozsgai?"

It is the practice of EPA's Criminal Investigation Division to conduct all investigations in a thorough manner.

6. "Provide a complete list of private individuals who were sentenced to more time in federal prison than Mr. Pozsgai for the same type of crimes."

The enclosed listing of all defendants in EPA-investigated environmental criminal prosecutions for the past 13 years includes, among other items, the terms of imprisonment imposed on the individuals. We will provide you a separate list of Clean Water Act Section 404 cases in the near future.

7. "In the past thirteen years, how many corporate polluters who violated the Clean Water Act to a similar or greater extent than Mr. Pozsgai has the EPA investigated? Provide a

complete list of these corporate polluters, a list of their violations of the Clean Water Act, and subsequent actions taken against them.”

The enclosed list of all defendants in EPA-investigated environmental criminal prosecutions for the past 13 years includes both individuals and corporations. The statutes under which the defendants were charged are indicated, as well as the sentences imposed. Our tracking system does not include the “extent” to which the defendants violated the law. Cases involving violations of Clean Water Act Section 404 will be provided to you in the near future.

8. “In the past thirteen years, how many polluters, corporate violators or private citizens, have been sentenced under the new federal sentencing guidelines? Provide a list of all convictions differentiating between corporate violators and private citizens.”

The enclosed list of all defendants in EPA-investigated environmental criminal prosecutions for the past 13 years includes the sentences of imprisonment for the individuals (imprisonment is non-applicable to corporations). Our system does not track which defendants were sentenced under the Sentencing Guidelines. Sentences of individuals for violations occurring on or after November 1, 1987, are subject to the Guidelines. Some Guidelines for sentencing organizations (including corporations) went into effect on November 1, 1991; however, the Commission did not include Guidelines for fines pertaining to environmental crimes.

9. “Provide a list of all these corporate polluters who were sentenced to more time in prison than Mr. Pozsgai.”

Please see the response to question 8, above.

10. “Provide any and all photos that were entered into evidence during Mr. Pozsgai’s trial.”

EPA is in the process of determining which, if any, photographs were introduced as evidence during the trial. We will forward a copy of CID’s case file, which will include copies of any investigative photographs, in the near future. Please see response to question 19.

11. “Provide any and all photos taken of Mr. Pozsgai’s property since his conviction.”

A review of EPA files indicates that EPA has no photographs taken of Mr. Pozsgai’s property since his conviction.

12. “Provide any stereoscopic evidence used in determining the hydric content of the soil on Mr. Pozsgai’s property.”

EPA has not yet determined if this was used in this case. We will advise you of our findings in the near future.

13. “Provide evidence that stereoscopic cameras can be used to determine the hydric content

of soils.”

Three dimensional stereo pairs of aerial photographs are routinely used, in conjunction with field work, to determine the basic criteria of potential jurisdictional wetlands: plants, soils and hydrology. Black and white, color and color-infrared aerial photographs have been used for decades to determine basic soil characteristics, including the relative moisture content, for applications in agriculture and wetland mapping. It should be noted that aerial photographs are almost never used exclusively to determine these characteristics and are usually used in conjunction with field observations and/or sampling.

In terms of determining the hydric content of soils, it depends on the definition of "hydric." If hydric is meant to mean water or moisture content, stereo aerial photographs are routinely used to determine topography and the relative moisture content of a particular soil. Wetter soils will generally display unique color, tone and texture characteristics. These features, in conjunction with topography and vegetation types and patterns, are often used to identify potential wetland areas.

Alternatively, if "hydric" means the chemical content relating to acid hydrogen, hydroxyl compounds, or the presence of anaerobic bacteria, then traditional stereo aerial photographs alone would not provide any unique information relating to these characteristics.

14. “Provide any and all maps used to determine whether Mr. Pozsgai violated the Clean Water Act.”

EPA has just recently received the case file from the archives and will forward a copy to you, including any maps in EPA's possession, in the near future.

15. “Provide any and all photos and maps that have been taken or made since the time of Mr. Pozsgai's trial and imprisonment.”

A review of EPA files indicates that EPA has no photographs nor made any maps of Mr. Pozsgai's property since the time of his trial and imprisonment.

16. “Provide solid documentation that Mr. Pozsgai's land does indeed intersect waters of the United States as defined by the Clean Water Act.”

Our information indicates that the prosecution at trial presented evidence that the fill material was deposited in a wetland that is adjacent to a tributary of the Pennsylvania Canal, which flows into the Delaware River. The jury convicted him on this evidence. Mr. Pozsgai appealed the conviction, and the Third Circuit affirmed without opinion. Whatever documentation that EPA has in its possession is in the CID case file which will be forwarded to you in the near future. Please see response to question 19.

17. “Provide copies of all internal procedures used in investigating Mr. Pozsgai.”



EPA is reviewing the case file concerning applicable procedures and will advise you of its findings in the near future.

18. "Provide copies of all internal correspondence, both paper and electronic, within the last year relating to Mr. Pozsgai's case before the U.S. Army Corps of Engineers."

Other than allusions to that case that have been generated in the course of researching and responding to your letter, EPA has no such correspondence.

19. "Provide all memos and internal correspondence, both paper and electronic, that address Mr. Pozsgai's case prior to his conviction."

EPA is in the process of obtaining the case file for your review. The case file will be transmitted to you in the near future. Please note that the records from CID's case file include information which, if released, could cause an unwarranted invasion of personal privacy for some individuals, or could breach expectations of confidentiality, or both. If EPA were to release records from this case file pursuant to a request under the Freedom of Information Act, EPA would withhold certain records or portions of records under FOIA Exemptions 7(C) and (D). Specifically, EPA would redact the names of all individuals (with few exceptions) along with any information which could identify those individuals, and EPA would redact the information provided by any persons on a confidential basis. It is our hope that the Committee will be able to take steps as necessary to ensure that there is no invasion of privacy or breach of expectations of confidentiality if the file is released without redactions.

In addition, please note that some of the records or portions thereof that EPA intends to provide would be privileged from disclosure under FOIA and in litigation, such as attorney work product and deliberative materials. By providing any privileged records to the Committee, EPA does not intend to, and does not, waive any privileges as to these items, and we respectfully request that the Committee not further publicize them.

20. "Provide ... the precise methodology used to determine the boundaries of the wetlands versus non-wetlands on Mr. John Pozsgai's site (Tax Parcel 13-28-83)."

The methods used to determine the existence of wetlands and their boundaries are contained in the "Wetland Delineation Manual," dated January 1987, issued by the Army Corps of Engineers.

21. "Provide a list of violators of the Clean Water Act who have been cited for impacting .005 acres, or less, of waters of the United States."

EPA does not track Clean Water Act Section 404 cases in terms of how many acres are impacted by the illegal activity. Normally, EPA would not bring a formal enforcement action for filling of wetlands in that amount (note that Mr. Pozsgai illegally filled more than 4 acres). Note that some Section 404 cases involve illegal discharges of dredged or fill material to lakes and rivers in the course of building piers in lakes or modifying river banks. Some of those cases may

involve little area in terms of acreage; however, the acreage is not necessarily an indicator of the damage done by this type of illegal activity.

22. "Provide a list of all individual cases where the violator of the Clean Water Act was cited for removing trash left on property that resulted in impacts upon waters of the United States."

To our knowledge, there have been no civil or criminal cases brought under the Clean Water Act in which the violator was cited for removing trash. The Clean Water Act regulates the discharge of pollutants, not the removal of trash, as such.

In response to Mr. Pozsgai's continuing, knowing noncompliance with the law, the Corps took the matter to the United States Attorney's Office in Philadelphia and, in August 1988, obtained a temporary restraining order which required Mr. Pozsgai to immediately stop filling activities and to refrain from further Clean Water Act violations.

Because – even after receiving a restraining order from the court – Mr. Pozsgai continued his illegal activity by dumping many truckloads of fill material and bulldozing at the site, a contempt of court proceeding was held in September 1988. Not knowing that the U.S. Attorney's Office had called in EPA's Criminal Investigation Division (CID) and that CID had documented his violations since the restraining order had been issued, Mr. Pozsgai lied to the court by denying that he had caused additional filling of the wetlands after he received the court's restraining order.

As a result of his flagrant violations and his perjury, Mr. Pozsgai was found in contempt of court. In addition, on September 29, 1988, he was indicted by the grand jury for 40 violations of the Clean Water Act, each count being a separate date of violation during the period between July 1987 and September 1988. On December 30, 1988, after a four-day trial, the defendant was found guilty by the federal jury on all 40 counts.

On July 13, 1989, the defendant was sentenced to 27 months (two years and three months) imprisonment for those violations occurring after the effective date of the Sentencing Guidelines (for which parole was not possible), three years imprisonment (the statutory maximum) for those violations occurring before the Guidelines (for which parole was possible), five years probation, and a \$200,000 fine (the statutory minimum). He was also ordered, as a condition of probation, to restore the wetlands in accordance with the specifications in a plan submitted by the Corps. As alluded to in your letter, the 27 months of imprisonment without parole was a result of the fact that 25 of Mr. Pozsgai's criminal violations occurred after the effective date of the Sentencing Guidelines. The Guidelines have had the effect of standardizing and generally increasing prison terms for environmental crimes; however, the Guidelines were not entirely responsible for Mr. Pozsgai's term of imprisonment – note the three-year statutory maximum term imposed for the pre-Guidelines violations.

Mr. Pozsgai appealed his conviction and sentence to the United States Court of Appeals for the Third Circuit. On January 12, 1990, the Third Circuit rejected all of his arguments without issuing a written opinion, ruling in the United States' favor by upholding the conviction and the sentence. Mr. Pozsgai then petitioned the Supreme Court for a Writ of Certiorari. On July 20, 1990, the Solicitor General's office filed a brief in opposition to the petition, and the Supreme Court subsequently denied Mr. Pozsgai's petition for review. As a result, CID closed its case on March 5, 1991.

Thereafter, Mr. Pozsgai filed a motion with the trial court to reduce his sentence, and the judge denied his motion. Mr. Pozsgai appealed that denial to the Third Circuit, and in October 1991, the appellate court ordered the trial judge to hold a hearing on Pozsgai's ability to pay the fine. Accordingly, in December 1991, the judge reduced Pozsgai's fine from \$200,000 to \$5,000 because he found that Mr. Pozsgai lacked the assets to pay the statutory minimum.

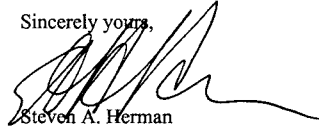
I respectfully submit that the story of Mr. Pozsgai's knowing environmental violations, extreme recalcitrance in the face of two regulatory agencies' attempts to address his violations civilly, flagrant defiance of a federal restraining order, and perjury in his testimony before the federal court regarding his illegal activities, clearly demonstrate that a federal criminal prosecution was warranted. Furthermore, I believe that the sentence imposed by the court was not unreasonable, nor was it out of keeping with sentences of imprisonment imposed in that era and since that time, under the Sentencing Guidelines.

Enclosed are EPA's responses to many of your specific questions. Pursuant to the request of Nicole Petrosino of your staff, we are providing this interim response and will forward additional information as soon as it is available to us, including the criminal investigation case file which has been obtained from the archives. The records from CID's case file will include information which, if released, could cause an unwarranted invasion of personal privacy for some individuals, or could breach expectations of confidentiality, or both. If EPA were to release records from this case file pursuant to a request under the Freedom of Information Act, EPA would withhold certain records or portions of records under FOIA Exemptions 7(C) and (D). Specifically, EPA would redact the names of all individuals (with few exceptions) along with any information which could identify those individuals, and EPA would redact the information provided by any persons on a confidential basis. It is our hope that the Committee will be able to take steps as necessary to ensure that there is no invasion of privacy or breach of expectations of confidentiality if the file is released without redactions.

In addition, please note that some of the records or portions thereof that EPA intends to provide would be privileged from disclosure under FOIA and in litigation, such as attorney work product and deliberative materials. By providing any privileged records to the Committee, EPA does not intend to, and does not, waive any privileges as to these items, and we respectfully request that the Committee not further publicize them.

If you have any further questions, please do not hesitate to contact me, or have one of your staff contact Jennifer H. Culotta, Executive Counsel, Office of Criminal Enforcement, Forensics, and Training at (202) 564-2403.

Sincerely yours,



Steven A. Herman  
Assistant Administrator

Enclosures

1. Letter from the Honorable Dan Burton
2. Response
3. Listing of Defendants in EPA-Investigated Environmental Criminal Cases from 1987 to Present

1. Was Mr. Pozsgai's case ever officially closed? If not, why not?
2. How often has the Environmental Protection Agency inquired into the Pozsgai matter, by contacting Mr. Pozsgai, since the end of Mr. Pozsgai's imprisonment.
3. Specifically, is Mr. Pozsgai's case considered currently open?
4. How many other environmental investigations of individual private citizens have taken as long as Mr. Pozsgai's?
5. In the past thirteen years, how many individual private citizens has the Environmental Protection Agency investigated to the same extent as Mr. Pozsgai?
6. Provide a complete list of private individuals who were sentenced to more time in federal prison than Mr. Pozsgai for the same type of crimes.

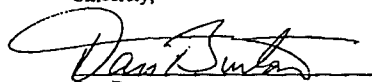
7. In the past thirteen years, how many corporate polluters who violated the Clean Water Act to a similar or greater extent than Mr. Pozsgai has the Environmental Protection Agency investigated? Provide a complete list of these corporate polluters, a list of their violations of the Clean Water Act, and subsequent actions taken against them.
8. In the past thirteen years, how many polluters, corporate violators or private citizens, have been sentenced under the new federal sentencing guidelines. Provide a list of all convictions differentiating between corporate violators and private citizens
9. Provide a list of all these corporate polluters who were sentenced to more time in prison than Mr. Pozsgai.
10. Provide any and all photos that were entered into evidence during Mr. Pozsgai's trial.
11. Provide any and all photos taken of Mr. Pozsgai's property since his conviction.
12. Provide any stereoscopic evidence used in determining the hydric content of the soils on Mr. Pozsgai's property.
13. Provide evidence that stereoscopic cameras can be used to determine the hydric content of soils.
14. Provide any and all maps used to determine whether Mr. Pozsgai violated the Clean Water Act.
15. Provide any and all photos and maps that have been taken or made since the time of Mr. Pozsgai's trial and imprisonment.
16. Provide solid documentation that Mr. Pozsgai's land does indeed intersect waters of the United States as defined by the Clean Water Act.
17. Provide copies of all internal procedures used in investigating Mr. Pozsgai.
18. Provide copies of all internal correspondence, both paper and electronic, within the last year relating to Mr. Pozsgai's case before the U.S. Army Corps of Engineers.
19. Provide all memos and internal correspondence, both paper and electronic, that address Mr. Pozsgai's case prior to his conviction.
20. Provide was the precise methodology used to determine the boundaries of the wetlands versus non-wetlands on Mr. John Pozsgai's site (Tax Parcel 13-28-83).
21. Provide a list of violators of the Clean Water Act who have been cited for impacting .005 acres, or less, of waters of the United States.

22. Provide a list of all individual cases where the violator of the Clean Water Act was cited for removing trash left on property that resulted in impacts upon waters of the United States.

Therefore, pursuant to the Constitution and Rules X and XI of the United States House of Representatives, please respond to the above questions or the Committee will be forced to schedule hearings concerning this matter. Deliver your response to the Committee majority staff in 2157 Rayburn House Office Building not later than Friday, June 9, 2000. If you have any questions about this request, please call Nicole Petrosino at 202- 225-5074.

Thank you for your attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Burton", with a stylized flourish extending from the end.

Dan Burton

Chairman

Committee on Government Reform and Oversight



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 31 2000

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

The Honorable Dan Burton, Chairman  
Committee on Government Reform  
U. S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in further response to your May 23, 2000 letter to Carol Browner, Administrator of the Environmental Protection Agency, regarding the environmental criminal case against Mr. John Pozsgai and related matters.

Enclosed is a copy of a videotape contained in the investigative case file which we identified in our previous response dated August 3, 2000. When the videotape was recorded, EPA used time lapse recording, a compressed format used to document events occurring over an extended period of time. The Federal Bureau of Investigation has the technology to copy time lapse recording, and as such, made a copy of this tape for EPA on time lapse equipment. In order to view this video as intended, the use of time lapse replay equipment is recommended.

In our previous responses, we referenced two other videotapes contained in the investigative case file and used at trial, these tapes cannot be located. The tapes were not contained in the materials obtained from the EPA archives, nor were any videotapes contained in the materials retrieved from the archives by the United States Attorney's Office in Philadelphia.

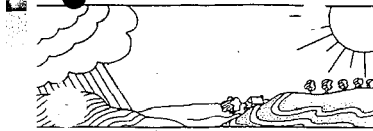
Again, I appreciate your interest in EPA's activities, and I hope that this information is helpful to you and addresses your concerns. If you have any further questions regarding this matter please feel free to contact me or have one of your staff contact Leo A. D'Amico, Director, Office of Criminal Enforcement, Forensics and Training, at (202) 564-2480.

Sincerely yours,

*Steven A. Herman*  
For Steven A. Herman  
Assistant Administrator

Enclosure





DelVal Soil Consultants, Inc.

W. E. Palkovics, Ph.D.  
Soil Scientist  
Box 771  
Newtown, PA 18940  
215-968-6384

October 13, 1987

Mr. John Pozsgai  
536 West Bridge Street  
Morrisville, PA 19067

Dear Mr. Pozsgai:

DelVal Soil Consultants, Inc. will be investigating the wetlands on your property (TMP# 13-28-83) in Falls Township. a copy of the results will be forwarded to you upon completion of the project.

Sincerely,

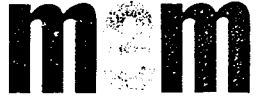
William E. Palkovics, Ph.D.

WEP/ah



000000





FROM

Nick Moran

To BILL - Date 12-5-86

Subject POZSGIA PROPERTY

LOCATED ON BRIDGE ST

JUST OUT SIDE OF MORRISVILLE -

BILL - THE PERIMETER

IS SHOWN IN "YELLOW" - I

KNOW THAT THE WETLANDS EXTEND

THRU THE SITE, & SINCE HE

WANTS TO PUT A BODY SHOP &

REPAIR YARD ON IT, AFTER

HE APPLIES FOR A CHANGE OF

ZONING - HOPEFULLY YOU CAN GET

THIS DONE ON THURS OF THIS WEEK

& WE CAN FIELD LOCATE THE

FLAGGED UP WETLANDS AREA

ON FBI & PUT IT ON A PLAN.

THANKS FOR YOUR PROMPT

ATTENTION



*DelVal Soil Consultants, Inc.*

W. E. Palkovics, Ph.D.  
Soil Scientist  
Box 771  
Newtown, PA 18940  
215-968-6384

December 11, 1986

J.G. Park Associates, Inc.  
1083 Taylorsville Road  
P.O. Box 518  
Washington Crossing, PA 18977

Attention: Mr. Nick Moran

Re: POZSGAI PROPERTY  
Morrisville, PA

Dear Nick:

A site investigation was performed on the Pozsgai property,  
tax map parcel 13-28-83 on December 11, 1986.

The purpose of this investigation was to determine the presence  
of any "wetlands", as defined by the Army Corps of Engineers.  
Based upon this investigation, it is my professional opinion that  
the entire site meets the criteria set forth by the Army Corps of  
Engineers as "wetlands". This is based upon soils, hydrology  
and vegetation.

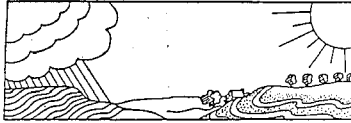
If you have any questions concerning this project, please contact me.

Very truly yours,

*W.E. Palkovics*  
W.E. Palkovics, Ph.D.

WEP:cep





DelVal Soil Consultants, Inc.

W. E. Palkovics, Ph.D.  
Soil Scientist  
Box 771  
Newtown, PA 18940  
215-958-6384

November 20, 1987

Mr. John Posgai  
536 West Bridge St.  
Morrisville, PA

Dear Mr. Posgai:

We have completed a preliminary wetlands evaluation of your property along West Bridge Street, Morrisville. The site is low lying and has two flow-through streams.

We are, currently, still trying to verify the age of the fill. Based on site inspection, it appears much of this fill and disturbance may predate the Army Corp of Engineers jurisdiction. You have indicated that the fill is 30 years old.

In discussion with Mr. Miller from the Corp of Engineers, it has been indicated they were utilizing aerial photographs, as we were, to determine the age of the fill.

Should you have any questions concerning this matter, please contact me.

Sincerely,  
DelVal Soil Consultants, Inc.

William E. Palkovics *[Signature]*  
William E. Palkovics, Ph.D.

WEP/ah

wlposgai



PHONE:  
(215) 493-5546  
(215) 357-6336

PENNSYLVANIA  
NEW JERSEY  
DELAWARE

J. G. PARK ASSOCIATES, INC.  
P.O. BOX 518  
WASHINGTON CROSSING, PENNSYLVANIA 18977

December 12, 1986

Mr. John Pozsgai  
Pozsgai Garage  
550 W. Bridge Street  
Morrisville, PA 19067

Re: Tax Map Parcel 13-28-83

Dear Mr. Pozsgai:

A site investigation was performed on your property, referenced above, on Thursday, December 11, 1986.

The purpose of this investigation was to determine the presence of any "wetlands" as defined by the Army Corps of Engineers. Based upon this investigation, it is my professional opinion that the entire site meets the criteria set forth by the Army Corps of Engineers as "wetlands". This is based upon soils, hydrology and vegetation.

Please be advised that any future development that might be considered on this site would have to be approved and reviewed by the Army Corps of Engineers, and it has been our experience in the past that the Corps is most reluctant to issue permits for sites that have conditions such as this.

I had the opportunity to speak with your daughter early this morning, whereas she had contacted the Corps and D.E.R. and had some input with regard to the site, whereas the Corps would be requesting of you to make a submission showing them the site location and area. Attached are three (3) copies of the pertinent information that if you choose to submit to the Corps, could be utilized.

If you have any questions concerning this project, please contact me.

Very truly yours,

J.G. PARK ASSOCIATES, INC.

*Nicholas J. Moran*

Nicholas J. Moran, P.L.S.  
President

NJM:cep  
enclosures

CONSULTING ENGINEERS • PLANNING • SURVEYING



WILLIAM G. MAJOR ASSOCIATES, INC.  
CONSULTING ENGINEERS • ARCHITECTS • PLANNERS • SURVEYORS

EXECUTIVE OFFICES  
110 MILL STREET  
P.O. BOX 603  
MORRISVILLE, PENNSYLVANIA 19067  
215 785-3288

BRANCH OFFICE  
5 EAST BROAD STREET  
P.O. BOX 830  
BURLINGTON, NEW JERSEY 08016  
609 386-4438

May 11, 1987

Mr. John Pozagai  
536 W. Bridge Street  
Morrisville, PA 19067

Re: Tax Map Parcel #13-28-83  
Phase 1

Dear John:

Pursuant to our meeting on May 8, 1987, William G. Major Assoc., Inc. is pleased to provide you with this estimate for professional service concerning the above captioned site.

Said services are to include conducting a boundary and topographic survey in the field and preparing a plan of survey for this project.

Our estimate is for Four Thousand one hundred thirty six dollars (\$4,136.00). This estimate is to be adhered to only if the subject property is cleared of all brush & trees. If subject property is not cleared our estimate for the project will be; Five thousand six hundred ninety six dollars, (\$5,696.00).

Please be advised that this is only an estimate and the final billing will be determined on a time and material basis. The writing of a new legal description will be based on a normal hourly rate of Forty five dollars (\$45.00) per hour and is not included in this proposal.

Should you decide to engage William G. Major Associates, Inc. in this endeavor a Two thousand dollar (\$2,000.00) retainer fee will be required and this proposal to be accepted with your signature. Please be advised that work will not begin until the above requirements are met.



*Delaware Valley Real Estate*

7507 NEW FALLS ROAD  
LEVITTOWN, PENNSYLVANIA 19058  
(215) 943-3131

Chief Kettler  
Falls Township Police Department  
285 Yardley Avenue  
Fallsington, Pa. 19054

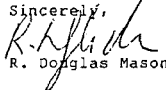
Re: Bucks County Tax Map  
Number 13-28-83  
West Bridge Street  
Falls Township, Pa.

June 1, 1987

Dear Chief Kettler,


Delaware Valley Real Estate represents the owner of the above named parcel. Enclosed is a letter from the Department of Environmental Resources. We are hereby notifying your department that the owner in fact is not dumping anything on their property. If someone is in fact using the property as a dump, it is without any permission whatsoever. Therefore, if the police see of such action, they may take the necessary procedures to stop such action.

Thank you for your attention on this matter.

Sincerely,  
  
R. Douglas Mason

RDM:smf

P.S. We would also like you to be aware we have sold the above premises.  
Settlement will occur sometime on or before June 1987.



*Delaware Valley Real Estate*

7507 NEW FALLS ROAD  
LEVITTOWN, PENNSYLVANIA 19058  
(215) 943-3131

Dr. Peter Cassalia  
1 Moredon Road  
Huntington Valley, Pa. 19006

Re: Bucks County Tax Map  
Number 13-28-83  
West Bridge Street

June 1, 1987

Dear Dr. Cassalia,

Enclosed please find the letter sent to the Falls Township  
Police Department from our office.

Sincerely,

*R. Douglas Mason*  
R. Douglas Mason





245

**EZRA  
GOLUB & ASSOCIATES**  
ENGINEERS - SURVEYORS - DESIGNERS



May 12, 1987

Mr. John Pozsgai  
536 W. Bridge Street  
Morrisville, Pennsylvania 19067

Dear Sir:

At the request of Douglas Mason I hereby confirm that Ezra Golub Associates has been commissioned to undertake the survey of your tract of land in Falls Township, Tax Parcel #13-28-83.

Ezra Golub Associates will begin the work immediately and make every effort to complete it by your deadline of May 28, 1987.

Charges are to be made on the basis of the length of time it takes to complete the work, but based upon the meager information I have at present, I estimate it to be \$2500.00

Very truly yours,

EZRA GOLUB & ASSOCIATES

\_\_\_\_\_  
Ezra Golub, P.E.

EG:mh  
CC: Douglas Mason

4141 WOERNER AVENUE, LEVITTOWN, PENNA. 19057 TEL: (215) 943-2220

215 943-2



CERTIFIED MAIL - RETURN RECEIPT REQUESTED



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS  
WANAMAKER BUILDING, 100 PENN SQUARE EAST  
PHILADELPHIA, PENNSYLVANIA 19107-3390

Regulatory Branch  
Surveillance and Enforcement Section

SUBJECT: CENAP-OP-R-199701484-57

NOV 24 1999

Mr. John Pozsgai  
550 W. Bridge Street  
Morrisville, Pennsylvania 19027

Dear Mr. Pozsgai:

It has come to our attention that additional work performed at your 14.2 acre property may be located in Federally regulated waters of the United States, including wetlands. The property is identified as TMP 13-28-83, Township of Falls, Bucks County, Pennsylvania and is located on the southeast corner of the intersection of West Bridge Street and My Lane.

Work performed in areas subject to Federal jurisdiction without a Department of the Army permit is a violation of Section 301 of the Clean Water Act.

In order to determine whether the above mentioned work requires Federal authorization, we are requesting a meeting with you at 10:00 A.M., January 3, 2000 at the site. We would like to examine the site and compare the extent of the new work with the previously determined limits of Federal jurisdiction on the property.

Please contact Mr. Kevin W. Dougherty, Surveillance and Enforcement Section, Regulatory Branch, Philadelphia District at (215) 656-6729 should you have any questions.

Sincerely,

Frank J. Cignarini  
Chief, Regulatory Branch



John Pozsgai  
538 W. Bridge Street  
Morrisville, PA 19067

Department of the Army  
Philadelphia District, Corps of Engineers  
Wanamaker Building, 100 Penn Square East  
Philadelphia, PA 19107-3390

Attention: Regulatory Branch  
Surveillance and Enforcement Section

Dear Mr. Dougherty:

In response to the form letter, ink date stamped, Nov 24 1999 I have the following:

- 1) The portion of the site claimed as subject to Federal Jurisdiction is by your own departments outlined map, definition and decree not federally regulated wetlands;
- 2) Moreover, by which the Army Corps themselves has ordered fill to be placed on that southeast corner as result of the Army Corps delineation determination. And so note that the Army Corp designed and insisted that any and all fill be placed on that Southeast corner;
- 3) We must manage and physically maintain the upland area and therefore movement and activity is necessary.

We respectfully request to know the origin of complaint regarding the work in the Federally regulated waters of the United States including wetlands violations pinpointing those waters as per your delineation. We also request to be advised as to who, where and when these complaints originated.

Please have available to us all the above requested information prior to your suggested appointment and arrival on the 3<sup>rd</sup>. We request our attorney to be present, please contact our attorney 48 hours prior to the appointment to confirm our attorneys availability; otherwise, another date must be arranged.

Thank you for all your time and effort in resolving this matter.

Respectfully yours,

Mr. John Pozsgai

cc: Sowerbutts, David J.  
Congressman, James C. Greenwood  
Congressman, Helen Chenoweth  
Governor, Thomas J. Ridge



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS  
WANAMAKER BUILDING, 100 PENN SQUARE EAST  
PHILADELPHIA, PENNSYLVANIA 19107-3390

Regulatory Branch  
Surveillance and Enforcement Section

MAY 05 2000

SUBJECT: CENAP-OP-R-177300202-35  
CENAP-OP-R-199701484-15  
CENAP-OP-R-200000043-37

Mr. John Pozsgai  
550 W. Bridge Street  
Morrisville, Pennsylvania 19027

Dear Mr. Pozsgai:

This letter is written with further regard to the Federal Court Order in United States v. John Pozsgai, Civil Action No. 88-6545 that directed removal of all material from, and restoration of, areas subject to Federal jurisdiction that were filled without authorization. This order applied to your property identified as Tax Parcel 13-28-83 and located southeast of West Bridge Street in Falls Township, Bucks County, Pennsylvania. In order to resolve the violation subject to the Court Order, you must remove all material and restore the areas identified by this office.

This letter also refers to our Cease and Desist letters dated November 7, 1997 and April 8, 1998. These letters concerned resolution of the additional unauthorized discharge of dredged and/or fill material into areas subject to Federal jurisdiction, including wetlands, on the above referenced property.

In order to resolve the unauthorized work cited in those two letters, you were directed to remove all unauthorized dredged and/or fill material from areas subject to Federal jurisdiction.

Based upon a site inspection conducted on January 3, 2000, it was determined that the restoration work required by the above referenced two letters has not been completed. As such, you are directed to remove the remaining unauthorized fill material from approximately 0.044 acre of area subject to Federal jurisdiction within twenty days of the date of this letter. The areas requiring immediate restoration are shown on the attached plan as Additional Fill 1997-2000 (Enclosure).

2157-967-6572

Preferred Customer

MAY 10 00 01 19P

Furthermore, the inspection found that additional work has been performed at various locations around the site including:

1. regrading and discharge of new material onto the surface of approximately 0.260 acre of older, unauthorized material was observed along the southwestern corner of the property (adjacent to the intersection of My Lane and West Bridge Street);
2. regrading and discharge of new material onto the surface of approximately 0.036 acre adjacent to the trailers parked to the east of the office trailer; and,
3. regrading and discharge of new material onto the surface of approximately 0.058 acre in the northeastern portion of the site.

Work was also observed in areas adjacent to My Lane and in areas along the eastern side of the site.

This office has determined that the unauthorized work along My Lane consists primarily of the regrading of approximately 0.283 acre of previously deposited and unauthorized fill material, and the addition of new dredged and/or fill material onto the top of this existing material. Also noted was the placement of wood chips, branches, logs, and stumps onto the existing unauthorized fill material and onto previously unfilled portions of the property.

The work along the eastern side of the site is located on an adjoining parcel (TMP 13-28-84). However, access to the work zone was through your property. Additionally, the work appears to have been done to facilitate movement between the My Lane area and the northeastern corner of your property. The work consisted of the placement of a concrete pipe in a ditch and construction of a road crossing impacting 0.005 acre of waters of the United States, including wetlands. Further investigation of the above off-site area may reveal the performance of additional unauthorized work.

The above noted work is considered to be a knowing and flagrant violation of our January 18, 1996 and March 20, 1997 Cease and Desist directives. Further, this office considers the continued performance of unauthorized work to be additional violations of the Federal Court Order in United States v. John Pozsgai, Civil Action No. 88-6545.

You are again put on notice that earthwork, e.g., mechanized landclearing, grading, and land leveling and/or filling, in areas subject to Federal jurisdiction on your property requires authorization from this office prior to commencement of the work. No work shall be performed in the areas subject to Federal jurisdiction, whether previously filled or not, without prior, written authorization from this office. Regrading the surface of unauthorized fill material is a violation of the Clean Water Act subject to further enforcement action.

To avoid additional violations, you are requested to have the upland/wetland boundary located by survey and staked in the field.

So that we may identify the person responsible responsibility for work on the adjoining parcel, you are requested to provide the name(s), address(es), and phone number(s) of any lessee(s) or other person(s) known to you who used or had access to the portion of the property accessed by the My Lane driveway. Please provide this information within 10 days of the date of this letter.

Please be advised that failure to remove the above noted dredged and/or fill material may result in civil and/or criminal action being brought against you and the possible imposition of civil penalties and criminal fines.

This letter does not affect your responsibility to obtain any other Federal, State, or local approvals required by law for the above noted work.

Should you have any questions regarding the above noted matter, please contact Mr. Kevin W. Dougherty at the above address or by telephone at (215) 656-6727.

Sincerely,

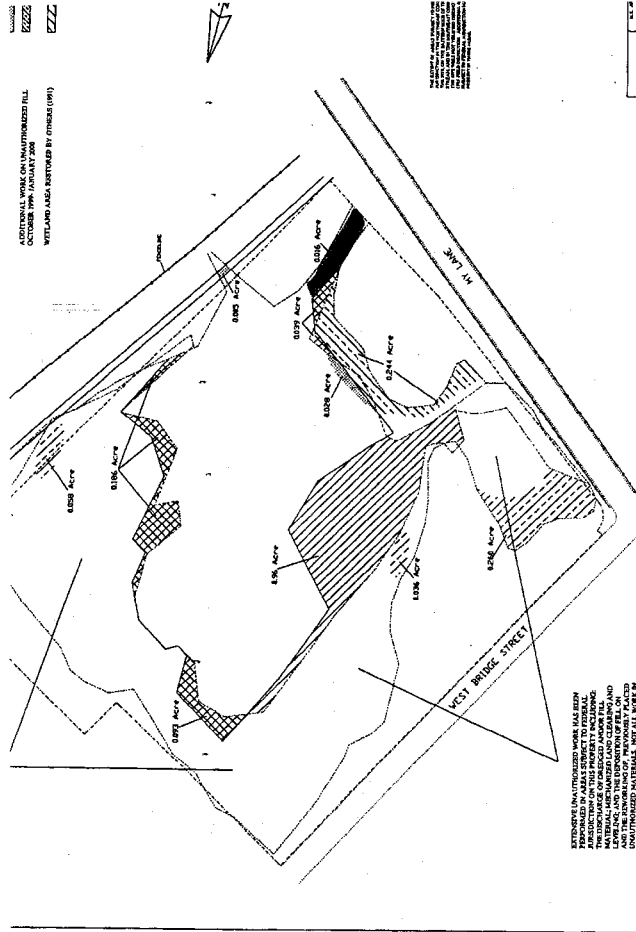


Frank J. Ciadfrani  
Chief, Regulatory Branch

Enclosure

Copies Furnished:

US Fish and Wildlife Service, Eastern PA Field Office  
US Environmental Protection Agency, Region III, PA  
PA Department of Environmental Protection, Conshohocken, PA  
Falls Township, Mr. Wayne Bergman  
Bucks County Conservation District, Mr. Eric Wightman  
Seth Webber, US Attorney General's Office  
Mr. David J. Sowerbutts, Esquire



CONVERSATION RECORD			TIME 0445	DATE 11 MAY 00
TYPE	<input type="checkbox"/> VISIT <input type="checkbox"/> CONFERENCE <input checked="" type="checkbox"/> TELEPHONE	<input checked="" type="checkbox"/> INCOMING <input type="checkbox"/> OUTGOING	ROUTING	
Location of Visit/Conference:	NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU	ORGANIZATION (Office, dept., bureau, etc.)	TELEPHONE NO.	NAME/SYMBOL INT
	DAVID SOWER BUTTS		215 781.9730	
SUBJECT	JOHN PEZSAI 200000043		1/4	
SUMMARY				
<p>1) ATTY SOWER BUTTS INDICATED HE HAD REVIEWED THE LETTER 'WAS DAMAGED w/ CONTAMINANT. HE INDICATED THAT HE THOUGHT THE CITATION OF ADDITIONAL FILLING TO BE UNJUSTIFIED &amp; THAT MR. PEZSAI WAS BEING TREATED UNFAIRLY. HE ASKED WHAT WAS THE MAIN IDEA IN THE LETTER.</p> <p>I REPLY AS FOLLOWS:</p> <p>A. MR. PEZSAI IS UNDER COURT ORDER TO REMOVE THE FILL UNLAWFULLY PLACED ON THE PROPERTY;</p> <p>B. HE HAS BEEN CONTINUOUSLY PUSHING MATERIAL OUT INTO PERMITTED AREAS;</p> <p>C. HE HAS BEEN REMOVING MATERIAL PLACED ON TOP OF OLD UNAUTHORIZED FILL; &amp;</p> <p>D HE HAS TO STOP (B &amp; C) &amp; MAKE PLANS TO REMOVE (A &amp; B).</p> <p>2) ATTY SOWER BUTTS STATED THAT THERE IS EVIDENCE THAT THE FILL ACTION REQUIRED</p>				
NAME OF PERSON DOCUMENTING CONVERSATION		SIGNATURE	DATE	
		YWD		
ACTION TAKEN				
SIGNATURE		TITLE	DATE	



CONVERSATION RECORD			TIME	DATE
TYPE <input checked="" type="radio"/> VISIT <input type="radio"/> CONFERENCE <input type="radio"/> TELEPHONE	Location of Visit/Conference: NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU <u>SOWERBUTTS</u>	ORGANIZATION (Office, dept., bureau, etc.) <u>2/4</u>	<input type="checkbox"/> INCOMING <input type="checkbox"/> OUTGOING	11 MAY 68 ROUTING NAME/SYMBOL INT _____ _____ _____ _____ _____
SUBJECT <u>POZSGAI</u>				
SUMMARY				
<p>             CITED IN (A), MAY NOT BE IN FEDERAL JURISDICTION. HE BRIEFLY EXPLAINS HIS REVIEW OF THE TRIAL EXHIBITS, HIS CONVERSATIONS W/ WETLAND EXPERTS &amp; HIS UNDERSTANDING OF THE SITE HISTORY. HE INDICATED THAT HIS CURRENT WAS BEING AGREE TO UNDO CONDITIONS THAT PRE-EXISTED ON THE SITE.           </p> <p>             I TOLD MR. SOWERBUTTS THAT THE GOVERNMENT POSITION WAS BASED ON THE JURISDICTIONAL LINE SET AT THE TRIAL. WORK DONE IN THE JURISDICTION AREA, NO MATTER HOW SMALL HAD TO BE ADDRESSED. MR. POZSGAI HAD BEEN TOLD TO REMOVE WORK IN 1997-1998 &amp; HAD NOT DONE IT; THIS WAS PART OF WORK CITED IN RECENT LETTER; ADDITIONAL WORK WAS FORWARDED AFTER LAST SITE VISIT.           </p> <p>             SATTY SOWERBUTTS STATED THAT MR. POZSGAI HAD NO WAY OF KNOWING WHERE BOUNDARY WAS. ALL DIRECTION HE HAS BEEN GIVEN BY CORPS. HAS NOT DIRECTED HIM NOT TO WORK IN SOME AREAS WE ARE NOW ACTION REQUIRED           </p>				
NAME OF PERSON DOCUMENTING CONVERSATION		SIGNATURE <u>WJ</u>		DATE
ACTION TAKEN				
SIGNATURE		TITLE		DATE
50271-101      ☆ GPO : 1988 O - 206-653      CONVERSATION RECORD      OPTIONAL FORM 271 (12-7) DEPARTMENT OF DEFENSE				

CONVERSATION RECORD			TIME	DATE
TYPE <input type="checkbox"/> VISIT <input type="checkbox"/> CONFERENCE <input type="checkbox"/> TELEPHONE <input type="checkbox"/> INCOMING <input type="checkbox"/> OUTGOING				11 MAY 00
Location of Visit/Conference:				
NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU	ORGANIZATION (Office, dept., bureau, etc.)	TELEPHONE NO.		
SOWERBUTTS		3/4		
SUBJECT				
POZSGAI				
SUMMARY CITING AS FILL VIOLATIONS (ALONG MY LINE SPECIFICALLY). I TOLD HIM THAT WORK MR. POZSGAI IS DOING ON OLD, UNAUTHORIZED MATERIAL IS NOT PERMITTED. HE CAN WORK ON OLD UPWARDS BUT NOT ON FILLED WETLANDS.				
4) ATTY SOWERBUTTS STATED HE THOUGHT HIS CLIENT WAS BEING UNFAIRLY PERSECUTED BY THE CORPS. HE STATED MR. POZSGAI DOES NOT HAVE THE MONEY TO CLEAN OUT THE SITE. IS ONLY DOING WORK WHERE HE THOUGHT HE WAS ALLOWED. ATTY SOWERBUTTS THOUGHT THE CONTINUED ENFORCEMENT ACTION WAS A WASTE OF GOVERNMENT FUNDS & TIME GIVEN THE SIZE OF THE VIOLATION & THE VALUE OF THE WETLANDS.				
5) ATTY SOWERBUTTS STATED THAT IT MIGHT MAKE MORE SENSE FOR HIS CLIENT TO GO BACK TO COURT & REARGUE THE PARTS OF THE DELINEATION THAN TO COMPLY W/ THE CORPS INSTRUCTIONS. HE WAS GOING TO MEET W/ MR. POZSGAI TO DISCUSS THEIR RESPONSE TO ACTION REQUIRED.				
NAME OF PERSON DOCUMENTING CONVERSATION		SIGNATURE	DATE	
		WD		
ACTION TAKEN				
SIGNATURE		TITLE	DATE	

50271-101

☆ GPO : 1988 O - 206-653

CONVERSATION RECORD

OPTIONAL FORM 271 (12-7)  
DEPARTMENT OF DEFENSE

CONVERSATION RECORD			TIME	DATE
TYPE	<input checked="" type="checkbox"/> VISIT <input type="checkbox"/> CONFERENCE <input type="checkbox"/> TELEPHONE			
Location of Visit/Conference:				
NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU	ORGANIZATION (Office, dept., bureau, etc.)	TELEPHONE NO.	<input type="checkbox"/> INCOMING <input type="checkbox"/> OUTGOING	
SUBJECT				
SUMMARY OUR LETTER.				
4) ATTY SOWER BUTTS REITERATED THAT HIS CLIENT WAS BEING UNFAIRLY SINGLED OUT & HARASSED. HE STATED MR POZSWAL COULD NOT HAVE KNOWN WHERE HE COULD WORK ON THE PROPERTY BECAUSE THE GOVERNMENT'S INSTRUCTIONS WERE VAGUE & CONTRADICTORY. HE STATED MR POZSWAL DID NOT WANT CONFRONTATION W/ CORPS; HE ONLY WANTED TO CONDUCT HIS LIFE W/O FURTHER TROUBLE OVER THE PROPERTY.				
ATTY SOWER BUTTS SAID HE WOULD RESPOND TO OUR LETTER AFTER TALKING W/ HIS CLIENT.				
ACTION REQUIRED				
NAME OF PERSON DOCUMENTING CONVERSATION		SIGNATURE		DATE
Kevin Dougherty		[Signature]		11 MAY 00
ACTION TAKEN				
SIGNATURE		TITLE		DATE

## LAW OFFICES

## CORDISCO &amp; BRADWAY

JOHN A. CORDISCO  
KEVIN M. BRADWAY  
THERESA HOGANER SINGH  
DANIEL J. SOWERBUTTS

OF COUNSEL:  
JAMES W. PEARSON, JR.  
(OFFICE IN PHILADELPHIA)

\*ALSO NEW JERSEY BAR  
\*ALSO IN AND CA BAR

234 MILL STREET  
BRISTOL, PENNSYLVANIA 19007

PHONE (215) 761-5730  
FAX (215) 761-9874  
E-MAIL: [www.jfc@3060.com](mailto:www.jfc@3060.com)

May 19, 2000

## NEW JERSEY OFFICE

2748 WHITEHORSE-MERCERVILLE ROAD  
SUITE F  
HAMILTON, NEW JERSEY 08616  
(609) 890-6080

## PHILADELPHIA OFFICE

218 SOUTH BROAD STREET  
SUITE 700  
PHILADELPHIA, PENNSYLVANIA 19107  
(215) 755-3066

Chris Caron  
Office of Hon. Helen Chenoweth- Hage

RE: John Pozsgai

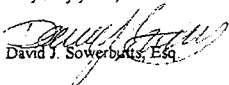
Dear Mr. Caron:

This letter will confirm my telephone conference with you this date. I was present at the Pozsgai property in Morrisville on January 3, 2000 when a representative from the Army Corps of Engineers conducted an on-site inspection. In the presence of Mr. Pozsgai, I was specifically told that no complaint had been filed against Mr. Pozsgai. I was told that the inspection resulted from a routine overflight of the property and that there appeared to be changes to the property visible during the overflight. At the conclusion of the on-site inspection, I was told in the presence of Mr. Pozsgai, in so many words that there did not appear to be a problem or a violation. The property had previously been marked on behalf of the Army Corps with red survey flags allegedly outlining the boundaries of the wetlands area. The work that had been done on the site appeared to be on the proper side of the boundary line. The only exception was a piece of concrete piping that was lying behind some trees and bushes along the superhighway that runs along the property. The origin of the pipe was and is unknown and there was certainly nothing to indicate that Mr. Pozsgai had caused the pipe to be placed in such a location. At that time, it was not clear to me that the pipe was even resting on Mr. Pozsgai's property.

Based on the comments made in January, I was surprised to receive a letter five months later, dated May 5, 2000, from the Regulatory Branch of the Army Corps. I was also surprised at the rather minimal nature of the allegations and that such minimal allegations would warrant the time and effort that obviously went into the overflight, site inspection, and the preparation of the report and the plot plan that accompanied the report.

Please contact me if you require further information.

Very truly yours,

  
David J. Sowerbutts, Esq.

la/ds



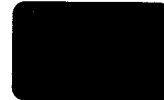
CENAP-OP-R (1145)

20-JAN-2000

## MEMORANDUM FOR RECORD

SUBJECT: CENAP-OP-R-200000043-57

1. On October 27, 1999, the property owned by John Pozsgai (TMP 13-28-83, Falls Township and Morrisville Borough, Bucks County, PA) was overflowed as part of routine aerial survey of the Pennsylvania Coastal Zone organized and scheduled by the Pennsylvania Department of Environmental Protection. Mr. Kevin Dougherty (CENAP-OP-R) was present as a representative of the of the Philadelphia District, Corps of Engineers. Work was observed to have taken place on the above referenced property and on an adjoining parcel (TMP 13-28-84). Photographs were taken of the site and these photographs were compared to previous photographs and mapping for the site in the files for the property.
2. Based on the available data, additional work appeared to have been done in areas subject to Federal jurisdiction. Mr. Pozsgai was contacted by telephone on November 23, 1999 and was asked to provide access to the property in order to investigate the apparent violation. Mr. Pozsgai stated that he requires 30 day written notice prior to entry in order that his attorney could attend.
3. A letter dated November 24, 1999 was sent to Mr. Pozsgai requesting an on site meeting to be held on January 3, 2000 at 10:00 AM. Mr. Pozsgai agreed to the meeting in a letter faxed to this office on December 6, 1999.
4. On December 8, 1999, Mr. Dougherty visited the site in response to a report by Michael Hayduk (CENAP-OP-R) that fresh grading at the site was observed by Mr. Hayduk. Mr. Dougherty photographed the site from the roadway and confirmed that recent grading had taken place on portions of the site. Mechanized landclearing was also observed in the area adjacent to SR0001.
5. On January 3, 2000, Mr. Dougherty and Mr. Kevin Maley (CENAP-OP-R) met on the site with Mr. David Sowerbutts (attorney for Mr. Pozsgai), Mr. John Pozsgai, Mr. Charley Heater (Mr. Pozsgai's son-in-law) and one of Mr. Pozsgai's daughters. The purpose of the site visit was to inspect areas where unauthorized work was suspected and to determine if additional work had been done in areas subject to Federal jurisdiction.
6. Areas of work adjacent to My Lane and along the northeastern side of the property were investigated. The area of fill adjacent to My Lane was measured using two baselines; one set along the existing guardrail and the second set at a 67 foot offset from the guardrail. An offset baseline was needed to avoid a fenced area containing a watch dog. The



centerline of work along the northeastern side of the property was located using offsets from the existing chainlink fence that separates the property from SR0001.

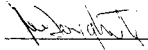
7. The data was plotted on an existing plan of the site. Aerial photography taken by this office on April 2, 1997 identified a silt fence along the northern side of the existing fill. This silt fence shows the fill to be extended further out into Federally regulated areas than in June 1995. This silt fence was relocated on January 3, 2000. An approximately 1900 square foot (SF) area of fill was identified along the northern side of the existing fill area on My Lane. When the extent of the fill observed on January 3, 2000 is considered with respect to the original plot plan and this 1997 photography, the fill was originally placed between June 1995 (the date of the plot plan) and April 1997 (date of the aerial photography); the current work appears to be spreading of material on the surface of this earlier filling of the My Lane site. Examination of the case file (CENAP-OP-R-177300202) found that filling on the northern and eastern portions of the My Lane area had previously been investigated by this office on October 8, 1997. This site investigation found that Mr. Pozsgai had engaged in unauthorized filling in the same general area as observed on January 3, 2000. Mr. Pozsgai was requested to cease activity at the field meeting on October 8, 1997 and a Cease and Desist letter was sent on November 7, 1997. This letter included a site plan showing the approximate limits of the unauthorized work. A second letter was sent on April 8, 1998 but this violation was never resolved. The work observed in the vicinity of My Lane on January 3, 2000 appears to be over the footprint of the older unresolved violations at this location on the site.

8. Approximately 360 SF of fill and a reinforced concrete pipe was placed in a ditch for construction of a road crossing just northeast of the property line. This crossing is on TMP 13-28-84, an adjoining parcel between Mr. Pozsgai's property and the SR0001 right-of-way, but the work allows movement along the eastern side of Mr. Pozsgai's property. Track marks were observed entering the area from both the northeastern and southeastern corners of Mr. Pozsgai's property. Approximately 1300 SF of mechanized land clearing was observed in areas subject to Federal jurisdiction on TMP 13-28-84 as part of the clearing of the access road. This work area could not be seen on the 1997 aerial photographs; therefore the work occurred sometime between June 1995 and October 1999. Based on the physical appearance of the site, the land clearing appears to have been done within the last growing season.

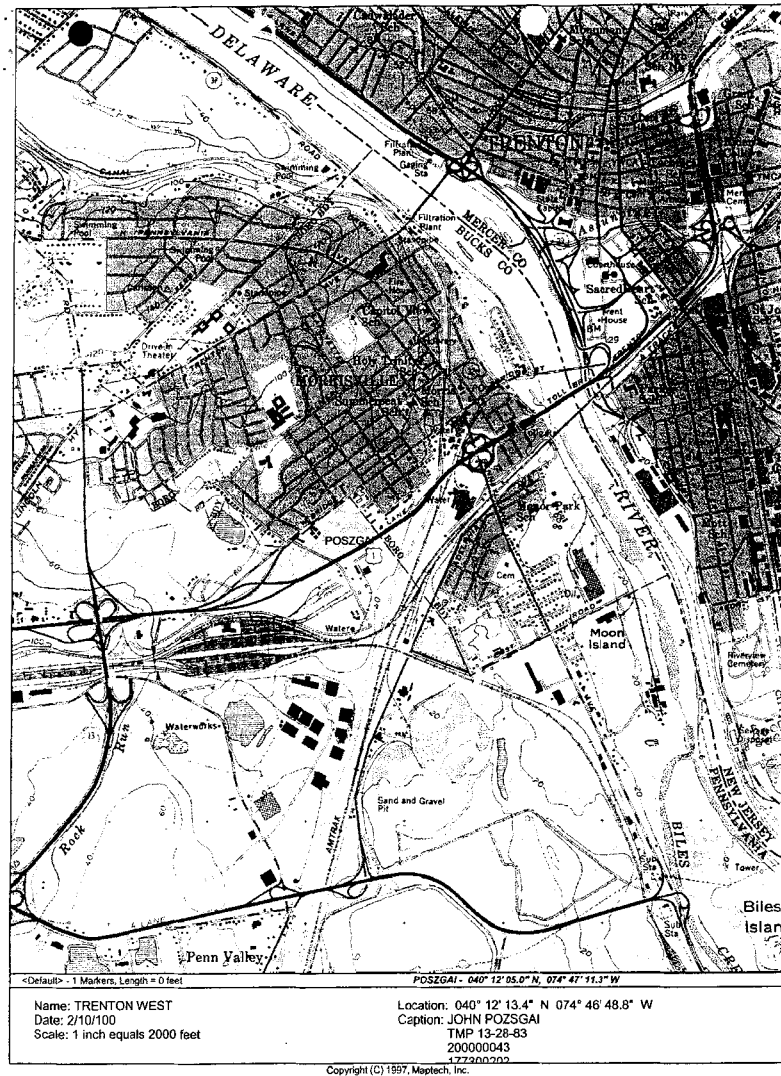
9. Additional grading was also observed along West Bridge Street. Comparison of the recently graded areas with previous mapping, notes, and photographs indicate the recent work is on the surface of older fill material or is on areas previously identified as uplands. No new unauthorized work in areas subject to Federal jurisdiction was found in this area.

10. New work in regulated areas consists of regrading of older unauthorized fill, and the addition of material on top of these old depositions adjacent to My Lane, the mechanized land clearing of areas along the eastern portion of the property (including work on TMP-13-28-84), and the crossing of a ditch on TMP-13-28-84.

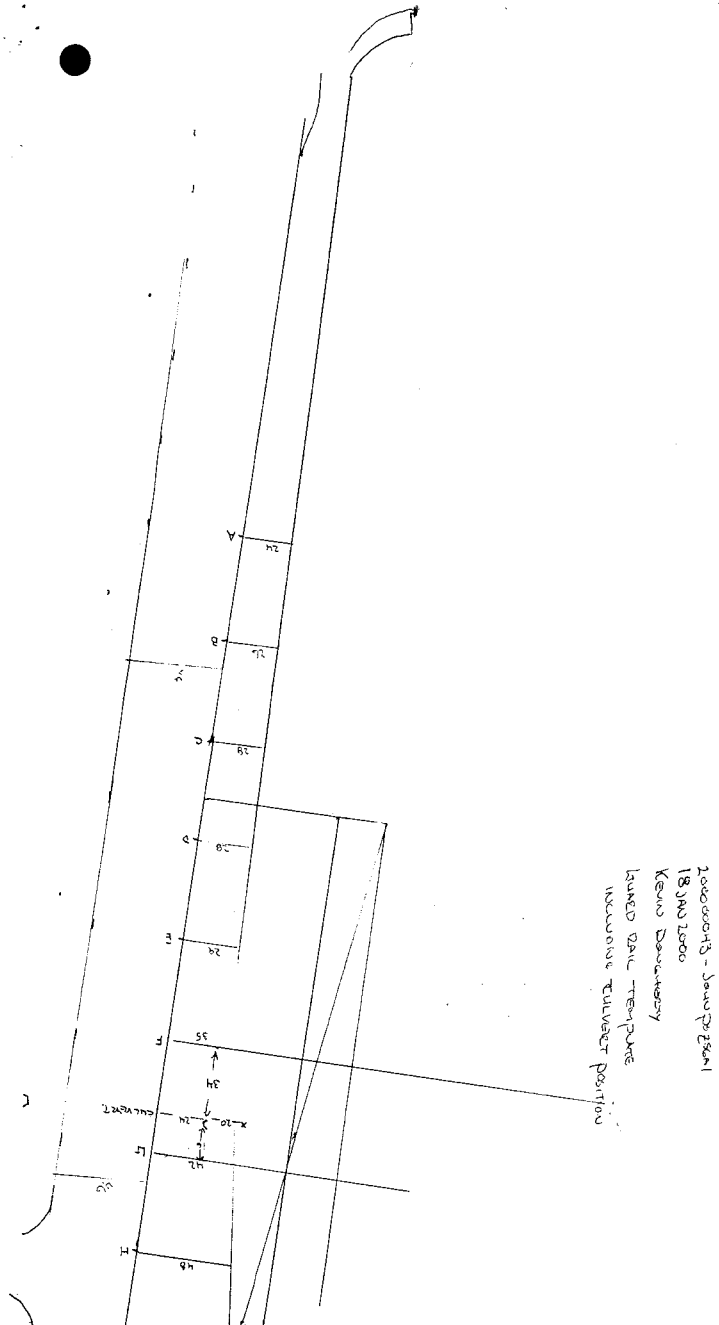
11. The following actions are recommended:
  - a. This office should send another Cease and Desist letter to Mr. Pozsgai ordering him to cease further work in areas subject to Federal jurisdiction. This includes the addition of material to, or the regrading of, unauthorized material previously placed in areas subject to Federal jurisdiction;
  - b. Mr. Pozsgai should be directed to have the jurisdictional boundary located by survey on the My Lane portion of the site. This boundary should be staked in the field and clearly marked. Mr. Pozsgai should be ordered not to use or work the area beyond the staked line;
  - c. Mr. Pozsgai should be requested to provide the name(s), address(es), and phone number(s) of his lessee(s) of the My Lane portion of the site. Upon receipt of this information, the lessee(s) should be interviewed to determine if they are responsible for some or all of the unauthorized work;
  - d. The owner(s) of TMP-13-28-84 should be contacted and advised of the work on their property. This office should determine if the owner(s) of the parcel are responsible parties to the violation; and,
  - e. The U.S. Attorney should be advised of the ongoing violation.



Kevin W. Dougherty  
Biologist









**QUESTIONS PRESENTED**

1. Whether the evidence was sufficient to support petitioner's convictions for discharging pollutants onto a federally protected wetlands site without a permit, in violation of 33 U.S.C. 1311(a) and 1319(c)(2)(A).

2. Whether the Sentencing Commission exceeded its authority in promulgating Sentencing Guidelines § 2Q1.3, as applied to the offense of discharging pollutants onto a wetlands site without a permit.

3. Whether the imposition of a \$200,000 fine for convictions on 40 counts of discharging pollutants onto a wetlands site without a permit violated the Excessive Fines Clause of the Eighth Amendment.

## TABLE OF CONTENTS

	Page
Opinion below .....	1
Jurisdiction .....	1
Statement .....	1
Argument .....	8
Conclusion .....	19

## TABLE OF AUTHORITIES

## Cases:

<i>Alameda County Assessor's Parcel Nos. 537-801-2-4 and 537-850-b, In re</i> , 672 F. Supp. 1278 (N.D. Cal. 1987) .....	13
<i>Avoyelles Sportsmen's League, Inc. v. Marsh</i> , 715 F.2d 897 (5th Cir. 1983) .....	12
<i>Government of the Canal Zone v. Burjan</i> , 596 F.2d 690 (5th Cir. 1979) .....	10
<i>United States v. Blunt</i> , 558 F.2d 1245 (6th Cir. 1977) .....	10
<i>United States v. Bradshaw</i> , 541 F. Supp. 880 (D. Md. 1981) .....	13
<i>United States v. Elkins</i> , 885 F.2d 775 (11th Cir. 1989), cert. denied, 110 S. Ct. 1300 (1990) .....	17
<i>United States v. Lambert</i> , 589 F. Supp. 366 (M.D. Fla. 1984) .....	13
<i>United States v. Larkins</i> , 657 F. Supp. 76 (W.D. Ky. 1987), aff'd, 852 F.2d 189 (6th Cir. 1988), cert. denied, 109 S. Ct. 1131 (1989) .....	13
<i>United States v. Riverside Bayview Homes, Inc.</i> , 474 U.S. 121 (1985) .....	2, 12-13
<i>United States v. Robinson</i> , 570 F. Supp. 1157 (M.D. Fla. 1983) .....	13
<i>United States v. Tull</i> , 615 F. Supp. 610 (E.D. Va. 1983), aff'd, 769 F.2d 182 (4th Cir. 1985), rev'd, 481 U.S. 412 (1987) .....	13
<i>United States v. Weisman</i> , 489 F. Supp. 1331 (M.D. Fla.), aff'd, 632 F.2d 891 (5th Cir. 1980) ..	13

## IV

Constitution, statutes, regulations, and rules:	Page
U.S. Const. Amend. VIII (Excessive Fines Clause) .....	7, 17, 18
Clean Water Act, 33 U.S.C. 1251 <i>et seq.</i> .....	2
§ 301, 33 U.S.C. 1311(a) .....	2, 7, 8
§ 309, 33 U.S.C. 1319 .....	3
§ 309(c)(2), 33 U.S.C. 1319(c)(2) .....	3, 16, 17
§ 309(c)(2)(A), 33 U.S.C. 1319(c)(2)(A) ..	2, 5, 8, 18
§ 404(a), 33 U.S.C. 1344(a) .....	12
§ 404(e), 33 U.S.C. 1344(e) .....	7
§ 502(6), 33 U.S.C. 1362(6) .....	7, 12
§ 502(7), 33 U.S.C. 1362(7) .....	7, 8
§ 502(12), 33 U.S.C. 1362(12) .....	12
Water Quality Act of 1987, Pub. L. No. 100-4, Tit. III, § 312, 101 Stat. 42-43 .....	16
28 U.S.C. 994(m) .....	15
33 C.F.R.:	
Section 328.3(a) .....	2
Section 328.3(a)(1) .....	8, 9, 11
Section 328.3(a)(2) .....	11
Section 328.3(a)(3) .....	11
Section 328.3(a)(5) .....	8, 9, 11
Section 328.3(a)(7) .....	8, 11
Section 328.3(b) .....	3, 13
Fed. R. Evid.:	
Rule 201 .....	10
Rule 201(b) .....	10
Sentencing Guidelines:	
Ch. 1, Pt. A:	
para. 3 .....	16
para. 4(f) .....	14
§ 2Q1.3. ....	13
§ 2Q1.3(b)(1)(A) .....	5, 6, 7, 15, 17
§ 2Q1.3(b)(4) .....	5, 6, 7, 15, 17
§ 5E4.2(a) (1987 and 1988) .....	18
§ 5E4.2(c)(1)(A) (1987 and 1988) .....	18

Rules – Continued:	Page
§ 5E4.2(c)(3) (1987 and 1988) .....	18
§ 5E4.2(f) (1987 and 1988) .....	18
Miscellaneous:	
R. McCullough & W. Leuba, <i>The Pennsylvania Main Line Canal</i> (1962) .....	10
United States Army Corps of Engineers, <i>Preliminary Case Report for Neshaminy Water Resources Authority, Point Pleasant Diversion Project, Point Pleasant, Bucks County, Pennsylvania</i> (Mar. 19, 1982) .....	10
C.P. Yoder, <i>Delaware Canal Journal</i> (1972) .....	10

**In the Supreme Court of the United States**

OCTOBER TERM, 1990

---

No. 89-1735

JOHN POZSGAI, PETITIONER

v.

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT*

---

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

---

**OPINION BELOW**

The judgment order of the court of appeals (Pet. App. 1a-3a) is unpublished, but the decision is noted at 897 F.2d 524 (Table).

**JURISDICTION**

The judgment of the court of appeals was entered on January 12, 1990. A petition for rehearing was denied on February 8, 1990. Pet. App. 15a-16a. The petition for a writ of certiorari was filed on May 9, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

After a jury trial in the United States District Court for the Eastern District of Pennsylvania, petitioner was con-

victed on 40 counts of discharging pollutants onto a wetlands site without a permit, in violation of 33 U.S.C. 1311(a) and 1319(c)(2)(A). He was sentenced to a total of three years' imprisonment, a five-year term of probation, a one-year term of supervised release, and a \$200,000 fine. The court of appeals affirmed.

1. Under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, "any discharge of dredged or fill materials into 'navigable waters'—defined as the 'waters of the United States'—is forbidden unless authorized by a permit issued by the [Army] Corps of Engineers pursuant to § 404, 33 U.S.C. § 1344." *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 123 (1985). The term "waters of the United States" is defined in regulations promulgated under the Act to include

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce \* \* \*;

\* \* \* \* \*

(5) Tributaries of waters identified in paragraphs (a)(1) through (4) of this section;

\* \* \* \* \*

(7) Wetlands adjacent to waters \* \* \* identified in paragraphs (a)(1) through (6) of this section.

33 C.F.R. 328.3(a). In *United States v. Riverside Bayview Homes, Inc.*, *supra*, this Court upheld an earlier version of the regulations at issue in this case. The Court held it is "reasonable for the Corps to interpret the term 'waters' to encompass wetlands adjacent to waters as more conventionally defined." 474 U.S. at 133.<sup>1</sup>

---

<sup>1</sup> The regulations define "wetlands" as

those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wet-



Section 309 of the Clean Water Act, 33 U.S.C. 1319, establishes criminal sanctions for violations of the Act, and Section 309(c)(2), 33 U.S.C. 1319(c)(2), provides that any person found guilty of a knowing violation of the statute “shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.”

2. The evidence at trial showed that petitioner owned and operated a truck repair business in Morrisville, Pennsylvania. In the fall of 1986, petitioner decided to buy an adjoining 14-acre tract in order to expand his business. That tract was bordered by Bridge Street on the north, U.S. Route 1—a four-lane highway—on the south, a salvage yard on the west, and a tire dealership and apartment complex on the east. See Pet. 3; Pet. App. 42a (Gov’t Exh. 1). A stream ran through the tract, flowing down through the property from the northeast and exiting through a culvert at the southern border. The culvert passed underneath Route 1. The Pennsylvania Canal, which ran roughly parallel to Route 1, was located nearby to the south. See Pet. 3; Pet. App. 42a (Gov’t Exh. 1); Gov’t C.A. Br. 6; 1 Dec. 27, 1988, Tr. 86; 1 Dec. 28, 1988, Tr. 29-30, 41; 2 Dec. 28, 1988, Tr. 77, 91; Dec. 29, 1988, Tr. 30-31, 34-35, 51-52, 145; Gov’t Exhs. 9, 20; Def’t Exh. 14.

While petitioner was negotiating to purchase the tract, he learned from environmental and engineering consultants that the tract met the criteria established by the Corps of Engineers for protected “wetlands” and thus that “any future development that might be considered on this site would have to be approved and reviewed by the Army Corps of Engineers.” 1 Dec. 27, 1988, Tr. 73; see *id.* at

---

lands generally include swamps, marshes, bogs, and similar areas.

33 C.F.R. 328.3(b).

91-92; Gov't Exhs. 2, 3. Shortly after he began the process of purchasing the tract, however, petitioner began depositing fill material onto the tract without obtaining approval from the Corps of Engineers. In April 1987, a Corps of Engineers inspector visited petitioner at the site. The inspector's on-site investigation confirmed that the tract contained wetlands protected under federal law. As a result, the inspector warned petitioner that federal law prohibited him from continuing to deposit fill onto the land without first obtaining the necessary permits and authorization. Gov't C.A. Br. 6-7; 2 Dec. 27, 1988, Tr. 4-18.

Despite repeated warnings, petitioner continued to have truckloads of fill material—mainly construction and excavation debris—dumped onto the site. In September 1987, the Corps of Engineers notified petitioner by letter that his unauthorized filling was in violation of the Clean Water Act and directed him “to cease and desist from conducting, contracting or permitting any further filling of the wetlands or areas subject to federal jurisdiction.” 2 Dec. 27, 1988, Tr. 23; Gov't Exh. 4. Petitioner ignored the notice and continued to deposit fill onto the site. After continued monitoring of petitioner's activities, the United States Environmental Protection Agency notified petitioner in early December 1987 that his “filling without a permit is a violation of the Clean Water Act” that could subject him to penal sanctions. 2 Dec. 28, 1988, Tr. 22; Gov't Exh. 18. After receiving that notice, petitioner continued the process of filling the site.

As a result, the Corps of Engineers issued petitioner a second notice of violation on December 17. That notice reiterated the earlier warnings and informed petitioner that

[r]ecent inspections by [Corps of Engineers] personnel \* \* \* have revealed that approximately five acres

of additional unauthorized fill material has been placed in Federally regulated wetlands on [the tract]. Work of this nature, when conducted without a Department of the Army permit is a violation of Section 301 of the Clean Water Act.

2 Dec. 28, 1988, Tr. 16-17; Gov't Exh. 6. The notice again advised petitioner to stop his unlawful filling and instructed him to apply for a permit if he wished to resume his activities.

The filling process continued in spite of the warnings. On August 24, 1988, the United States Attorney filed a civil action against petitioner and obtained a temporary restraining order directing petitioner immediately to stop discharging fill material onto the wetlands site. Dec. 29, 1988, Tr. 79-81; Gov't Exh. 44. Over the next several weeks, however, truckloads of fill material continued to be dumped onto the site. Petitioner's discrete acts of unlawful filling of the site over a 14-month period constituted the 41 offenses charged in the indictment. Gov't CA. Br. 8-9.

3. At sentencing, the probation officer recommended a sentence of 21 to 27 months' imprisonment under the Sentencing Guidelines for the 25 counts that were subject to the Guidelines. The probation officer determined that petitioner's offense had a "total offense level" of 16: a base level of six, a six-level increase under Sentencing Guidelines § 2Q1.3(b)(1)(A) for continuous and ongoing discharging activities, and a four-level increase under Sentencing Guidelines § 2Q1.3(b)(4) for discharging without a permit. C.A. App. A35-A37. The probation officer also informed the district court that because 33 U.S.C. 1319(c)(2)(A) "calls for a mandatory minimum fine of \$5,000 \* \* \* per day of violation," petitioner faced "the minimum mandatory fine [of] \$200,000" for the 40 counts of conviction. C.A. App. A38. The prosecutor agreed with the probation officer's recommendations under the

Guidelines and asked the court to impose a sentence of 27 months' imprisonment, and "the mandatory minimum fine in this case of \$200,000.00." July 13, 1989, Tr. 63; see *id.* at 27.

Petitioner challenged the probation officer's calculation of the offense level. First, petitioner argued that a four-level increase under Sentencing Guidelines § 2Q1.3(b)(4) was unwarranted because the offense of conviction itself involved discharging without a permit, the punishment for which was already reflected in the base offense level of six. Second, petitioner contended that a six-level increase under Sentencing Guidelines § 2Q1.3(b)(1)(A) was inappropriate because the criminal conduct at issue – failure to obtain a permit for discharging fill – was not the sort of "ongoing, continuous" activity covered by that Guideline. July 13, 1989, Tr. 7-11.

The district court rejected petitioner's arguments and agreed with the probation officer's recommendations under the Sentencing Guidelines. July 13, 1989, Tr. 20-21, 25-26. Stating that "[i]t's hard to visualize a more stubborn violator of the laws that were designed to protect the environment," *id.* at 66, the court sentenced petitioner to a three-year term of imprisonment on Counts 1-14 (the pre-Guidelines counts), a concurrent term of 27 months' imprisonment on Counts 16-41 (the counts governed by the Guidelines), a five-year term of probation on Count 15, and a one-year term of supervised release on the Guidelines counts. The court also ordered petitioner to pay a fine of \$5,000 on each count, for a total of \$200,000, and as a condition of probation, the court ordered petitioner to comply with a restoration plan for the wetlands site. *Id.* at 67:<sup>2</sup>

---

<sup>2</sup> Before the jury retired for deliberations, the government discovered that Count 33 and Count 34 were duplicative and therefore withdrew the latter. Dec. 30, 1988, Tr. 89.

4. On appeal, petitioner contended that the government had not presented sufficient evidence to show that his wetlands site was a “water[ ] of the United States,” 33 U.S.C. 1362(7). In particular, he claimed that the government had failed to prove that the stream on his property was a tributary of the Pennsylvania Canal and that the Canal had the required nexus with interstate commerce. Pet. C.A. Br. 8-13; Pet. C.A. Reply Br. 1-7. Petitioner also contended that the government had failed to prove that he had discharged any “pollutant” on the site, as that term is used in 33 U.S.C. 1311(a) and 1362(6). Pet. C.A. Br. 24-27; Pet. C.A. Reply Br. 7-13.

In addition to contesting his conviction, petitioner challenged his sentence on several grounds. First, he argued that the district court erroneously applied Sentencing Guidelines § 2Q1.3(b)(1)(A) and (b)(4) to increase his offense level to 16; alternatively, he contended that if that application of the Guidelines was correct, those Guidelines were illegal. Pet. C.A. Br. 27-38; Pet. C.A. Reply Br. 16-20. Second, petitioner contended that the district court abused its discretion in imposing a term of three years’ imprisonment and a substantial fine on the pre-Guidelines counts. Pet. C.A. Br. 38-41; Pet. C.A. Reply Br. 21. Third, petitioner argued that the court’s sentence was so grossly disproportionate to his offense that it violated the Eighth Amendment. Pet. C.A. Br. 41-44; Pet. C.A. Reply Br. 21-25.<sup>3</sup>

---

<sup>3</sup> Petitioner also claimed that he was authorized to fill his wetlands site by virtue of a “nationwide permit” issued by the Corps of Engineers under 33 U.S.C. 1344(e), Pet. C.A. Br. 13-23; Pet. C.A. Reply Br. 13-15, and that his trial counsel had rendered ineffective assistance, Pet. C.A. Br. 23-24. The court of appeals rejected those claims, Pet. App. 2a-3a, and petitioner has not sought further review of those aspects of the court of appeals’ judgment.

The court of appeals summarily rejected each of petitioner's claims in an unpublished judgment order. Pet. App. 1a-3a.

### ARGUMENT

1. Petitioner's principal contention (Pet. 10-21) is that the government did not present sufficient evidence to support his convictions for discharging pollutants onto a federally protected wetlands site without a permit, in violation of 33 U.S.C. 1311(a) and 1319(c)(2)(A).

a. First, petitioner claims (Pet. 10-17) that the government failed to prove that his wetlands site was a "water[ ] of the United States," 33 U.S.C. 1362(7). Therefore, he contends, he was not required to obtain a permit to discharge the fill materials he placed on the property.

The indictment alleged that petitioner's property was a federally protected wetlands under the Clean Water Act and its implementing regulations because the site was adjacent to a tributary of the Pennsylvania Canal. That Canal, the indictment alleged, was a "water of the United States" under the applicable regulations, which define "waters of the United States" as waters "which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce." C.A. App. A26. See 33 C.F.R. 328.3(a)(1), (5), and (7).

It is true that the government did not offer direct evidence that the stream on petitioner's property flowed into the Pennsylvania Canal, or that the Canal had been used in interstate commerce.<sup>4</sup> There was, however, evidence from which the jury could have inferred both facts. With respect to the stream's status as a "tributary" under

---

<sup>4</sup> The prosecutor advised the jury in his opening statement that he would be offering direct evidence to establish both of those facts, but apparently because of an oversight that evidence was never introduced.

33 C.F.R. 328.3(a)(5), testimony and documentary evidence showed that the stream flowed through petitioner's tract toward the Pennsylvania Canal, which was located near the tract's southern border on the other side of Route 1—a fact pointed out by one of the government's expert witnesses. See 1 Dec. 28, 1988, Tr. 41; Pet. App. 42a (Gov't Exh. 1); Gov't Exh. 9. The stream entered petitioner's site from the northeast and exited through a culvert at the southern border that ran underneath Route 1.<sup>5</sup> From that evidence, the jury could reasonably infer that the stream flowed through the culvert and into the Canal just south of Route 1.<sup>6</sup>

With respect to the status of the Pennsylvania Canal as a waterway that was "used in the past, or may be susceptible to use in interstate or foreign commerce," 33 C.F.R. 328.3(a)(1), the photographic evidence introduced at trial showed that the Canal was a substantial waterway that obviously could have handled shipping traffic at one time. See Pet. App. 42a (Gov't Exh. 1); Pet. App. 41a; Gov't Exhs. 7, 9.<sup>7</sup> Consequently, the jury could reasonably infer that the Canal was "susceptible to use in interstate \* \* \* commerce."

---

<sup>5</sup> See Pet. 3; Pet. App. 42a (Gov't Exh. 1); Gov't C.A. Br. 6; 1 Dec. 27, 1988, Tr. 86; 1 Dec. 28, 1988, Tr. 29-30, 41; 2 Dec. 28, 1988, Tr. 91; Dec. 29, 1988, Tr. 30-31, 34-35, 51-52, 95, 145.

<sup>6</sup> The government's brief in the court of appeals asserted that the aerial photographs introduced at trial showed the stream flowing into the Canal. That representation, we have now determined, was inaccurate. We have examined the photographs and determined that they do not show the stream flowing into the Canal. However, the photographs would not be expected to show the intersection of the stream and Canal, since the evidence showed that the stream went underground through a 72" culvert shortly before it left petitioner's property. 2 Dec. 28, 1988, Tr. 91; Dec. 29, 1988, Tr. 95; Gov't Exh. 20.

<sup>7</sup> Although it was not necessary for the jury to find that the Canal had actually been used in interstate commerce, the evidence would

As a matter of historical fact, the Pennsylvania Canal was used in interstate commerce for nearly a century. The Canal, which runs for approximately 60 miles along the Delaware River, the border between Pennsylvania and New Jersey, was a shipping route between the Pennsylvania Lehigh Valley and markets in eastern Pennsylvania and southern New Jersey. The Canal opened in 1832 and was closed to active traffic in 1931. See, e.g., R. McCullough & W. Leuba, *The Pennsylvania Main Line Canal* 80-82, 166-167 (1962); see generally C.P. Yoder, *Delaware Canal Journal* (1972). The Canal was designated as a National Historic Landmark in 1976. United States Army Corps of Engineers, *Preliminary Case Report for Neshaminy Water Resources Authority, Point Pleasant Diversion Project, Point Pleasant, Bucks County, Pennsylvania* § 2.1, at 7 (Mar. 19, 1982).

The Canal's status as an interstate waterway is the kind of fact that is capable of judicial notice under Federal Rule of Evidence 201, since it is "not subject to reasonable dispute in that it is \* \* \* capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The court of appeals could properly take judicial notice of the Canal's use in interstate commerce, even though the district court did not do so. See *Government of the Canal Zone v. Burjan*, 596 F.2d 690, 693-694 (5th Cir. 1979); *United States v. Blunt*, 558 F.2d 1245, 1247 (6th Cir. 1977). For that reason as well, petitioner's jurisdictional claim fails.

---

have supported such a conclusion. The photographic evidence showed that the Canal ran toward the New Jersey border, since it was established that petitioner's tract was located in Morrisville, Pennsylvania, directly across from Trenton, New Jersey. See, e.g., Pet. 3; Pet. App. 42a (Gov't Exh. 1).



Apart from the evidence regarding the status of the stream as a tributary of the Canal and the use of the Canal in interstate commerce, there was direct evidence from several expert witnesses establishing that petitioner's wetlands property was federally protected and subject to Army Corps of Engineers jurisdiction under the Clean Water Act. See 1 Dec. 27, 1988, Tr. 47; 1 Dec. 28, 1988, Tr. 17-18, 44-46; see also Gov't Exhs. 4, 6, 18; 2 Dec. 28, 1988, Tr. 21-22. That evidence provided an independent basis from which the jury could have inferred that the requirements of federal jurisdiction were met. To be sure, the witnesses merely stated their conclusions that petitioner's site was subject to Army Corps of Engineers regulation; they did not explain the steps by which they had reached that conclusion. Yet, petitioner did not cross-examine the expert witnesses on that point, nor did he object to that aspect of their testimony for lack of foundation. In fact, he did not contest the presence of federal jurisdiction over the site except to argue that it did not contain "wetlands" as that term was used in the pertinent regulations. Accordingly, the jury could properly rely on the expert witnesses' conclusions that the jurisdictional requirements of the statute and the regulations were satisfied in this case.<sup>8</sup>

---

<sup>8</sup> In context, the witnesses' testimony that petitioner's wetlands site was federally protected and within the jurisdiction of the Army Corps of Engineers necessarily meant that the wetlands were adjacent to a water of the United States or a tributary of such a water. 33 C.F.R. 328.3(a)(1), (5), and (7). There are only two other ways that wetlands can be within federal jurisdiction: either by being "interstate wetlands," 33 C.F.R. 328.3(a)(2), or by having a use or potential use that affects interstate commerce, 33 C.F.R. 328.3(a)(3). The photographic evidence conclusively established that petitioner's site was not an "interstate" wetlands, since it was located entirely within the Commonwealth of Pennsylvania, and the evidence regarding federal jurisdiction could not have rested on any effect on interstate com-

In sum, the record is admittedly quite thin with regard to the two elements needed to establish federal jurisdiction over the wetlands site—the physical connection between the stream and the Pennsylvania Canal, and the historical status of the Canal as a waterway used or susceptible to use in interstate commerce. Nevertheless, in our view, the record contains sufficient evidence on those issues, particularly in light of the fact that petitioner has not at any point suggested that the presence of those jurisdictional facts could have been contested.

b. Petitioner also claims (Pet. 18-21) that the government did not prove that he had discharged “pollutants” within the meaning of 33 U.S.C. 1344(a) and 1362(6), because the evidence did not show that he discharged any material into “water.” The Clean Water Act defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source \* \* \*.” Section 502(12), 33 U.S.C. 1362(12). The Act defines “pollutant” to include “rock, sand, [and] cellar dirt.” Section 502(6), 33 U.S.C. 1362(6).

As shown above, petitioner’s wetlands site constituted “navigable waters” within the meaning of the Clean Water Act, and petitioner does not dispute that he was responsible for discharging material onto the site from a “point source,” *i.e.*, dump trucks. See, *e.g.*, *Avoyelles Sportsmen’s League, Inc. v. Marsh*, 715 F.2d 897, 922 (5th Cir. 1983). Contrary to petitioner’s submission, the fill materials he used on his wetlands site—construction and excavation debris—plainly qualify as “pollutants” under the terms of the statute. See *United States v. Riverside*

---

merce, because the witnesses who identified petitioner’s property as federally protected wetlands were testifying about its physical and geographical properties, not about the use to which it was being or could be put.

*Bayview Homes, Inc.*, 474 U.S. at 123.<sup>9</sup> Moreover, the record shows that petitioner repeatedly discharged those materials onto his wetlands site, namely, an “area[ ] \* \* \* inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do[es] support, a prevalence of vegetation typically adapted for life in saturated soil conditions.” 33 C.F.R. 328.3(b). See Gov’t C.A. Br. 6-16. There is thus ample evidence that petitioner discharged “pollutant[s]” into “water,” as those terms are used in the Clean Water Act.

2. Petitioner also contends (Pet. 21-29) that the Sentencing Commission exceeded its authority in promulgating Sentencing Guidelines § 2Q1.3, as applied to the offense of discharging pollutants onto a wetlands site without a permit. In petitioner’s view, that Guideline automatically causes “double counting” (Pet. 23) of the same criminal conduct—discharging fill without a permit—that results in sentences far exceeding those previously imposed for environmental offenses.

The Sentencing Commission recognized that in light of their variety, regulatory offenses called for a particular approach under the Guidelines. As the Commission explained:

(1) The [typical] guideline provides a low base offense level (6) aimed at \* \* \* [a] recordkeeping or

---

<sup>9</sup> See also *In re Alameda County Assessor’s Parcel Nos. 537-801-2-4 and 537-850-9*, 672 F. Supp. 1278, 1284-1285 (N.D. Cal. 1987); *United States v. Larkins*, 657 F. Supp. 76, 78-79 n.2 (W.D. Ky. 1987), *aff’d*, 852 F.2d 189 (6th Cir. 1988), *cert. denied*, 109 S. Ct. 1131 (1989); *United States v. Tull*, 615 F. Supp. 610 (E.D. Va. 1983), *aff’d*, 769 F.2d 182 (4th Cir. 1985), *rev’d on other grounds*, 481 U.S. 412 (1987); *United States v. Lambert*, 589 F. Supp. 366, 371 (M.D. Fla. 1984); *United States v. Robinson*, 570 F. Supp. 1157, 1162-1163 (M.D. Fla. 1983); *United States v. Bradshaw*, 541 F. Supp. 880, 882-883 (D. Md. 1981); *United States v. Weisman*, 489 F. Supp. 1331, 1336-1337 (M.D. Fla.), *aff’d*, 632 F.2d 891 (5th Cir. 1980) (Table).

reporting offense. It gives the court the legal authority to impose a punishment ranging from probation up to six months of imprisonment.

Sentencing Guidelines ch. 1, Pt. A, para. 4(f), at 1.10. Such "recordkeeping or reporting offense[s]" merited a low base offense level because they typically involved "more technical, administratively-related offenses such as failure to keep accurate records or to provide requested information." *Ibid.*<sup>10</sup> Beyond those sorts of technical offenses, the Sentencing Commission prescribed (*ibid.*)

[s]pecific offense characteristics designed to reflect substantive offenses that do occur (in respect to some regulatory offenses), or that are likely to occur, [in order to] increase the offense level.

And the Commission explained (*ibid.*) that

[a] specific offense characteristic also provides that a recordkeeping or reporting offense that conceals a substantive offense will be treated like the substantive offense.

Under the Sentencing Guidelines, the relatively low base offense level therefore prescribes punishment only for technical regulatory violations that do not otherwise involve substantive conduct subject to regulation. The Guidelines take the defendant's substantive conduct into account through specific offense characteristics. In this case, contrary to petitioner's submission, petitioner was

---

<sup>10</sup> The Commission also recognized that

in the simplest of cases, the offender may have failed to fill out a form intentionally, but without knowledge or intent that substantive harm would likely follow. He might fail, for example, to keep an accurate record of toxic substance transport, but that failure may not lead, nor be likely to lead, to the release or improper treatment of any toxic substance. \* \* \*

Sentencing Guidelines ch. 1, Pt. A, para. 4(f), at 1.10.

not convicted of slipshod recordkeeping or simply failing to obtain a necessary form. Rather, his offenses involved a continuous course of conduct of discharging pollutants onto a federally protected wetlands site without obtaining authorization from the Corps of Engineers. The Guidelines properly treated petitioner's conduct for what it was, *i.e.*, "ongoing, continuous, [and] repetitive discharge \* \* \* of a pollutant into the environment," Sentencing Guidelines § 2Q1.3(b)(1)(A), and "discharge [of a pollutant] without a permit," Sentencing Guidelines § 2Q1.3(b)(4).

The Sentencing Commission acted well within its statutory mandate in promulgating the Guidelines that apply to environmental offenses, such as discharging pollutants onto wetlands. Congress specifically instructed the Commission to

insure that the guidelines reflect the fact that, in many cases, current sentences do not accurately reflect the seriousness of the offense. This will require that, as a starting point in its development of the initial sets of guidelines for particular categories of cases, the Commission ascertain the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of such terms actually served. \* \* \*

28 U.S.C. 994(m). Congress further directed that the Commission "shall not be bound by such average sentences, and shall independently develop a sentencing range that is consistent with the purposes of sentencing described in section 3553(a)(2) of title 18, United States Code." 28 U.S.C. 994(m).

Consequently, the Commission sought and received information from the Environmental Protection Agency

regarding past criminal prosecutions and sentencing for environmental offenses.<sup>11</sup> The EPA, for example, told the Commission that more stringent sentences were needed for environmental offenses and that Congress was considering making certain environmental crimes felonies, as opposed to misdemeanors. In February 1987, Congress raised the criminal penalties for intentional violations of provisions of the Clean Water Act, including discharging pollutants onto wetlands. See Water Quality Act of 1987, Pub. L. No. 100-4, Tit. III, § 312, 101 Stat. 42-43 (codified at 33 U.S.C. 1319(c)(2)). Instead of being punishable as misdemeanors, those offenses were made felonies punishable by a maximum term of three years' imprisonment.

The Commission's guidelines for environmental offenses, which became effective on November 1, 1987, properly reflected past sentencing practices and Congress's recent legislation. As the Commission explained:

The Commission has not simply copied estimates of existing practice as revealed by the data (even though establishing offense values on this basis would help eliminate disparity, for the data represent averages). Rather, it has departed from the data at different points for various important reasons. Congressional statutes, for example, may suggest or require departure, as in the case of the new drug law that imposes increased and mandatory minimum sentences. In addition, the data may reveal inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Sentencing Guidelines ch. 1, Pt. A, para. 3, at 1.4. Accordingly, the Commission did not act improperly in

---

<sup>11</sup> Petitioner is mistaken in suggesting (Pet. 25) that the Sentencing Commission promulgated guidelines for environmental offenses without first considering past practices.

promulgating the Sentencing Guidelines that apply to environmental offenses, such as Sentencing Guidelines § 2Q1.3(b)(1)(A) and (b)(4).

4. Finally, petitioner contends (Pet. 29-30) that the district court's imposition of a total fine of \$200,000 violated the Excessive Fines Clause of the Eighth Amendment. As petitioner correctly observes, "[t]his Court has never issued a decision on the Excessive Fines Clause." Pet. 29. This case is not an appropriate vehicle for addressing the scope of that constitutional provision for two reasons. First, the fine imposed on each count was at the bottom of the range prescribed by Congress. Under Section 309(c)(2) of the Clean Water Act, 33 U.S.C. 1319(c)(2), any person found guilty of an offense "shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both." Petitioner stood convicted of 40 separate violations, and thus faced a fine of up to \$2,000,000. Cf. *United States v. Elkins*, 885 F.2d 775, 789 (11th Cir. 1989), cert. denied, 110 S. Ct. 1300 (1990). It is unlikely that Congress's judgment as to the appropriate range for fines is so badly flawed that a fine at the bottom of the prescribed range, which is only 10 percent of the statutory maximum, could be found to be constitutionally excessive.

Second, although petitioner has not raised the point here or in the courts below, the probation officer incorrectly asserted that a mandatory minimum fine was applicable. That assertion, together with the prosecutor's comments at sentencing, see July 13, 1989, Tr. 63, may have led the district court to believe that it was required to impose at least a \$200,000 fine. See *id.* at 26-27 ("If I understand it correctly, then, so far as the applicable guidelines, it's \* \* \* a fine of \$200,000 to \$2 million \* \* \*."). If the court believed it was required to impose such a fine, it was mistaken.

The applicable penalty provision, 33 U.S.C. 1319(c)(2)(A), does not mandate the imposition of a fine on any single count if the court imposes a term of imprisonment on that count; the statute requires the court to impose a fine of at least \$5,000 only if the court elects to impose some fine, either in place of, or in addition to, imprisonment. The Sentencing Guidelines required the imposition of some fine, subject to the court's consideration of petitioner's financial condition. Sentencing Guidelines § 5E4.2(a), (c)(1)(A), (c)(3), and (f) (1987 and 1988). Again, however, neither the statute nor the Sentencing Guidelines required a cumulative fine of at least \$5,000 on each count. Assuming the district court found that petitioner was financially capable of paying some fine, it could have satisfied the requirements of both the statute and the Sentencing Guidelines by imposing a \$5,000 fine on one count and not imposing any fine on any of the other counts. Instead, the district court imposed a \$5,000 fine on each of the 40 counts of conviction, even though the probation officer informed the court that such a fine will "completely devastate [petitioner's] financial future, given his age and earning ability." C.A. App. A40.

Because the district court may have sentenced petitioner on the basis of the misapprehension that the court did not have the authority to impose a lesser fine, the \$200,000 fine may not represent the district court's judgment as to the appropriate fine that should be imposed in this case. Under these circumstances, petitioner may challenge the fine through a collateral attack on the judgment in the district court. If the district court concludes that it imposed the original fine because of a misapprehension about its authority under the statute and the Sentencing Guidelines, the court may decide to impose a lesser fine, or no fine at all, in which case petitioner's argument under the Excessive Fines Clause will be moot. For that reason, the issue



of the amount of the fine, in light of the proper interpretation of the statute and the Sentencing Guidelines, should be raised in, and addressed by, the district court in the first instance.

**CONCLUSION**

The petition for a writ of certiorari should be denied.  
Respectfully submitted.

KENNETH W. STARR  
*Solicitor General*

RICHARD B. STEWART  
*Assistant Attorney General*

J. CAROL WILLIAMS  
RAYMOND W. MUSHAL  
JACQUES B. GELIN  
*Attorneys*

JULY 1990



DEPARTMENT OF THE ARMY  
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS  
CUSTOM HOUSE-20 & CHESTNUT STREETS  
PHILADELPHIA, PENNSYLVANIA 19106-2991

SEP 03 1987

Regulatory Branch

SUBJECT: CENAP-OP-R-PV87-206

John and Gizella Pozsgai  
536 West Bridge Street  
Morrisville, Pennsylvania 19067

Dear Mr. and Mrs. Pozsgai:

Inspection by personnel of this office has revealed that fill material has been placed in Federally regulated waters of the United States, including wetlands, on property identified as Tax Parcel 13-28-83 located on West Bridge Street in Falls Township, Bucks County, Pennsylvania.

Work of this nature, when conducted without a Department of the Army permit, is a violation of Section 301 of the Clean Water Act.

Since you have not been granted a permit for the above noted work, you are directed to cease and desist from conducting, contracting, or permitting any further work of this nature in areas subject to Federal jurisdiction. Please contact this office within five (5) days of the date of this letter to arrange an on-site meeting to delineate the areas subject to Federal jurisdiction.

Further, this office is investigating the circumstances involving the above noted work. As such, you are requested to provide the following information:

- a. The dates during which the property was filled; and
- b. The names(s), address(es), and telephone number(s) of all parties responsible for placing the dredged material.

Submission of the above information, to the Philadelphia District Office, within fifteen (15) days of the date of this letter, is requested.

Should you have any questions regarding this matter, please contact Mr. Martin Miller of this office at (215) 597-3626.

Copy Furnished:

Sincerely,

Falls Township

H. Ronald Kreh, P.E.  
Chief, Operations Division

Enclosure

-2-

This letter does not affect your responsibility to obtain any other Federal, State, or local approvals required by law for the above noted work. Should you have any questions regarding this matter, please contact Mr. Martin Miller of this office at (215) 5978-3626.

Sincerely,

H. Ronald Kreh, P.E.  
Chief, Operations Division

Enclosure

Copies Furnished:

DOI, State College  
EPA PHILA  
PA DER Skippack  
✓ Falls Township  
Bucks County Soil Conservation District

HARRY J. GLOSSER, JR.  
ATTORNEY AT LAW  
331 WEST BRIDGE STREET  
MORRISVILLE, PENNSYLVANIA 19067-6626  
(215) 736-2589

September 24, 1987

9/25/87

Department of the Army  
Philadelphia District,  
Corps of Engineers'  
Custom House  
2nd and Chestnut Streets  
Phila., PA 19106-2991

Attention: H. Ronald Kreh, P.E.

Dear Mr. Kreh:

This letter is to inform you that I represent the interest of Mr. and Mrs. John Pozsgai. After having reviewed your letter of September 3, 1987, I have conferred with my client and my client has indicated to me that he has consulted with B.C.M. Engineers located in Plymouth Meeting, PA with regard to the allegations set forth on your letter.

I am hereby informing you that my client is having this matter thoroughly reviewed by B.C.M. and also is, at the moment, curtailing any work on the areas in question.

It is my client's position, after having studied and reviewed the matter, that the area designated by your office as wetlands is, in fact, nothing but an area where, as a result of Morrey's construction of an overpass this past year, that a stream which generally flowed through and past Mr. Pozsgai's property has been blocked off. As a result, an area of saturation of drainoff water, developed one which did not exist naturally and if the natural flow could be resumed, the property would dry up and return to its natural state.

Whatever the ultimate cause, my client will attempt to proceed in a fashion which constitutes cooperation with all controlling bodies over the land in question and upon my receipt of the engineer's report, it will be forwarded to you promptly.

If you have any questions or comments prior to that time, please do not hesitate to contact this office.

Very truly yours,

HARRY J. GLOSSER, JR.

HJG:lon  
cc: Edward G. Wilodan  
John Pozsgai



Mr. John Pozsgai  
536 West Bridge Street  
Morrisville, PA 19067

DEC 2 1987

Dear Mr. Pozsgai:

The Army Corps of Engineers (COE) recently notified us of filling in federally regulated wetlands at property identified as Tax Parcel 13-28-82 located on West Bridge Street, Falls Township, Bucks County, Pennsylvania.

This filling constitutes the discharge of pollutants into the Nation's waters in violation of Section 301(a) of the Clean Water Act (the Act), 33 U.S.C. § 1311(a). EPA's role under the Act is to enforce the restoration and maintenance of the chemical, physical and biological integrity of the Nation's waters. Since the unauthorized fill identified above poses a threat to wetlands, which have been defined to be a part of the Nation's waters, our objective is fill removal and restoration of the filled wetlands.

Section 309 of the Act, 33 U.S.C. § 1319, authorizes EPA to initiate a variety of enforcement actions. EPA may issue administrative orders for correction of the violation and may assess administrative penalties of up to \$125,000. EPA may file civil suits for injunctive relief and civil penalties of up to \$25,000 per day of violation. EPA may also pursue criminal prosecutions which may entail imprisonment of violators and fines of up to \$50,000 per day of violation.

At this time, the Corps is taking the enforcement lead in this case, and EPA merely seeks your cooperation with the Corps in resolving this matter. Your prompt and positive response to the Corps' directions will be an indication of your willingness to comply with the Clean Water Act. Conversely, your failure to comply with the Corps' Administrative Order will make the initiation of a more formal enforcement action by EPA much more likely.

JButch:carnold:3ES42:12/1/87:9296

CA #7/Doc. #16

3ES42

JBUTCH



Please advise us of your progress by forwarding copies of all relevant case correspondence to the address below. If you have any questions, please call James R. Butch at 215-597-7816 or write to:

U.S. Environmental Protection Agency  
Wetlands and Marine Policy Section  
841 Chestnut Building  
Philadelphia, PA 19107

Sincerely,

Barbara D'Angelo, Chief  
Wetlands and Marine Policy Section

cc: U.S. Army COE - Philadelphia District (Marty Miller)  
U.S. FWS - State College, PA (Norma Kline)  
PADER (Larry Oliver)

*40 Com Ser*

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL RESOURCES

1875 New Hope Street  
Norristown, PA 19401  
215 270-1879

*1/7/88*

December 7, 1987

CERTIFIED MAIL NO. P-593 923 972

John Pozsgai  
536 W. Bridge Street  
Morrisville, PA 19067

Re: Pozsgai Property  
Tax Parcel No. 132883

NOTICE OF VIOLATION

Dear Mr. Pozsgai:

On November 17, 1987, the Department conducted an inspection of your property, accompanied by you and with your permission. During that inspection, the following violations were noted:

1. Two piles of a dark material which appeared to be crushed macadam had been deposited on the ground.
2. A large pile of scrap metal had been deposited on the ground.
3. A small amount of refuse had been deposited on the ground (cardboard, trash, etc.)
4. Grubbing wastes (stumps, branches, etc.)

You are hereby notified that these conditions are violations of the Pennsylvania Solid Waste Management Act (Act 97) and Chapter 75 of the Department's Rules and Regulations. You are also notified that these violations should be abated upon your receipt of this Notice, and that you should keep your property free of all unpermitted solid wastes in the future. Abatement would involve complete removal of all unpermitted solid wastes from the site, and proper disposal of the wastes at a DER-permitted disposal facility or legitimate reclaimer; it would also involve submission of documentation of the removal of the wastes to this office. You should also submit an abatement plan and schedule to this office within three (3) days of your receipt of this Notice.

This letter does not waive, either expressly or by implication, the power or authority of the Commonwealth of Pennsylvania to prosecute for any and all violations of law arising prior to or after the issuance of this letter or the conditions upon which the letter is based. This letter shall not be construed so as to waive or impair any rights of the Department of Environmental Resources, heretofore or hereafter existing.



John Pozsgai  
December 7, 1987  
- 2 -

This letter shall also not be construed as a final action of the Department of Environmental Resources.

The Pennsylvania Solid Waste Management Act (Act 97) provides for a fine of up to \$25,000.00 per day for each violation, as listed in Section 606(d)(2).

Very truly yours,

ROBERT ZANG  
Waste Management Specialist

cc: Falls Township  
Mr. Danyliw  
Mr. Bonner  
Re 30 (CLC)341.11



CONTINUED MAIL - RETURN RECEIPT REQUESTED

CENAP-OP-R  
M. MILLER/nrs/3626  
3 December 1987

Regulatory Branch

DEC 17 1987

REYNOLDS *RR*

SUBJECT: CENAP-OP-R-PV87-206

CIANFRANI *CC*John and Ginella Pozsgai  
596 West Bridge Street  
Morrisville, Pennsylvania 19067

Dear Mr. and Mrs. Pozsgai:

This is in further regard to our letter of September 3, 1987 directing you to cease and desist from conducting, contracting, or permitting any further work involving the unauthorized placement of dredged or fill material into Federally regulated wetlands on property identified as Tax Parcel 13-28-53 located on West Bridge Street in Falls Township, Bucks County, Pennsylvania.

Recent inspections by personnel of this office have revealed that approximately five (5) acres of additional unauthorized fill material has been placed in Federally regulated wetlands on the above referenced property. Work of this nature, when conducted without a Department of the Army permit, is a violation of Section 301 of the Clean Water Act and the requirements prescribed therein.

Since you have not been granted a permit for the above noted work, you are again directed to cease and desist from conducting, contracting, or permitting any further work of this nature in areas subject to Federal jurisdiction. Areas subject to Federal jurisdiction are indicated on Enclosure 1. Mr. Martin Miller of the

Two options are available to you to resolve this violation:

a. Remove all fill material in areas of Federal jurisdiction and restore the area to its former condition, subject to the approval of this office.

b. Obtain a 401 Water Quality Certification from the Pennsylvania Department of Environmental Resources for the fill material placed in Federally regulated wetlands (Enclosure 1) by completing the enclosed joint permit application (Enclosure 2) and submitting it to the Pennsylvania Department of Environmental Resources, Bureau of Dams and Waterway Management, Executive House, 2nd and Chestnut Streets, Post Office Box 2357, Harrisburg, Pennsylvania 17120.

DATE  
TIME  
BY  
FOR  
RECEIVED

Encl

48

Department of Environmental Resources  
Bureau of Dams and Waterway Management  
3661 Stippack Pike  
Harrisville, PA 19438  
215 584-5566

January 26, 1968

John Poeschl  
536 West Bridge Street  
Harrisville, PA 19067

Re: Falls Township  
Ducks County

NOTICE OF VIOLATION

Dear Mr. Poeschl:

On January 12, 1968 an inspection was conducted of a site where you have placed fill, degraded the land surface, and felled trees on your property which has been delineated as a protected wetland area by the Corps of Engineers. This property is situated along the south side of West Bridge Street and just west of the Harrisville Borough boundary in Falls Township, Ducks County.

Under the Dam Safety and Encroachments Act and the companion Rules and Regulations (25 Pa. Code Chapter 105) it is required that a permit be obtained prior to working in or otherwise disturbing a protected wetland.

Since you have not obtained the required permit you are therefore in violation of the Dam Safety and Encroachments Act of November 26, 1973, P.L. 1375, No. 223, as amended 32 P.S. §§ 693.6 and 693.10. Penalties are set forth at 32 P.S. § 693.22.

It is requested that you advise this office within 30 days of receipt of this letter as to your intentions to either apply for a permit or remove all fill materials you have placed in this wetland and properly restore this site so that this violation can be resolved.

"If you choose to apply for a permit for the work you have performed in the wetland area the outcome of the processing of the application may be approval of the existing work, approval of the existing work subject to special conditions, or denial of the permit accompanied with an order to remove the fill materials and restore the area to its original condition."

For your convenience and review I am enclosing permit applications, an instruction sheet, a municipal notification form, and a copy of our Chapter 105 regulations. These are the documents you will need to apply for the required permit if you should choose to do so. If you elect to restore the site please submit to this office plans which indicate the restoration work, including an erosion and sediment control plan that is satisfactory to your County Conservation District.

JAN 23 1968

Wetlands & Mar. Pol. Sect.  
EPA - Region III



This letter does not waive, either expressly or by implication, the power or authority of the Commonwealth of Pennsylvania to prosecute for any and all violations of law arising prior to or after the issuance of this letter or the conditions upon which the letter is based. This letter shall not be construed so as to waive or impair any rights of the Department of Environmental Resources, heretofore or hereafter existing.

This letter shall also not be construed as a final action of the Department of Environmental Resources.

Should you have any questions, feel free to contact this office.

Very truly yours,

EDWARD L. BENDER, P.E.  
Southeast Area Engineering Supervisor

ENCLOSURE

cc: Mr. Oliver  
Falls Township  
✓EPA  
Morrisville Borough  
Re 30 (BJO)20.4

BUCKS COUNTY  
COURIER TIMES  
LEVITTOWN, PA  
PM—55,213  
S—68,857

# Morrisville

## dumping is investigated

By J.D. Mullane

Courier Times Staff Writer

The U.S. Attorney's office in Philadelphia is investigating a Morrisville businessman who is accused of destroying federally protected wetlands despite two government orders to stop.

John Pozsgai, of 536 W. Bridge St., has been dumping debris without a permit on his 17-acre tract of land at the corner of West Bridge Street and M.Y. Lane, according to documents on file in the Falls Township Municipal Building.

The tract contains wetlands which are considered ecologically crucial to the regeneration of most animal life.

In the last year, the Army Corps of Engineers has twice ordered Pozsgai to stop dumping on the tract, said Barry Gale, an attorney representing the Army. The Corps of Engineers issues permits for filling wetlands. Because of Pozsgai's defiance, Gale has turned the case over to the U.S. Attorney's office.

Pozsgai, who owns a truck repair business, is violating section 404 of the Wetlands Protection Act which prohibits filling wetlands without a permit, said Virginia Gibson-Mason, an investigator for the U.S. Attorney's office. She declined further comment on the case.

If found guilty, Pozsgai could be fined \$25,000 for each day he violates the law. Also, he may have to return the land to its undisturbed state, Gale said.

Wetlands are marshy areas partially submerged in water. About 90 percent of all animals spend a part of their lives there, said Karen Wolper, a wetlands specialist with the Environmental Protection Agency.

Historically, wetlands were

considered useless unless drained and filled. But in the past 30 years, scientists have discovered they are invaluable economic resources that not only nurture life, but help purify polluted waters and help control flooding.

When a Courier Times reporter went to ask Pozsgai what he plans to do with the land, he ordered her off the property. The reporter complied, but as she left, she said Pozsgai tried to grab her notebook. He then got in his car and chased her while she was on foot, she said.

The investigation is the latest in a yearlong string of warnings, citations and fines Pozsgai has received from federal, state and local officials to stop clearing and filling the land without proper approval.

Pozsgai was found guilty June 16 and fined \$3,000 by District Justice Donald Nasshorn for failing to control soil and sediment erosion on the tract, said a spokeswoman for the Bucks County Soil Conservation District in Doylestown.

Falls has repeatedly cited Pozsgai for violations, including refusing to allow inspectors on the property to sell firewood without a license, according to documents on file in the municipal building. Because of the citations, he was refused a use/occupancy permit last April, which forbids him to do anything with the land.

Yet, Pozsgai continues to clear the land. In recent days, heavy construction equipment has been seen moving earth on the tract.

It is a mystery what Pozsgai is planning to do with the land. Last December, it was reported that he told District Justice Dorothy Vislosky that he planned to build a 30,000-square-foot truck garage on the site.

...man has  
...law wife even though  
...the victim's body, police said.  
...at a Las Vegas hotel Saturday, 20  
...police obtained a warrant charging him with  
...in the suspected death of 42-year-old Lisa Tu.

### use high among prison inmates

UPPER MARLBORO, Md. (UPI) — A majority of inmates who enter the Prince George's County jail are recent users of cocaine, heroin, marijuana or PCP, the results of a new study shows. The survey's finding that nearly 75 percent of inmates entering the county jail had recently used drugs was "somewhat shocking to us," said a corrections spokeswoman.

### Dumping on his land brings charges

PHILADELPHIA (UPI) — A Bucks County man yesterday was charged with violating environmental law for allowing debris to be dumped on federally protected wetlands he owned. John Pozsgai of Morrisville was charged by the Environmental Protection Agency with illegally dumping concrete rubble, dirt and building materials that had been excavated from construction sites.

*Chester Co  
Daily Local  
News  
9-15-88*

Good  
Cent. 14

**Jamesway**

**WEDNESDAY**



OFFICE OF THE DISTRICT ATTORNEY

BUCKS COUNTY COURTHOUSE  
DOYLESTOWN, PENNSYLVANIA 18901

ALAN M. RUBENSTEIN  
DISTRICT ATTORNEY  
(215) 348-6344

October 21, 1988

Mr. John Pozsgai  
536 W. Bridge Street  
Morrisville, PA. 19067

Dear Mr. Pozsgai:

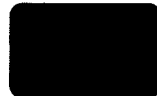
I am presently looking into a matter involving yourself and Falls Township regarding zoning of your property. It is my understanding that you have alleged that a pay-off offer was made to you by the township attorney. I would like to interview you regarding this reported incident. Please contact me at your earliest convenience at 348-6354.

Sincerely,

*Roberta J. Kostick*  
ROBERTA J. KOSTICK  
BUCKS COUNTY DETECTIVES

RJK/spc

cc: file



FALLS TOWNSHIP  
ZONING HEARING BOARD

IN THE MATTER OF:

JOHN POZSGAI  
536 WEST BRIDGE STREET  
MORRISVILLE, PA.

MUNICIPAL BUILDING  
ERWIN AUDITORIUM  
285 YARDLEY AVENUE  
FALLSINGTON, PA.


TUESDAY  
JUNE 14, 1988

BEFORE: JAMES GALLOWAY,  
CHAIRMAN

DAVID PARKER,  
SECRETARY

GREGORY VIDA,  
MEMBER

WILLARD WAMSLEY,  
MEMBER



ALSO PRESENT: FRANCES X. DILLON, ESQUIRE  
DON WILLIAMS, ESQUIRE  
SOLICITORS,  
ZONING HEARING BOARD

PAT BOYLE,  
DIRECTOR,  
COMMUNITY DEVELOPMENT

JANET HUDE,  
CORRESPONDING SECRETARY  
ZONING HEARING BOARD

- - -

REPORTED BY: WILLIAM J. SCHAEFER,

- - -



POZSGAI PETITION

MR. GALLOWAY: JOHN POZSGAI, 536  
WEST BRIDGE STREET, MORRISVILLE, PA.--- CASE  
NUMBER 13 ---APPEALING THE DENIAL OF CERTIFICATE  
OF OCCUPANCY FOR TAX PARCEL NUMBER 13-28-83.

WOULD YOU COME UP AND BE SWORN...

- - -

(WHEREUPON, AT THIS TIME, VICTORIA  
POZSGAI AND JOHN POZSGAI CAME BEFORE THE BOARD  
TO BE SWORN AND TO TESTIFY.)

- - -

VICTORIA POZSGAI AND JOHN POZSGAI, HAVING BEEN FIRST DULY  
SWORN BY THE REPORTER, WERE EXAMINED AND TESTIFIED  
AS FOLLOWS:

THE REPORTER: LET ME HAVE YOUR  
FULL NAME AND HOME ADDRESS, PLEASE.

MR. POZSGAI: JOHN POZSGAI,  
P-O-Z-S-G-A-I, 536 WEST BRIDGE STREET,  
MORRISVILLE, PENNSYLVANIA.

MS. POZSGAI: VICTORIA POZSGAI,  
P-O-Z-S-G-A-I, SAME RESIDENCE.

MR. GALLOWAY: NOW, WOULD YOU  
PROCEED, THEN.

MS. POZSGAI: FIRST, IF I COULD  
HAVE, I WOULD LIKE TO KNOW THE REASON OF THE

POZSGAI PETITION

MR. BOYLE: CERTAINLY.

MR. GALLOWAY: THE MEETING WAS - - -  
WHEN? ABOUT? WHAT DATE?

MR. BOYLE: WELL, THIS WAS - - -

MR. GALLOWAY: I MEAN, WAS IT  
RECENTLY OR IS THIS SOMETHING - - -

MR. BOYLE: I DON'T BELIEVE I EVEN  
HAVE A NOTE, THE MEETING TOOK PLACE IN THE TOWN-  
SHIP SOLICITOR'S OFFICE,

MR. GALLOWAY: UHM, I'M TRYING TO  
FIND OUT HOW OLD THIS THING IS.

IS IT A CASE THAT THE ATTORNEYS  
SHOULD GET TOGETHER ON?

MR. BOYLE: THIS CASE GOES BACK  
- - - I'LL HAVE TO DIG THROUGH - - - I HAVE THE  
MATERIAL HERE BACK AS FAR AS DECEMBER, APPROXI-  
MATELY-87.

MR. GALLOWAY: IS THERE A PROBLEM  
WHY THE TWO ATTORNEYS CAN'T GET TOGETHER, IS  
THERE A PROBLEM WITH IT IN LITIGATION?

MS. POZSGAI: WELL, WE HAVE BEEN  
DENIED AND THEY SAID THAT - - -

MR. POZSGAI: CAN I ANSWER THAT?

POZSGAI PETITION

MR. WAMSLEY: WHEN WAS THIS?

MR. POZSGAI: THAT WAS IN JUDGE  
NASHWARD'S OFFICE IN NEWTOWN BECAUSE WE TRANS-  
FERRED - - -

MR. WAMSLEY: WHEN? WHEN?

MR. POZSGAI: A LITTLE BIT AGO

- - -

MR. WAMSLEY: LAST YEAR?

MR. POZSGAI: TWO MONTHS AGO.

MS. POZSGAI: THIS IS TRUE, THEY  
HAD MADE - - - THEY HAD MADE AN AGREEMENT - - -

MR. POZSGAI: YES.

MS. POZSGAI: THEY SAID IF WE HAD  
GIVEN A DONATION THAT THEY WOULD GIVE US ALL  
THE CERTIFICATES OF OCCUPANCY.

MR. POZSGAI: OUR LAND IS GOODIE  
LAND, JUST LIKE ANYBODY ELSE'S BUT HE SAYS THIS  
PAYS THEIR DAMAGES.

HE SAYS - - - YOU WANT PERMIT MONEY,  
I GIVE IT TO YOU.

SO JUDGE NASHWARD AND YOUR LAWYER  
AND MY LAWYER WENT TO THE BACK ROOM AND HE SAYS  
- - - "WHY DON'T YOU GO THIS WAY" - - - HE SAID

POZSGAI PETITION

- - - WITH GOOD FAITH, AND YOU DONATE THREE THOUSAND DOLLARS AND GET ALL THE PERMITS YOU WANT." BUT WE DON'T WORK LIKE THAT.

MR. GALLOWAY: FIRST OF ALL, I WANT TO MOVE HERE, PLEASE.

ONE, WE ARE INTO A DEAL - - -

MR. VIDA: MR. CHAIRMAN - - -

MR. GALLOWAY: PLEASE.

MR. VIDA: I WOULD LIKE TO - - -

MR. GALLOWAY: LET ME FINISH FIRST, AND THEN YOU CAN TALK.

I THINK WE ARE IN A DEAL OF FIRST WE HAVE NO RIGHT TO BE.

I THINK - - - BECAUSE THERE IS NO WAY THAT THE OTHER PEOPLE CAN RESPOND TO WHAT HE IS SAYING. I THINK, NUMBER TWO, IF HE HAS THIS PROBLEM, THERE IS A PROPER PROCEDURE TO FOLLOW. - - - I AM JUST NOT SURE IT IS AT A ZONING HEARING.

DO YOU UNDERSTAND?

MS. POZSGAI: BUT WE ARE NOT - - -

MR. GALLOWAY: THERE IS NO WAY THAT WE CAN MAKE A DECISION IN VIEW OF WHAT IS

FALLS TOWNSHIP  
BOARD OF SUPERVISORS

285 Yardley Avenue  
Fallsington, Pa. 19054  
Phone 295-4176

Fee Schedule:  
Residential - \$15.00 25  
Non-Residential - \$30.00 50  
Application for Certificate of Occupancy/Use No 3716

Application is hereby made to:

- ☐ OCCUPY A PREVIOUSLY OCCUPIED DWELLING UNIT.  
☐ OCCUPY A COMMERCIAL OR INDUSTRIAL UNIT.  
☐ CHANGE OR EXTEND THE USE OF A NON-CONFORMING USE.  
☒ OCCUPY/USE VACANT LAND.  
☐ CHANGE THE USE OF LAND TO A DIFFERENT TYPE OF USE.  
☐ START OR CHANGE A HOME OCCUPATION.  
☐ CHANGE THE USE OF AN EXISTING STRUCTURE TO A DIFFERENT TYPE OF USE.

ADDRESS (Location) WEST BRIDGE STREET, FALLSINGTON, PA Tax Parcel 13-028-083

DATE YOU DESIRE TO OCCUPY THESE PREMISES IMMEDIATELY

CERTIFICATE IS FOR XXX PERMANENT BASIS, OR Permanent TEMPORARY BASIS.

IF TEMPORARY, LENGTH OF TIME WILL BE \_\_\_\_\_

REMARKS: (Provide details on present and proposed use)

Sale of Fire Wood, Parking-Trucks & Land Clearing  
Equipment

APPROVALS:

Zoning: ☐ Yes ☐ No \_\_\_\_\_ Zoning Officer

APPLICABLE: BLDG. PERMIT NO. \_\_\_\_\_ ZONING DISTRICT \_\_\_\_\_

Application is hereby made for permission to occupy/use the premises above described for the purpose stated. If such use complies with the provisions of all laws and ordinances and certificate of occupancy is issued it is understood by the applicant that the same certificate will authorize only the use stated in this application and that such use may not legally be extended or changed without authorization by a new Certificate of Occupancy.

DATE 04/04/88, John Pozsgai, 536 W. Bridge St.

Signature, address & phone no. of Owner or Authorized Agent.

MAXIMUM PERMITTED OCCUPANCY \_\_\_\_\_

TOWNSHIP OF FALLS  
Certificate of Occupancy - No 3716

Certificate of Occupancy is hereby issued for the above said premises and use. Said use as conducted shall conform in all particulars to the requirements of the law and all ordinances of the Township of Falls.

DATE 04/04/88 19\_\_

SIGN \_\_\_\_\_ Code Enforcement Officer

FEE \$ \_\_\_\_\_

RECEIPT NO. 68834  
4-6-88

MAXIMUM PERMITTED OCCUPANCY \_\_\_\_\_

Reinspection Fee \$ \_\_\_\_\_ Date \_\_\_\_\_ 19\_\_

Return this application, properly filled out at least Ten (10) days before the building is to be occupied. DO NOT occupy building until "Permit of Occupancy" has been granted, to do so may result in a fine.



Commonwealth of Pennsylvania

CITATION  
(NON-TRAFFIC)CITATION No.  
07-328251

MAGISTERIAL DISTRICT NO.		DOCKET NUMBER	
DEFENDANT - FIRST NAME <b>John &amp; Gizella Pozgai</b>		MIDDLE NAME	LAST NAME
STREET ADDRESS <b>536 West Bridge St., Morrisville, Pa.</b>		CITY-TWP-BORO-COUNTY <b>19067</b>	ZIP CODE
VIOLATION <b>Violation Falls Township Code</b>			
NATURE OF OFFENSE <b>No Certificate of Occupancy</b>			
<b>( using site for parking of vehicles ) and sale of</b>			
<b>fire wood.</b>			
Tax Parcel <b>13-28-83</b>			
DATE <b>4-8-88</b>	TIME <b>13:30</b>	LOCATION <b>535 West Bridge St.</b>	COUNTY <b>Bucks</b>
CITY <b>Falls</b>	TWP <b>13-28-83</b>	BORO <b>Morrisville, Pa.</b>	CODE <b>Falls</b>
VIOLATION <b>Falls Twp. Code</b>		MAGISTERIAL DISTRICT <b>1-10</b>	
SEC. <b>209.53</b>	FINE	ADDRESS <b>9187 New Falls Rd.</b>	
COSTS <b>(8) (3)</b>		<b>Levittown, Pa.</b>	
TOTAL DUE		RECEIPT OF CITATION IS ACKNOWLEDGED-SIGNATURE OF DEFENDANT	
DATE ISSUED <b>4-8-88</b>		I VERIFY THAT THE FACTS SET FORTH IN THIS CITATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE OR INFORMATION AND BELIEF. THIS VERIFICATION IS MADE SUBJECT TO THE PENALTIES OF SECTION 4904 OF THE CRIMES CODE (18 P.S. §4904) RELATING TO UNSWORN FALSIFICATION TO AUTHORITY.	
OFFICER'S SIGNATURE <b>Edward W. Blodeau</b>		BADGE NO. <b>CE0</b>	
STATION ADDRESS <b>285 Yardley Ave., Fallsington, Pa.</b>		CODE	
RACE	SEX	D.O.B.	INCIDENT NO.
	<b>M F</b>		
REMARKS: <b>Violations and penalties - Falls Township Code Section</b>			
<b>209.85 - ( using site for parking vehicles ) and sale</b>			
<b>of fire wood.</b>			

AOPC 407-86

POLICE

April 15, 1988

CERTIFIED MAIL - 428-360-996

John Pozsgai  
536 West Bridge Street  
Morrisville, Pa. 19067

Re: Application for Certificate of Occupancy/Use #3716  
Tax Parcel #13-28-83

Dear Mr. Pozsgai:

Your application for Use and Occupancy Certificate #3716, receipt dated 6/88, is hereby denied because of continuing violations of the law.

Should you have any questions regarding the above decision, please have your attorney contact Groen, Laveson, Goldberg & Rubenstone, One Greenwood Square, Suite 101, 3301 Street Road, Bensalem, Pa., 19020, Falls Township Solicitors.

Very truly yours,



William J. Kent  
Acting Director, Community Development

WJK/jah



P 428 360 996

**RECEIPT FOR CERTIFIED MAIL**  
NO INSURANCE COVERAGE PROVIDED  
 NOT FOR INTERNATIONAL MAIL  
 (See Reverse)

Sent to	<i>John Pozsgai</i>
Postage No.	<i>536 West Bridge St</i>
City, State and ZIP Code	<i>Morrisville, Pa. 19067</i>
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom Date and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, June 1985

**UNCLAIMED**

Return to Sender  
 No Postage  
 Necessary  
 If Mailed  
 in U.S.

NO NOTICE  
 1ST NOTICE  
 2ND NOTICE  
 3RD NOTICE  
 4TH NOTICE  
 5TH NOTICE  
 6TH NOTICE  
 7TH NOTICE  
 8TH NOTICE  
 9TH NOTICE  
 10TH NOTICE  
 11TH NOTICE  
 12TH NOTICE  
 13TH NOTICE  
 14TH NOTICE  
 15TH NOTICE  
 16TH NOTICE  
 17TH NOTICE  
 18TH NOTICE  
 19TH NOTICE  
 20TH NOTICE  
 21TH NOTICE  
 22TH NOTICE  
 23TH NOTICE  
 24TH NOTICE  
 25TH NOTICE  
 26TH NOTICE  
 27TH NOTICE  
 28TH NOTICE  
 29TH NOTICE  
 30TH NOTICE  
 31TH NOTICE  
 32TH NOTICE  
 33TH NOTICE  
 34TH NOTICE  
 35TH NOTICE  
 36TH NOTICE  
 37TH NOTICE  
 38TH NOTICE  
 39TH NOTICE  
 40TH NOTICE  
 41TH NOTICE  
 42TH NOTICE  
 43TH NOTICE  
 44TH NOTICE  
 45TH NOTICE  
 46TH NOTICE  
 47TH NOTICE  
 48TH NOTICE  
 49TH NOTICE  
 50TH NOTICE  
 51TH NOTICE  
 52TH NOTICE  
 53TH NOTICE  
 54TH NOTICE  
 55TH NOTICE  
 56TH NOTICE  
 57TH NOTICE  
 58TH NOTICE  
 59TH NOTICE  
 60TH NOTICE  
 61TH NOTICE  
 62TH NOTICE  
 63TH NOTICE  
 64TH NOTICE  
 65TH NOTICE  
 66TH NOTICE  
 67TH NOTICE  
 68TH NOTICE  
 69TH NOTICE  
 70TH NOTICE  
 71TH NOTICE  
 72TH NOTICE  
 73TH NOTICE  
 74TH NOTICE  
 75TH NOTICE  
 76TH NOTICE  
 77TH NOTICE  
 78TH NOTICE  
 79TH NOTICE  
 80TH NOTICE  
 81TH NOTICE  
 82TH NOTICE  
 83TH NOTICE  
 84TH NOTICE  
 85TH NOTICE  
 86TH NOTICE  
 87TH NOTICE  
 88TH NOTICE  
 89TH NOTICE  
 90TH NOTICE  
 91TH NOTICE  
 92TH NOTICE  
 93TH NOTICE  
 94TH NOTICE  
 95TH NOTICE  
 96TH NOTICE  
 97TH NOTICE  
 98TH NOTICE  
 99TH NOTICE  
 100TH NOTICE

*John Pozsgai*  
 536 West Bridge Street  
 Morrisville, Pa. 19067

**FALLS TOWNSHIP BOARD OF SUPERVISORS**  
 288 Yeckley Avenue  
 FALLS TOWNSHIP, PENNA. 1964

**CLAIM CHECK**  
 P 428 360 996  
**CERTIFIED MAIL**

Date *4/16/86*  
☐ Held

909125

PAID  
 APR 17 1986  
 MORRISVILLE, PA.



## PHONE CALL

FOR	SC/EWB	DATE	10/2	TIME	1 <sup>10</sup>	A.M. P.M.
M	Gloria Pozzi					
OF	W) 295-7052					
PHONE	AREA CODE	NUMBER	EXTENSION	TELEPHONED		
MESSAGE	The office is DER - Harry, I am			RETURNED YOUR CALL		
No permit required for display of				PLEASE CALL		
Only if Temp requires permit for				WILL CALL AGAIN		
Bridges, concrete, painting projects, etc.				WANTS TO SEE YOU		
SIGNED				TOPS FORM 4003		

## PHONE CALL

FOR	EB	DATE	11/12	TIME	2 <sup>10</sup>	A.M. P.M.
M	Marty Miller					
OF	Army Chief of Engineers					
PHONE	AREA CODE	NUMBER	EXTENSION	TELEPHONED		
MESSAGE	215-597-3626			RETURNED YOUR CALL		
Will not be there after				PLEASE CALL		
Call by 3:30 P.M.				WILL CALL AGAIN		
Will begin 7 A.M. tomorrow				WANTS TO SEE YOU		
SIGNED				TOPS FORM 4003		

## PHONE CALL

FOR	EB	DATE	12/18	TIME	2 <sup>00</sup>	A.M. P.M.
M	Shirley Greenlee					
OF	295-0319					
PHONE	AREA CODE	NUMBER	EXTENSION	TELEPHONED		
MESSAGE	Information on Pozzi			RETURNED YOUR CALL		
Lines across Petri's room				PLEASE CALL		
him. Please call ASAP.				WILL CALL AGAIN		
				WANTS TO SEE YOU		
SIGNED				TOPS FORM 4003		

A P P E A R A N C E S :

CAROLINE E. EDWARDS, ESQ.  
COUNSEL FOR PETITIONER

- - - - -

ALSO PRESENT:

FRANCIS X. DILLON, ESQ.  
SOLICITOR  
ZONING HEARING BOARD  
TIMBY & DILLON, P.C.  
330 SOUTH STATE STREET  
NEWTOWN, PA 18940  
TELEPHONE: (215) 968-6886

WAYNE BERGMAN,  
CHIEF, CODE ENFORCEMENT

DAVID PARKER,  
ZONING HEARING BOARD LIAISON

- - - - -

REPORTED BY:

WILLIAM J. SCHAEFER,  
REGISTERED MERIT REPORTER  
HEARING REPORTER

WILLIAM J. SCHAEFER, R.M.R.

FALLS TOWNSHIP  
ZONING HEARING BOARD

-----  
IN RE: NEW JERSEY TRANSIT  
PROPERTY: MORRISVILLE YARD  
TPN: 13-28-75  
-----

-----  
FALLS TOWNSHIP MUNICIPAL COMPLEX BUILDING  
188 LINCOLN HIGHWAY  
FAIRLESS HILLS, PA 19030  
-----

TUESDAY  
DEC. 14TH, 1999  
7:30 P.M.

BEFORE:

JANET HUDE,  
VICE-CHAIRPERSON

ALLEN B. WILSON,  
MEMBER

WALTER ALMOND,  
MEMBER

DARLENE STEDMAN,  
MEMBER

WILLIAM J. SCHAEFER, R.M.R.

1                   MRS. HUDE: PETITION NUMBER  
2                   FOUR, NEW JERSEY TRANSIT.  
3                   LOCATION OF THE PROPERTY, MORRISVILLE  
4                   YARD, PORTION OF FORMER CONRAIL PROPERTY  
5                   LOCATED BETWEEN U.S. ROUTE ONE, NEWBOLD  
6                   ROAD, AND THE PENNSYLVANIA CANAL. ZONED  
7                   LI.  
8                   REQUEST A VARIANCE FROM REQUIRED  
9                   ZONING CODE 209-27G(1) TEN FEET ADJACENT TO  
10                  ALL LOT LINES MUST BE PLANTED AND  
11                  MAINTAINED IN LAWN AREA, GROUND COVER OR  
12                  LANDSCAPED WITH EVERGREEN SHRUBBERY  
13                  (LANDSCAPING REQUIREMENTS); ALSO, REQUEST A  
14                  VARIANCE FROM REQUIRED LANDSCAPING IN  
15                  PARKING AREAS AS REQUIRED BY 209-42(B) (3).  
16                  - - - - -  
17                  OSCAR SANDOVAL, P.E., HAVING BEEN  
18                  FIRST DULY SWORN WAS EXAMINED AND TESTIFIED  
19                  AS FOLLOWS:  
20                  MS. EDWARDS: CAROLINE EDWARDS  
21                  ATTORNEY FOR NEW JERSEY TRANSIT.  
22                  WE ARE HERE THIS EVENING REQUESTING  
23                  TWO VARIANCES FOR THE NEW JERSEY TRANSIT  
24                  PROPERTY IN CONNECTION WITH THE LAND

WILLIAM J. SCHAEFER, R.M.R.

1 DEVELOPMENT APPLICATION PRESENTLY PENDING  
2 BEFORE FALLS TOWNSHIP; SUBMITTED THOSE  
3 PLANS HAVE NOT HAD A HEARING, WE WANTED TO  
4 DEAL WITH THE ZONING ISSUES BEFORE WE WENT  
5 TO THE PLANNING COMMISSION AND BOARD OF  
6 SUPERVISORS.

7 MRS. HUDE: EVERYBODY NOTIFIED.

8 MS. EDWARDS: YES, WE HAVE AN  
9 AFFIDAVIT THAT GIVES A LIST OF ALL OF THE  
10 OWNERS OF THE PROPERTIES NOTIFIED, AND  
11 WHEN, AS WELL AS A COPY OF THE LETTER.

12 MR. DILLON: THANK YOU.

13 MARK THAT AS EXHIBIT NUMBER ONE.

14 MS. EDWARDS: PROPOSED USE OF  
15 THIS PROPERTY FOR TRAIN MAINTENANCE AND  
16 STORAGE AREA CONSISTENT WITH THE USE OF THE  
17 OVERALL SITE WHEN RUN BY CONRAIL.

18 NEW JERSEY TRANSIT DID SUBDIVIDE THAT  
19 PROPERTY A COUPLE OF YEARS AGO, ACQUIRED  
20 THE PROPERTY FROM CONRAIL, AND IS NOW  
21 MOVING FORWARD ON LAND A DEVELOPMENT PLAN,  
22 ALL RIGHT.

23 SEEKING TWO VARIANCES-- A VARIANCE  
24 FROM THE REQUIREMENT FOR TEN FEET OF LAND

1 SCANNING ALONG ALL PROPERTY LINES; AND FROM  
2 THE REQUIREMENT FROM GROUND COVER  
3 LANDSCAPING ISLANDS WITHIN PARKING AREAS.

4 WE THINK THAT THE USE OF THIS  
5 PROPERTY DOES NOT LEND ITSELF TO THOSE  
6 ISSUES WHICH ARE MORE ESTHETIC IN NATURE  
7 AND WE ARE DEALING WITH SITUATIONS WHERE WE  
8 HAVE A RESIDENTIAL PROPERTY OR -- WHERE  
9 ESTHETIC ISSUES WOULD BE MORE PRESSING.

10 WE WERE PREVIOUSLY BEFORE THE  
11 TOWNSHIP WITH SIMILAR PLANS WHICH WERE  
12 WITHDRAWN TEMPORARILY, NOW WE ARE BACK. AT  
13 THAT TIME WE BROUGHT THESE VARIANCES BEFORE  
14 THE ZONING HEARING BOARD, AND THEY WERE  
15 APPROVED ON JUNE 13, 1995.

16 WE HAVE SUGGESTED TWO APPROACHES IN  
17 OUR APPLICATION, ONE THAT THIS BOARD COULD  
18 RATIFY --SITUATION HAS NOT CHANGED, OR WE  
19 CAN GO THROUGH THE TESTIMONY, WE ARE  
20 PREPARED TO BE GO THROUGH THE TESTIMONY IF  
21 THE BOARD CHOOSES TO HEAR THAT.

22 MR. DILLON: HAS THE PLAN  
23 CHANGED-- PLANS CHANGED.

24 MS. EDWARDS: NOT SIR, ONE

1 MINOR CHANGE IN THIS AREA REGARDING TRACK  
2 LOCATION--(INDICATING)-- BUT AS FAR AS  
3 LEVEL OF IMPROVEMENTS GOING TO BE  
4 INSTALLED, BEEN NO CHANGE, THE SAME  
5 MAINTENANCE FACILITIES, CREW FACILITIES ARE  
6 BEING PROPOSED NOW, SAME SIGNS, SAME  
7 LOCATION.

8 MR. DILLON: THERE A LIMIT ON  
9 THE TIME FOR THE VARIANCE?

10 MS. EDWARDS: I BELIEVE THE  
11 ORDINANCE CALLS FOR A TIME FRAME I BELIEVE  
12 OF ONE YEAR, WHY WE ARE ASKING FOR  
13 RATIFICATION OF THAT, IF THE BOARD CHOOSES  
14 TO TAKE THAT APPROACH.

15 MR. WILSON: I HEARD NEW JERSEY  
16 TRANSIT FOR FIVE YEARS, I DON'T WANT TO  
17 PARTICULARLY HEAR IT.

18 MRS. HUDE: I DON'T HAVE TO  
19 HEAR IT.

20 MR. WILSON: ONLY QUESTION I  
21 HAVE, WHEN YOU OPEN THIS FACILITY, THE  
22 DUMPSTERS, YOU ARE GOING TO SCREEN THE  
23 DUMPSTERS?

24 MS. EDWARDS: YES..

1 MR. WILSON: SO THEY WILL NOT  
2 BE VISIBLE-- AS YOU RIDE DOWN LINCOLN  
3 HIGHWAY SEARS' DUMPSTERS MIGHT AS WELL BE  
4 OUT IN THE ROADWAY.

5 MR. DILLON: YOU AGREE TO THAT  
6 AS CONDITION OF VARIANCE.

7 MS. EDWARDS: YES.

8 MRS. HUDE: ANYBODY IN THE  
9 AUDIENCE HAVE ANYTHING TO SAY?  
10 COME UP AND BE SWORN.

11 EDMOND SPOCK, 111 COBALT RIDGE DRIVE,  
12 LEVITTOWN, PA., HAVING BEEN FIRST DULY  
13 SWORN WAS EXAMINED AND TESTIFIED AS  
14 FOLLOWS:

15 MR. SPOCK: EDMOND SPOCK, I OWN  
16 A PIECE OF PROPERTY BEHIND TREASE CATERING,  
17 ZONED LIGHT INDUSTRIAL, AND THE QUESTION I  
18 HAVE, IS, WHAT KIND OF VEHICLES ARE GOING  
19 TO BE SERVICED AT THIS LOCATION?

20 MS. EDWARDS: TRAINS.

21 MR. SPOCK: ANY BUSES?

22 MS. EDWARDS: NO.

23 - - - - -

24 (WHEREUPON, AT THIS TIME, THERE WAS A



1 DISCUSSION OFF THE RECORD.)  
2 - - - - -  
3 MR. SANDOVAL: ONLY PLAN WE  
4 HAVE SUBMITTED OVERNIGHT STORAGE OF  
5 ELECTRIC TRAINS.  
6 MR. SPOCK: THERE GOING TO BE  
7 ANY TRAFFIC PUT ON MY LANE THAT LEADS-- IT  
8 IS A DEADEND STREET, PRIOR TO GOING--  
9 MS. EDWARDS: THAT THE ROAD  
10 THIS SITE AS FRONTAGE ON--  
11 MS. EDWARDS: THIS IS MY LANE,  
12 SO BASICALLY GOES DOWN HERE--(INDICATING)--  
13 THAT'S ACCESS.  
14 MR. SPOCK: HOW MANY PARKING  
15 SPACES YOU REQUESTING.  
16 MS. EDWARDS: THIS LINE DOWN AT  
17 THE BOTTOM WOULD MATCH UP TO  
18 HERE--(INDICATING)-- YOU HAVE THIS AREA, MY  
19 LANCE RUNS TO HERE--(INDICATING)-- IT IS  
20 CONNECTED INTO THE PROPERTY, THIS IS  
21 ACTUALLY PART OF THE PROPERTY.  
22 A VOICE: WHAT YOU WANT TO BE  
23 BLACKTOP--  
24 - - - - -

1 (WHEREUPON, AT THIS TIME, THERE WAS A  
2 DISCUSSION OFF THE RECORD.)

3 - - - - -

4 MS. EDWARDS: YES.

5 MR. SANDOVAL: GOING TO BE AT  
6 THE VERY END, WE WILL BLACKTOP THAT MY  
7 LANE.

8 MR. SPOCK: ANY OTHER ACCESS TO  
9 YOUR PARKING LOT FROM ANY OTHER ROAD?

10 MS. EDWARDS: NO.

11 MR. SPOCK: HOW MANY CARS YOU  
12 EXPECT TO PARK THERE?

13 MR. SANDOVAL: WAY I HAVE-- I  
14 HAVE PROVIDED ENOUGH PARKING SPACES FOR  
15 VEHICLES IN ACCORDANCE WITH THE TOWNSHIP  
16 ORDER, I DON'T HAVE AN EXACT COUNT IN MY  
17 MIND, BUT DURING THE PREVIOUS APPLICATION  
18 WE HAVE SUBMITTED TO THE TOWNSHIP, LAND  
19 DEVELOPMENT, THE COUNT OF PARKING SPACES  
20 WAS VERIFIED BY THE TOWNSHIP ENGINEERS,  
21 PENONI ASSOCIATES.

22 MS. EDWARDS: WE HAVE TO MEET  
23 CERTAIN REQUIREMENTS AS TO THE NUMBER OF  
24 SPACES PROVIDED.

1 MR. SPOCK: MY ONLY QUESTION IS  
2 ALL THAT -- ALL THE CARS GOING TO BE PARKED  
3 THERE WILL HAVE TO GO THROUGH THE TUNNEL  
4 AND USE PART OF MY LAND.

5 MR. SANDOVAL: NOBODY. THE  
6 TUNNEL IS ON THE OPPOSITE END OF THE YARD,  
7 THEY ARE NOT GOING TO BE USING--

8 MR. BERGMAN: THERE ARE TWO MY  
9 LANES, WEST BRIDGE STREET, THAT WOULD BE AN  
10 ACCESS ROAD FOR YOUR EMPLOYEES; MY LANE MR.  
11 SPOCK IS REFERRING TO IS NEAR LOWER  
12 MORRISVILLE ROAD, RAILROAD TRACK, AND I  
13 BELIEVE, CORRECT ME IF I AM WRONG, HAS NO  
14 CONNECTION TO THIS SITE AT ALL.

15 MS. EDWARDS: NO, NONE.

16 MR. SANDOVAL: NO, THANK YOU.

17 MRS. HUDE: ANYBODY ELSE?

18  DO I HAVE A MOTION?

19 MR. WILSON: WHY DO WE HAVE TWO  
20 DIFFERENT ROADS WITH THE SAME NAME, GOD  
21 FORBID THEY HAVE AN ACCIDENT IN THERE YOU  
22 ARE GOING TO HAVE SOMEONE CHASING TWO  
23 DIFFERENT STREETS.

24 MR. SANDOVAL: THEY DIDN'T KNOW

1 WHERE TO CONNECT THEM, THERE IS NO  
 2 CONNECTION BETWEEN THE TWO OF THEM-- MY  
 3 LANE AT THE WEST THAT ENDS AT THE . . .  
 4 BUILDING, NO EXIT TO ROUTE ONE.

5 WE HAD THE SAME QUESTION WHEN WE  
 6 STARTED THE PROJECT IN 1991, 1992 WERE  
 7 CONFUSED AS TO MY LANE AND ONE TIME WE HAVE  
 8 THE ONE ON THE OTHER SIDE AS LOWER  
 9 MORRISVILLE CHANGED TO NEWBOLD ROAD, ALSO  
 10 CHANGED NAME AT THAT LOCATION, THAT CORNER  
 11 I BELIEVE--

12 - - - - -  
 13 (WHEREUPON, AT THIS TIME, THERE WAS A  
 14 DISCUSSION OFF THE RECORD.)

15 - - - - -  
 16 MR. WILSON: FOR NOW, IF THEY  
 17 HAD TO GET AN EMERGENCY VEHICLE IN THERE--  
 18 IF YOU ARE LOST, YOU GET DIRECTIONS LOST  
 19 FOR DIRECTIONS, YOU'RE LOST-- BUT AN  
 20 EMERGENCY VEHICLE-- WHO WOULD HANDLE THAT?

21 MR. DILLON: I THINK, IF YOU  
 22 WANT, WHATEVER THE MOTION YOU CAN ALSO  
 23 SUGGEST THAT THE TOWNSHIP, APPROPRIATE  
 24 PERSON IN THE TOWNSHIP GOVERNMENT BE

1 NOTIFIED TO CONSIDER CHANGING THE NAME.  
2 THIS ROAD IN MORRISVILLE, OR IN FALLS  
3 TOWNSHIP.

4 MR. BERGMAN: FALLS TOWNSHIP.

5 MR. DILLON: BE WITHIN THE  
6 AUTHORITY OF THE TOWNSHIP.

7 - - - - -  
8 (WHEREUPON, AT THIS TIME, THERE WAS A  
9 DISCUSSION OFF THE RECORD.)

10 - - - - -  
11 MR. ALMOND: I THINK BOTH  
12 SECTIONS OF THAT ROAD ARE INVOLVED.

13 MR. WILSON: I STRONGLY  
14 RECOMMEND THAT THEY CHANGE ONE OF THEM;  
15 THAT IS THE ONLY RECOMMENDATION THAT I  
16 HAVE-- YOU WILL SCREEN THE DUMPSTERS?

17 MS. EDWARDS: YES.

18 MR. WILSON: SAME OPERATION WE  
19 HAVE SEEN SEVERAL YEARS AGO?

20 MR. SANDOVAL: YES.

21 MR. WILSON: I CAN TELL YOU, I  
22 WILL SPEECH FOR ME, TOURED THEIR SITE, VERY  
23 CLEAN, I HAD THE IMPRESSION WAS GOING TO BE  
24 A LOT OF AIR GUNS-- VERY QUIET OPERATION,

1 TRUE WHEELS ON THE TRAINS, YOU CAN HAVE A  
2 CONVERSATION WHILE THEY WERE DOING THIS--  
3 AND YOU ARE NOT CHANGING ANYTHING FROM THE  
4 OPERATION THAT WE SAW SEVERAL YEARS BACK?

5 MR. SANDOVAL: NO, NO.

6 MR. WILSON: VERY CLEAN  
7 OPERATION, NO NOISE, VERY NICE OPERATION.

8 NOW, I WANT TO PUT A STATION THERE,  
9 BUT WE CAN NOT TALK ABOUT THAT NOW, IN THE  
10 HALLWAY WE WILL DO THAT.

11 I DON'T HAVE A PROBLEM. I MAKE A  
12 MOTION TO GRANT, WITH THE STIPULATION, I  
13 GUESS, THAT THE BOARD OF SUPERVISORS BE  
14 NOTIFIED ONE OF THESE NAMES SHOULD BE  
15 CHANGED ASAP.

16 THEY HAVE A MEETING NEXT TUESDAY, THE  
17 DUMPSTER-- THEY AGREED, AND I GUESS YOU  
18 WANT TO SAY IT VERBALLY.

19 MR. DILLON: THEY HAVE AGREED  
20 TO THAT CONDITION OF YOUR MOTION.

21 MR. WILSON: THAT IS MY MOTION.

22 MRS. HUDE: DO I HEAR A SECOND?

23 MR. ALMOND: YES.

24 MR. WILSON: YES.

1 MRS. HUDE?  
2 MRS. HUDE: YES.  
3 MR. WILSON: MR. WILSON?  
4 MR. ALMOND: YES.  
5 MR. WILSON: YES.  
6 - - - - -  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

## C E R T I F I C A T I O N

I, WILLIAM J. SCHAEFER, OFFICIAL  
 COURT REPORTER, REGISTERED PROFESSIONAL  
 REPORTER, DO HEREBY CERTIFY THAT THE  
 PROCEEDINGS AND EVIDENCE ARE CONTAINED  
 FULLY AND ACCURATELY IN THE NOTES OF  
 TESTIMONY TAKEN BY ME ON THE FOREGOING  
 MATTER, AND THAT THIS IS A CORRECT AND  
 CERTIFIED TRANSCRIPT OF THE SAME.

  
 WILLIAM J. SCHAEFER, R.P.R./CM

- - - - -

(THE FOREGOING CERTIFICATION OF  
 THIS TRANSCRIPT DOES NOT APPLY TO ANY  
 REPRODUCTION OF THE SAME BY ANY MEANS  
 UNLESS UNDER THE DIRECT CONTROL AND/OR  
 SUPERVISION OF THE CERTIFYING REPORTER.)

WILLIAM J. SCHAEFER, R.M.R.





NESHAMINY ABSTRACT CO., INC.

No. MER 10,070-86-NB

## SCHEDULE "A"

PREMISES: Bridge Street  
Falls Township  
Bucks County, PA

Effective date: August 21, 1986

## 1. Policy or Policies to be issued:

(a) Owner's Policy

Amount  
\$125,000.00

143,100

Proposed Insured: John Pozsgai and Gizella Pozsgai, husband and wife

(b) Loan Policy

\$125,000.00

Proposed Insured:

## 2. The estate or interest in the land described or referred to in this Commitment and covered herein is and title thereto is at the effective date hereof vested in:

Frances Cassalia, Peter Cassalia and Alan B. Cassalia

## 3. The land referred to in this Commitment is more particularly set forth in Schedule "C" attached hereto.

## SCHEDULE "B" — SECTION I

The following are the requirements to be complied with:

1. Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.
2. Instruments in insurable form which must be executed, delivered, and duly filed for record.

DEED: Frances Cassalia, Peter Cassalia and Alan B. Cassalia

TO: John Pozsgai and Gizella Pozsgai, husband and wife

DATED: \_\_\_\_\_ RECORDED: \_\_\_\_\_ BOOK: \_\_\_\_\_ PAGE: \_\_\_\_\_

MORTGAGE: John Pozsgai and Gizella Pozsgai, husband and wife

TO:

DATED: \_\_\_\_\_ RECORDED: \_\_\_\_\_ BOOK: \_\_\_\_\_ PAGE: \_\_\_\_\_



No. MER 10,070-86-NB

**SCHEDULE "B" – SECTION II**

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Satisfactory evidence should be had that improvements *and/or* repairs or alterations thereto are completed; that contractor, subcontractors, labor and materialmen are all paid.
3. Satisfactory evidence must be produced that the premises are entirely in the possession of the owner and that the premises are not subject to the terms of any unrecorded lease.
4. Proof of identity, legal age, competency and marital status of all parties to this transaction.
5. Any variation in location and dimensions, conflicts in boundary lines, encroachments, overlaps, easements not of record and any other objections which a survey made in accordance with "Minimum Standard Detail Requirements for Land Title Surveys as adopted by American Title Association and American Congress on Surveying and Mapping" would disclose. (Upon production of a survey made in accordance with said standards, by a surveyor approved by the Corporation, this objection will be removed and only the specific objections, if any, disclosed thereby, will be excepted herefrom.)
6. Possible additional tax assessments by reason of new construction or improvements pursuant to provisions of Acts of Assembly relating thereto.
7. Taxes for current year.  
Tax receipts for years 1983 to 1985 incl. to be produced and filed with Company.  
1986 Assessment \$16,260.00
8. Water and Sewer Rent Receipts for years 1983 to 1986 incl. to be produced and filed with Company (if supplied by Municipality or Authority).
9. Mortgages: NONE
10. Judgments: NONE

No. MER 10,070-86-NB

## SCHEDULE "B" — SECTION II CONTINUED

11. Proof that no sewers have been installed or ordered to be installed, abutting or in front of or upon premises described herein prior to completion of this transaction or receipts for the cost of same to be produced, otherwise an exception will be certified in Schedule "B" of the Policy relieving Company from liability for any loss arising by reason of a claim or claims for such sewer installation and connection therewith.

12. MECHANICS AND MUNICIPAL CLAIMS: NONE

13. OBJECTIONS:

- a) Proof that Frances Cassalia, Peter Cassalia and Alan B. Cassalia, present co-grantors, are not parties to any Action in Divorce.

## SCHEDULE "B" — SECTION II CONTINUED

EXCEPTIONS:

1. Public and private rights in and to that portion of premises lying in the bed of Bridge Street.
2. Provisions of Acts of Assembly authorizing the State Highway Department to extend boundaries of State Roads.
3. Right of Way Agreement as set forth in Deed Book 1551 page 167. (attached)
4. Condemnation Proceedings as set forth in Deed Book 2099 page 295; & 2129 page 1053. (attached)
5. Survey should be produced and description verified and possible additional Requirements and/or exceptions to be certified upon production of same.
6. Estate, defects, liens or encumbrances affecting tracts of land excluded from the premises described herein, are not certified hereon.
7. Stream flows through subject premises; riparian rights and rights of others therein excepted.
8. Conditions, easements as shown on Plan recorded in Plan Book 113 page 26 and page 27.

No.

**SCHEDULE "C"**  
**(description)**

**ALL THAT CERTAIN tract or piece of ground, Situate in the Borough of Morrisville, and Township of Falls, County of Bucks and State of Pennsylvania, bounded and described according to a Survey of Harry H. Lee Jr., Registered Surveyor, as follows.**

BEGINNING at a point in the Southerly line of West Bridge Street at the Northeast corner of land recently conveyed to Herman Brownstein, said point being distant in an Easterly direction 600 feet from the Northerly corner of land now owned by the Penna. Railroad Company, and running thence (1) North Fifty-two degrees, 51 minutes East 821.75 feet along the Southerly line of West Bridge Street to a point in the middle of a concrete culvert, thence (2) South 35 degrees, 57 minutes East 377.6 feet along remaining land of the grantors, to a corner; thence (3) North 54 degrees 3 minutes East 72.8 feet along remaining land of the grantors to a stone monument at the Northwest corner of Lot No. 266 in the Southerly line of Woodland Avenue, thence (4) South 35 degrees, 57 minutes East 360 feet along the Westerly line of Lot No. 266 and the Westerly line of tract No. 4 on a stone monument, thence (5) South 54 degrees, 3 minutes West 1099.6 feet along land now or formerly owned by the Pennsylvania Railroad Company to a corner; thence (6) North 65 degrees, 5 minutes 30 seconds West 301.02 feet along land of the Penna. Railroad Company to the Southerly corner of land now owned by Rose Mann, thence (7) North 52 degrees 51 minutes East 61.32 feet along the Southerly line of land now owned by Rose Mann to a point in the Westerly line of land now owned by Herman Brownstein, thence (8) South 37 degrees 0 minutes East 10 feet along said Brownstein's land to a corner, thence (9) North 52 degrees 51 minutes East 300 feet along said Brownstein's land to a corner; thence (10) North 37 degrees 9 minutes West 460 feet along said Brownstein's land to the point and place of beginning.  
 CONTAINING 15.944 acres of land.

Excepting thereout and therefrom a piece of ground containing in front or breadth on West Bridge Street approximately 28 feet and extending in length or depth 10 feet, being the most Northeasterly corner of the above described tracts of land.

Also excepting and reserving thereout and therefrom portion of premises taken in Condemnation Proceeding as in Deed Book 2099 page 295 and as amended in Deed Book 2129 page 1053.

BEING part of the same premises which Benny Cassalia and Frances Cassalia, his wife by Deed dated December 29, 1969 and recorded in Bucks County, Pennsylvania, in Deed Book 1960 page 1184, granted and conveyed unto Frances Cassalia, Peter Cassalia and Alan B. Cassalia, in fee. (Mother and Two Sons.)

## CONDITIONS AND STIPULATIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to Paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Conditions and Stipulations, and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

# commitment for title insurance



Meridian Title Insurance Company  
Represented by:

**NESHAMINY ABSTRACT CO., INC.**  
SERVICING PENNSYLVANIA AND NEW JERSEY  
26-28 E. OAKLAND AVENUE  
DOYLESTOWN, PA 18901  
TEL (215) 348-1848

**Meridian Title Insurance Company**, a Pennsylvania corporation, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate 6 months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

**IN WITNESS WHEREOF**, Meridian Title Insurance Company has caused this Commitment to be signed and sealed by its duly authorized officers, to be valid when this Company's Schedule A and B are attached hereto and countersigned by a duly authorized officer, agent or signatory of the Company, all in accordance with its By-laws.

**MERIDIAN TITLE INSURANCE COMPANY**

**NESHAMINY ABSTRACT CO., INC.**

By

*John A. Pizzo*  
Authorized Signature



Attest:

*James A. Allinger*  
President  
*James A. Allinger*  
Secretary

**AGREEMENT FOR THE SALE OF REAL ESTATE**  
 This form recommended and approved for, but not restricted to,  
 use by members of the Pennsylvania Association of REALTORS®  
**COPYRIGHT PENNSYLVANIA ASSOCIATION OF REALTORS® 1973**

**S & C 1969A**  
 (Rev. 3-85)  
 (Mod. 1-88)

**COPIES**

1. White..... Seller  
 2. Yellow..... Agent  
 3. Pink..... Buyer  
 4. Blue..... Mortgage  
 5. Gold.....  
 6. Green..... Buyer's  
 copy at time of signing.

**AGENT FOR THE SELLER**  
**Delaware Valley Real Estate**  
**7507 New Falls Road**  
**Levittown, Pa. 19058**

**SUB AGENT FOR SELLER**

PA. LICENSED BROKER

PA. LICENSED BROKER

**This Agreement, this** ..... 30th ..... day of ..... October ..... A.D. 1986 .....

- 1. PRINCIPALS (1-78) Between** .....  
 Dr. Peter Cassalia .....  
 (residing at ..... Zip ..... ) hereinafter called Seller,  
 and John Pozsgai and Gizella Pozsgai .....  
 (residing at ..... 536 W. Bridge Street .....  
 Morrisville, Pa. ..... Zip 19067 ..... ) hereinafter called Buyer.
- 2. PROPERTY (3-85) Seller hereby agrees to sell and convey to Buyer, who hereby agrees to purchase:**  
**ALL THAT CERTAIN lot or piece of ground with buildings and improvements thereon erected, if any, known as:**  
 Bucks County Tax Map Parcel 13-28-83  
 Approximately 11.57  
 in the township of Falls County of Bucks  
 State of Pa. Zip 19067  
 Zoned Light Industrial
- 3. TERMS (3-85) (a) Purchase Price** ..... One Hundred Fifty Thousand ..... Dollars  
 which shall be paid to the Seller by the Buyer as follows:  
 (b) Cash or check at signing this agreement ..... \$ 1,500.00 .....  
 (c) Cash or check to be paid on or before Acceptance of seller ..... \$ 8,500.00 .....  
 (d) November 20, 1986 ..... \$ 15,000.00 .....  
 (e) Cash or certified check at time of settlement: ..... \$ 125,000.00 .....  
**TOTAL \$150,000.00**  
 (f) Written approval of Seller to be on or before: November 6, 1986  
 (g) Settlement to be made on or before: January 31, 1988  
 (h) Conveyance from Seller will be by fee simple deed of special warranty.  
 (i) Payment of transfer taxes will be divided equally between Buyer and Seller.  
 (j) The following shall be apportioned pro-rata as of and at time of settlement: Taxes as levied and assessed, rents, interest on mortgage assumptions, condominium fees and homeowner association fees if any, water and or sewer rents if any, together with any other lienable municipal services.
- 4. MORTGAGE CONTINGENCY (1-88) This sale is NOT contingent upon any mortgage financing except as hereinafter provided.**  
 (a) Mortgage terms required by Buyer. Amount of mortgage loan \$125,000. Term twenty years.  
 Type of mortgage Conventional  
 Interest rate Prev. rate % HOWEVER, BUYER AGREES TO ACCEPT THE INTEREST RATE AS MAY BE  
 COMMITTED BY THE MORTGAGE LENDER, not to exceed a maximum interest rate of %  
 (b) Within ten(10) days of Seller's approval of this agreement, Buyer shall make a completed mortgage application to a responsible  
 mortgage lending institution through the office of Delaware Valley Real Estate  
 who for the purposes of negotiating for the said mortgage loan, shall be considered the Agent for the Buyer.  
 (c) (1) Buyer will, upon receipt of a mortgage commitment, promptly provide a copy to Seller, Agent and/or Sub-agent, if any.  
 (2) Mortgage commitment date January 15, 1987. If a written commitment is not received  
 by the above date, Buyer agrees to extend the commitment date until Seller terminates this agreement, in writing.  
 (3) Should the mortgage commitment not be valid until the date of settlement, be conditioned upon the sale or settlement of any other  
 property or contain any other condition not specified herein, Seller has the option to terminate this agreement, in writing.  
 In the event Seller terminates this agreement as specified in paragraphs (c) (2) or (3), or the mortgage commitment is not obtained  
 by the date of settlement, all deposit monies paid on account shall be returned to the Buyer, subject to the payments required,  
 if any, provided for in paragraph #7(c), 1, 2, and 3.  
 (d) Seller hereby agrees to permit inspections by authorized appraisers, reputable certifiers and/or Buyer as may be required by the  
 lending institution or insuring agencies.
- 5. SPECIAL CLAUSES**  
 (a) This sale is NOT contingent in any manner upon the sale or settlement of any other real estate except as may be hereinafter provided.

This Agreement of sale is contingent upon the following terms and conditions:

- A) That the BUYER is able to obtain all necessary permits to build an industrial building.
- B) Public water and sewer is available to said premises.
- C) That said premises is in fact zoned light industrial.



**6. NOTICES & ASSESSMENTS (3-85)**

- (a) Seller represents as of the approval date of this agreement, that no public improvement, condominium or homeowner association assessments have been made against the premises which remain unpaid and that no notice by any government or public authority has been served upon the Seller or anyone on the Seller's behalf, including notices relating to violations of zoning, housing, building, safety or fire ordinances which remain uncorrected unless otherwise specified herein.
- (b) If required by law, Seller shall deliver to Buyer on or before settlement, a certification from the appropriate municipal department or departments disclosing notice of any uncorrected violation of zoning, housing, building, safety or fire ordinances.
- (c) Seller will be responsible for any notice of improvements or assessments received on or before the date of Seller's approval of this agreement, unless improvements consist of sewer or water lines not in use.
- (d) Buyer will be responsible for any notice served upon Seller after the approval date of this agreement and for the payment thereafter of any public improvement, condominium or homeowner association assessments.

**7. TITLE AND COSTS (1-86)**

- (a) The premises are to be conveyed free and clear of all liens, encumbrances, and easements, EXCEPTING HOWEVER, the following: existing building restrictions, ordinances, easements of roads, easements visible upon the ground, privileges or rights of public service companies, if any; otherwise the title to the above described real estate shall be good and marketable and such as will be insured by a reputable Title Insurance Company at the regular rates.
- (b) In the event the Seller is unable to give a good and marketable title and such as will be insured by a reputable Title Company, subject to aforesaid, Buyer shall have the option of taking such title as the Seller can give without abatement of price or of being repaid all monies paid by Buyer to the Seller on account of the purchase price and the Seller will reimburse the Buyer for any costs incurred by the Buyer for those items specified in paragraph 7(c) items (1), (2), (3), and in paragraph 7(d); and in the latter event there shall be no further liability or obligation on either of the parties hereto and this agreement shall become NULL AND VOID and all copies will be returned to Seller's agent for cancellation.
- (c) The Buyer will pay for the following:
- (1) The premium for mechanics lien insurance and/or title search, or fee for cancellation of same, if any.
  - (2) The premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any.
  - (3) Appraisal fees and charges paid in advance to mortgagee if any.
  - (4) Buyer's normal settlement costs and accruals.
- (d) Any survey or surveys which may be required by the Title Insurance Company or the abstracting attorney, for the preparation of an adequate legal description of the premises (or the correction thereof), shall be secured and paid for by the Seller. However, any survey or surveys desired by the Buyer or required by his/her mortgagee shall be secured and paid for by the Buyer.

- 8. FIXTURES, TREES, SHRUBBERY, ETC. (1-81)** All existing plumbing, heating and lighting fixtures (including chandeliers) and systems appurtenant thereto and forming a part thereof, and other permanent fixtures, as well as all ranges, laundry tubs, T.V. antennas, mats and rotor systems, together with wall to wall carpeting, screens, storm ash and/or doors, shades, awnings, venetian blinds, couplings for automatic washers and dryers, etc., radiator covers, cornices, kitchen cabinets, drapery rods, drapery rod hardware, curtain rods, curtain rod hardware, all trees, shrubbery, plantings now in or on property, if any, unless specifically excepted in this agreement, are included in the sale and purchase price. None of the above mentioned items shall be removed by the Seller from the premises after the date of this agreement. Any remaining heating and/or cooking fuels stored on the premises at time of settlement are also included under this agreement. Seller hereby warrants that he will deliver good title to all of the articles described in this paragraph, and any other fixtures or items of personally specifically scheduled and to be included in this sale.

- 9. DEPOSIT AND RECOVERY FUND (5-85)** Deposits or hand monies shall be paid to agent for Seller, who shall retain the same until consummation or termination of this agreement in conformity with all applicable laws and regulations. Agent for the Seller may, at his/her sole option, hold any uncashed check tendered as deposit or hand monies, pending the acceptance of this offer. A real estate recovery fund exists to reimburse persons who have suffered monetary loss and have obtained an uncollectable judgment due to fraud, misrepresentation or deceit in a real estate transaction by a Pennsylvania licensee. For complete details, call 717-763-3658.

**10. POSSESSION AND TENDER (3-85)**

- (a) Possession is to be delivered by deed, keys and physical possession to a vacant building (if any) broom clean, free of debris at day and time of settlement, or by deed and assignment of existing lease(s) at time of settlement if premises is tenant occupied at the signing of this agreement, unless otherwise specified herein. Buyer will acknowledge existing lease(s) by initialing said lease(s) at time of signing of this agreement of sale if tenant occupied.
- (b) Seller will not enter into any new leases, written extension of existing leases, if any, or additional leases for the premises without expressed written consent of the Buyer.
- (c) Formal tender of an executed deed and purchase money is hereby waived.
- (d) Buyer reserves the right to make a pre-settlement inspection of the subject premises.

**11. MAINTENANCE AND RISK OF LOSS (3-85)**

- (a) Seller shall maintain the property (including all items mentioned in paragraph #8 herein) and any personal property specifically scheduled herein in its present condition, normal wear and tear excepted.
- (b) Seller shall bear risk of loss from fire or other casualties until time of settlement. In the event of damage to any property included in this sale by fire or other casualties, not repaired or replaced prior to settlement, Buyer shall have the option of rescinding this agreement and receiving all monies paid on account or of accepting the property in its then condition together with the proceeds of any insurance recovery obtainable by Seller. Buyer is hereby notified that he may insure his equitable interest in this property as of the time of the acceptance of this agreement.

- 12. RECORDING (3-85)** This agreement shall not be recorded in the Office for the Recording of Deeds or in any other office or place of public record and if Buyer causes or permits this agreement to be recorded, Seller may elect to treat such act as a breach of this agreement.

- 13. ASSIGNMENT (3-85)** This agreement shall be binding upon the parties, their respective heirs, personal representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto, it being expressly understood, however, that the Buyer shall not transfer or assign this agreement without the written consent of the Seller.

- 14. DEFAULT-TIME OF THE ESSENCE (1-79)** The said time for settlement and all other times referred to for the performance of any of the obligations of this agreement are hereby agreed to be of the essence of this agreement. Should the Buyer:

- (a) Fail to make any additional payments as specified in paragraph #3, or
  - (b) Furnish false or incomplete information to the Seller, the Seller's agent, or the mortgage lender, concerning the Buyer's legal or financial status, or fail to cooperate in the processing of the mortgage loan application, which acts would result in the failure to obtain the approval of a mortgage loan commitment, or
  - (c) Violate or fail to fulfill and perform any other terms or conditions of this agreement,
- then in such case, all deposit money and other sums paid by the Buyer on account of the purchase price, whether required by this agreement or not, may be retained by the Seller:
- (1) On account of the purchase, or
  - (2) As monies to be applied to the Seller's damages, or
  - (3) As liquidated damages for such breach,
- as the Seller may elect, and in the event that the Seller elects to retain the monies as liquidated damages in accordance with paragraph #14(c), the Seller shall be released from all liability or obligations and this agreement shall be NULL AND VOID and all copies will be returned to the Seller's agent for cancellation.

- 15. AGENT(S) (3-85)** It is expressly understood and agreed between the parties that the named Agent, Broker, and any Sub Agent, Broker and their salespeople, employees, officers and or partners, are Agent(s) for the Seller, not the Buyer, however, the Agent(s) may perform services for the Buyer in connection with financing, insurance and document preparation.

- 16. REPRESENTATIONS (3-85)** It is understood that Buyer has inspected the property, or hereby waives the right to do so and has agreed to purchase it as a result of such inspection and not because of or in reliance upon any representation made by the Seller or any other officer, partner or employee of Seller, or by the Agent, Sub Agent, if any, of the Seller, their salespeople and employees, officers and or partners. The Buyer has agreed to purchase it in its present condition unless otherwise specified herein. It is further understood that this agreement contains the whole agreement between the Seller and the Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this agreement shall not be altered, amended, changed or modified except in writing executed by the parties.

**APPROVAL BY BUYER**

WITNESS AS

TO BUYER

WITNESS AS

TO BUYER

BUYER: Jane P. Pappas (SEAL)BUYER: Angela Pappas (SEAL)

BUYER: \_\_\_\_\_ (SEAL)

**APPROVAL BY SELLER**

Seller hereby approves the above contract this 3 day of November, A.D. 1996

and in consideration of the services rendered in procuring the Buyer, Seller agrees to pay the named Agent a fee of \$50 off from the herein specified sale price. In the event Buyer defaults hereunder, any monies paid on account shall be divided 50 Agent, but in no event will the sum paid to the Agent be in excess of the above specified Agent's fee.

WITNESS AS

TO SELLER

WITNESS AS

TO SELLER

SELLER: Robert A. Kossala (SEAL)

SELLER: \_\_\_\_\_ (SEAL)

SELLER: \_\_\_\_\_ (SEAL)

AGENT BY:

SELLER: \_\_\_\_\_ (SEAL)

TO: \_\_\_\_\_ (Agent) Date: \_\_\_\_\_ 19 \_\_\_\_\_

In conjunction with the purchase of the premises described in this agreement of sale attached hereto, I/We hereby authorize your firm to perform the services as indicated below by my/our initials.

A. Order Title insurance in any reputable title insurance company \_\_\_\_\_ (INITIALS)

B. Order insurance in the amount of \$ \_\_\_\_\_ ☐ Homeowners ☐ Fire & Extended Coverage ☐ Flood \_\_\_\_\_ (INITIALS)

C. \_\_\_\_\_ (INITIALS)

S & C 1969B  
(Rev. 3-85)  
(Mod. 1-86)

**COPIES**

1. White.....	Seller
2. Yellow.....	Agent
3. <u>Pink</u> .....	Buyer
4. Blue.....	Mortgagee
5. Gold.....	
6. Green.....	Buyer's

copy at time of signing.

**AGENT FOR THE SELLER**  
Delaware Valley Real Estate  
7507 New Falls Road  
Levittown, Pa. 19058

**-SUB AGENT FOR SELLER**

- PA. LICENSED BROKER.

-PA. LICENSED BROKER

This Agreement, this 23rd day of March, A.D. 1907

1. PRINCIPALS (1-78) Between John Pozgai & Gizella Pozgai  
(residing at Dr. Peter Cassalia, Alameda, California) Zip 94601 hereinafter called Seller  
and John Pozgai & Gizella Pozgai b/w  
(residing at Alameda, California) Zip 94601 hereinafter called Buyer

2. **PROPERTY (3-85)** Seller hereby agrees to sell and convey to Buyer, who hereby agrees to purchase:  
ALL THAT CERTAIN lot or piece of ground with buildings and improvements thereon erected, if any, known as:

Approximately 11.57 acres  
in the \_\_\_\_\_ township \_\_\_\_\_ of \_\_\_\_\_ Falls \_\_\_\_\_ County of \_\_\_\_\_ Bucks  
State of \_\_\_\_\_ pa \_\_\_\_\_ Zip 19067  
Zoned \_\_\_\_\_ Light Industrial

3. TERMS (3-85) (a) Purchase Price .... One Hundred Forty Thousand ..... (\$140,000.00) ..... Dollars

which shall be paid to the Seller by the Buyer as follows:

(b) Cash or check at signing this agreement: ..... \$ 14,000.00

(c) Cash or check to be paid on or before: ..... 19 ..... \$ .....

(d) ..... \$ .....

(e) Cash or certified check at time of settlement: ..... € 126,000.00

(e) Cash or certified check at time of settlement: .....	\$ <del>128,000.00</del>
<b>TOTAL</b> .....	\$ <del>140,000.00</del> <i>RDM</i>

(f) Written approval of Seller to be on or before: March 27, 1987 143,000

(g) Settlement to be made on or before: May 7, 1987

(i) Payment of transfer taxes will be divided equally between Buyer and Seller.

(j) The following shall be apportioned pro-rata as of and at time of settlement: Taxes as levied and assessed, rents, interest on mortgage assumptions

4. **MORTGAGE CONTINGENCY (3-85)** This sale is NOT contingent upon any mortgage financing except as hereinafter provided

## 5. SPECIAL CLAUSES

(a) This sale is NOT contingent in any manner upon the sale or settlement of any other real estate except as may be hereinafter provided.

This agreement of sale is contingent upon BUYER, at ~~SELLER'S~~ <sup>BUYER'S</sup> expense, obtaining a plot plan of the above parcel.

Both BUYER and SELLER hereby agree and understand that the BUYER is buying the premises "AS IS" and understands fully there are no warranties or conditions whatsoever.

**6. NOTICES & ASSESSMENTS (3-85)**

- (a) Seller represents as of the approval date of this agreement that no public improvement, condominium or homeowner association assessments have been made against the premises which remain unpaid and that no notice by any government or public authority has been served upon the Seller or anyone on the Seller's behalf, including notices relating to violations of zoning, housing, building, safety or fire ordinances which remain uncorrected unless otherwise specified herein.
- (b) If required by law, Seller shall deliver to Buyer on or before settlement, a certification from the appropriate municipal department or departments disclosing notice of any uncorrected violation of zoning, housing, building, safety or fire ordinances.
- (c) Seller will be responsible for any notice of improvements or assessments received on or before the date of Seller's approval of this agreement, unless improvements consist of sewer or water lines not in use.
- (d) Buyer will be responsible for any notice served upon Seller after the approval date of this agreement and for the payment thereafter of any public improvement, condominium or homeowner association assessments.

**7. TITLE AND COSTS (1-86)**

- (a) The premises are to be conveyed free and clear of all liens, encumbrances, and easements, EXCEPTING HOWEVER, the following: existing building restrictions, ordinances, easements of roads, easements visible upon the ground, privileges or rights of public service companies, if any; otherwise the title to the above described real estate shall be good and marketable and such as will be insured by a reputable Title Insurance Company at the regular rates.
- (b) In the event the Seller is unable to give a good and marketable title and such as will be insured by a reputable Title Company, subject to aforesaid, Buyer shall have the option of taking such title as the Seller can give without abatement of price or of being repaid all monies paid by Buyer to the Seller on account of the purchase price and the Seller will reimburse the Buyer for any costs incurred by the Buyer for those items specified in paragraph 7(c) items (1), (2), (3), and in paragraph 7(d) and in the latter event there shall be no further liability or obligation on either of the parties hereto and this agreement shall become NULL AND VOID and all copies will be returned to Seller's agent for cancellation.
- (c) The Buyer will pay for the following:
- (1) The premium for mechanics lien insurance and/or title search, or fee for cancellation of same, if any.
  - (2) The premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any.
  - (3) Appraisal fees and charges paid in advance to mortgagee if any.
  - (4) Buyer's normal settlement costs and accruals.
- (d) Any survey or surveys which may be required by the Title Insurance Company or the abstracting attorney, for the preparation of an adequate legal description of the premises (or the correction thereof), shall be secured and paid for by the Seller. However, any survey or surveys desired by the Buyer or required by his/her mortgagee shall be secured and paid for by the Buyer.

- 8. FIXTURES, TREES, SHRUBBERY, ETC. (1-81)** All existing plumbing, heating and lighting fixtures (including chandeliers) and systems appurtenant thereto and forming a part thereof, and other permanent fixtures, as well as all ranges, laundry tubs, T.V. antennas, masts and rotor systems, together with wall to wall carpeting, screens, storm sash and/or doors, shades, awnings, venetian blinds, couplings for automatic washers and dryers, etc., radiator covers, cornices, kitchen cabinets, drapery rods, drapery rod hardware, curtain rods, curtain rod hardware, all trees, shrubbery, plantings now in or on property, if any, unless specifically excepted in this agreement, are included in the sale and purchase price. None of the above mentioned items shall be removed by the Seller from the premises after the date of this agreement. Any remaining heating and/or cooking fuels stored on the premises at time of settlement are also included under this agreement. Seller hereby warrants that he will deliver good title to all of the articles described in this paragraph, and any other fixtures or items of personal property specifically scheduled and to be included in this sale.

- 9. DEPOSIT AND RECOVERY FUND (5-86)** Deposits or hand monies shall be paid to agent for Seller, who shall retain the same until consummation or termination of this agreement in conformity with all applicable laws and regulations. Agent for the Seller may, at his/her sole option, hold any uncashed check tendered as deposit or hand monies, pending the acceptance of this offer.
- A real estate recovery fund exists to reimburse persons who have suffered monetary loss and have obtained an uncollectable judgment due to fraud, misrepresentation or deceit in a real estate transaction by a Pennsylvania licensee. For complete details, call 717-783-3658.

**10. POSSESSION AND TENDER (3-85)**

- (a) Possession is to be delivered by deed, keys and physical possession to a vacant building (if any) broom clean, free of debris at day and time of settlement, or by deed and assignment of existing lease(s) at time of settlement if premises is tenant occupied at the signing of this agreement, unless otherwise specified herein. Buyer will acknowledge existing lease(s) by initialing said lease(s) at time of signing of this agreement of sale if tenant occupied.
- (b) Seller will not enter into any new leases, written extension of existing leases, if any, or additional leases for the premises without expressed written consent of the Buyer.
- (c) Formal tender of an executed deed and purchase money is hereby waived.
- (d) Buyer reserves the right to make a pre-settlement inspection of the subject premises.

**11. MAINTENANCE AND RISK OF LOSS (3-85)**

- (a) Seller shall maintain the property (including all items mentioned in paragraph #8 herein) and any personal property specifically scheduled herein in its present condition, normal wear and tear excepted.
- (b) Seller shall bear risk of loss from fire or other casualties until time of settlement. In the event of damage to any property included in this sale by fire or other casualties, not repaired or replaced prior to settlement, Buyer shall have the option of rescinding this agreement and receiving all monies paid on account of or accepting the property in its then condition together with the proceeds of any insurance recovery obtainable by Seller. Buyer is hereby notified that he may insure his equitable interest in this property as of the time of the acceptance of this agreement.

- 12. RECORDING (3-85)** This agreement shall not be recorded in the Office for the Recording of Deeds or in any other office or place of public record and if Buyer causes or permits this agreement to be recorded, Seller may elect to treat such act as a breach of this agreement.

- 13. ASSIGNMENT (3-85)** This agreement shall be binding upon the parties, their respective heirs, personal representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto, it being expressly understood, however, that the Buyer shall not transfer or assign this agreement without the written consent of the Seller.

- 14. DEFAULT-TIME OF THE ESSENCE (1-79)** The said time for settlement and all other times referred to for the performance of any of the obligations of this agreement are hereby agreed to be of the essence of this agreement. Should the Buyer:

- (a) Fail to make any additional payments as specified in paragraph #3, or
- (b) Furnish false or incomplete information to the Seller, the Seller's agent, or the mortgage lender, concerning the Buyer's legal or financial status, or fail to cooperate in the processing of the mortgage loan application, which acts would result in the failure to obtain the approval of a mortgage loan commitment, or
- (c) Violate or fail to fulfill and perform any other terms or conditions of this agreement,

then in such case, all deposit money and other sums paid by the Buyer on account of the purchase price, whether required by this agreement or not, may be retained by the Seller.

- (1) On account of the purchase, or
- (2) As monies to be applied to the Seller's damages, or
- (3) As liquidated damages for such breach.

as the Seller may elect, and in the event that the Seller elects to retain the monies as liquidated damages in accordance with paragraph #14(c), the Seller shall be released from all liability or obligations and this agreement shall be NULL AND VOID and all copies will be returned to the Seller's agent for cancellation.

- 15. AGENT(S) (3-85)** It is expressly understood and agreed between the parties that the named Agent, Broker, and any Sub Agent, Broker and their salespeople, employees, officers and or partners, are Agent(s) for the Seller, not the Buyer, however, the Agent(s) may perform services for the Buyer in connection with financing, insurance and document preparation.

- 16. REPRESENTATIONS (3-85)** It is understood that Buyer has inspected the property, or hereby waives the right to do so and has agreed to purchase it as a result of such inspection and not because of or in reliance upon any representation made by the Seller or any other officer, partner or employee of Seller, or by the Agent, Sub Agent, if any, of the Seller, their salespeople and employees, officers and or partners.

The Buyer has agreed to purchase it in its present condition unless otherwise specified herein. It is further understood that this agreement contains the whole agreement between the Seller and the Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this agreement shall not be altered, amended, changed or modified except in writing executed by the parties.

**APPROVAL BY BUYER**

WITNESS AS

TO BUYER

WITNESS AS

TO BUYER

BUYER

BUYER

BUYER

BUYER

(SEAL)

(SEAL)

(SEAL)

(SEAL)

**APPROVAL BY SELLER**

Seller hereby approves the above contract this

2-2

day of

March

A.D. 19

87

and in consideration of the services rendered in procuring the Buyer, Seller agrees to pay the named Agent a fee of

6400

of the herein specified sale price. In the event Buyer defaults hereunder, any monies paid on account shall be divided

Agent, but in no event will the sum paid to the Agent be in excess of the above specified Agent's fee.

WITNESS AS

TO SELLER

WITNESS AS

TO SELLER

SELLER

SELLER

SELLER

(SEAL)

(SEAL)

(SEAL)

AGENT BY:

SELLER

(SEAL)

TO: Blawie Realty, Inc. (Agent)

Date

3-24-87

19

In conjunction with the purchase of the premises described in this agreement of sale attached hereto, I/We hereby authorize your firm to perform the services as indicated below by my/our initials.

A. Order Title Insurance in any reputable title insurance company (INITIALS)

B. Order insurance in the amount of \$ ☐ Homeowners ☐ Fire & Extended Coverage ☐ Flood (INITIALS)

C. (INITIALS)

This form recommended and approved for, but not restricted to, use by members of the Pennsylvania Association of REALTORS®  
 COPYRIGHT PENNSYLVANIA ASSOCIATION OF REALTORS® 1973

(Rev. 3-85)  
 (Mod. 1-86)

1. **AGENT FOR THE SELLER**  
 Delaware Valley Real Estate  
 7507 New Falls Road  
 Levittown, Pa. 19058

2. **SUB AGENT FOR SELLER**

3. **PA. LICENSED BROKER**

**This Agreement**, this 24th day of March, A.D. 1987

**PRINCIPALS (1-78)** Between  
DR. Peter Cassalia (residing at Cassalia, Zip 19057) hereinafter called Seller,  
 and John Pozsgai & Gizella Pozsgai b/w (residing at Levittown, Zip 19057) hereinafter called Buyer.

**PROPERTY (3-85)** Seller hereby agrees to sell and convey to Buyer, who hereby agrees to purchase:  
 ALL THAT CERTAIN lot or piece of ground with buildings and improvements thereon erected, if any, known as:  
Bucks County, Tax Map Number 13-28-83  
Approximately 11.57 acres  
in the township of Falls, County of Bucks  
State of PA  
Zoned Light Industrial

**TERMS (3-85) (a)** Purchase Price: One Hundred Forty Thousand (\$140,000.00) Dollars

which shall be paid to the Seller by the Buyer as follows:

(b) Cash or check at signing this agreement:	\$ 14,000.00
(c) Cash or check to be paid on or before:	\$
(d) Cash or check to be paid on or before:	\$
(e) Cash or certified check at time of settlement:	\$ 126,000.00
<b>TOTAL</b>	\$ 140,000.00

(f) Written approval of Seller to be on or before: March 27  
 (g) Settlement to be made on or before: May 7  
 (h) Conveyance from Seller will be by fee simple deed of special warranty.  
 (i) Payment of transfer taxes will be divided equally between Buyer and Seller.  
 (j) The following shall be apportioned pro-rata as of and at time of settlement: Taxes as levied and assessed, rents, interest on mortgage assumptions, condominium fees and homeowner association fees if any, water and or sewer rents if any, together with any other lienable municipal services.

**4. MORTGAGE CONTINGENCY (3-85)** This sale is NOT contingent upon any mortgage financing except as hereinafter provided.

**5. SPECIAL CLAUSES**  
 (a) This sale is NOT contingent in any manner upon the sale or settlement of any other real estate except as may be hereinafter provided.

This agreement of sale is contingent upon BUYER, at BUYER'S expense, obtaining a plot plan of the above parcel.

Both BUYER and SELLER hereby agree and understand that the BUYER is buying the premises "AS IS" and understands fully there are no warranties or conditions whatsoever.

**6. NOTICES & ASSESSMENTS (3-85)**

(a) Seller represents as of the approval date of this agreement, that no public improvement, condominium or homeowner association assessments have been made against the premises which remain unpaid and that no notice by any government or public authority has been served upon the Seller or anyone on the Seller's behalf, including notices relating to violations of zoning, housing, building, safety or fire ordinances which remain uncorrected unless otherwise specified herein.

(b) If required by law, Seller shall deliver to Buyer on or before settlement a certification from the appropriate municipal department or departments disclosing notice of any uncorrected violation of zoning, housing, building, safety or fire ordinances.

(c) Seller will be responsible for any notice of improvements or assessments received on or before the date of Seller's approval of this agreement, unless improvements consist of sewer or water lines not in use.

(d) Buyer will be responsible for any notice served upon Seller after the approval date of this agreement and for the payment thereafter of any public improvement, condominium or homeowner association assessments.

**7. TITLE AND COSTS (3-85)**

(a) The premises are to be conveyed free and clear of all liens, encumbrances, and easements, EXCEPTING HOWEVER, the following existing building restrictions, ordinances, easements of roads, easements visible upon the ground, privileges or rights of public service companies; if any; otherwise the title to the above described real estate shall be good and marketable and such as will be insured by a reputable Title Insurance Company at the regular rates.

(b) In the event the Seller is unable to give a good and marketable title and such as will be insured by a reputable Title Company, subject to aforesaid, Buyer shall have the option of taking such title as the Seller can give without abatement of price or of being repaid all monies paid by Buyer to the Seller on account of the purchase price and the Seller will reimburse the Buyer for any costs incurred by the Buyer for those items specified in paragraph 7(c) items (1), (2), (3), and in paragraph 7(d); and in the latter event there shall be no further liability or obligation on either of the parties hereto and this agreement shall become NULL AND VOID and all copies will be returned to Seller's agent for cancellation.

(c) The Buyer will pay for the following:

- (1) The premium for mechanics lien insurance and/or title search, or fee for cancellation of same, if any.
- (2) The premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any.
- (3) Appraisal fees and charges paid in advance to mortgagee if any.
- (4) Buyer's normal settlement costs and accruals.

(d) Any survey or surveys which may be required by the Title Insurance Company or the abstracting attorney, for the preparation of an adequate legal description of the premises (or for correction thereof), shall be secured and paid for by the Seller. However, any survey or surveys desired by the Buyer or required by his/her mortgagee shall be secured and paid for by the Buyer.

**8. FIXTURES, TREES, SHRUBBERY, ETC. (1-81)** All existing plumbing, heating and lighting fixtures (including chandeliers) and systems appurtenant thereto and forming a part thereof, and other permanent fixtures, as well as all ranges, laundry tubs, T.V. antennas, masts and rotor systems, together with wall to wall carpeting, screens, storm ash and/or doorshades, awnings, venetian blinds, couplings for automatic washers and dryers, etc., radiator covers, curtains, kitchen cabinets, drapery rods, drapery rod hardware, curtain rods, curtain rod hardware, all trees, shrubbery, plantings now in or on property, if any, unless specifically excepted in this agreement, are included in the sale and purchase price. No fixtures, furniture, or other items shall be removed by the Seller from the premises after the date of this agreement. Any remaining heating and/or cooling fuels stored on the premises at time of settlement are also included under this agreement. Seller hereby warrants that he will deliver good title to all of the articles described in this paragraph, and any other fixtures or items of personal property specifically scheduled and to be included in this sale.

**9. DEPOSIT AND RECOVERY FUND (5-85)** Deposits or hand monies shall be paid to agent for Seller, who shall retain the same until consummation or termination of this agreement in conformity with all applicable laws and regulations. Agent for the Seller may, at his/her sole option, hold any uncashed check tendered as deposit or hand monies, pending the acceptance of this offer.

A real estate recovery fund exists to reimburse persons who have suffered monetary loss and have obtained an uncollectable judgment due to fraud, misrepresentation or deceit in a real estate transaction by a Pennsylvania licensee. For complete details, call 717-783-3658.

**10. POSSESSION AND TENDER (3-85)**

(a) Possession is to be delivered by deed, keys and physical possession to a vacant building (if any) broom clean, free of debris at day and time of settlement, or by deed and assignment of existing lease(s) at time of settlement if premises is tenant occupied at the signing of this agreement, unless otherwise specified herein. Buyer will acknowledge existing lease(s) by initialing said lease(s) at time of signing of this agreement of sale if tenant occupied.

(b) Seller will not enter into any new leases, written extension of existing leases, if any, or additional leases for the premises without expressed written consent of the Buyer.

(c) Formal tender of an executed deed and purchase money is hereby waived.

(d) Buyer reserves the right to make a pre-settlement inspection of the subject premises.

**11. MAINTENANCE AND RISK OF LOSS (3-85)**

(a) Seller shall maintain the property (including all items mentioned in paragraph #8 herein) and any personal property specifically scheduled herein in its present condition, normal wear and tear excepted.

(b) Seller shall bear risk of loss from fire or other casualties until time of settlement. In the event of damage to any property included in this sale by fire or other casualties, not repaired or replaced prior to settlement, Buyer shall have the option of rescinding this agreement (and receiving all monies paid on account or of accepting the property in its then condition together with the proceeds of any insurance recovery obtainable by Seller. Buyer is hereby notified that he may insure his equitable interest in this property as of the time of the acceptance of this agreement.

**12. RECORDING (3-85)** This agreement shall not be recorded in the Office for the Recording of Deeds or in any other office or place of public record and if Buyer causes or permits this agreement to be recorded, Seller may elect to treat such act as a breach of this agreement.

**13. ASSIGNMENT (3-85)** This agreement shall be binding upon the parties, their respective heirs, personal representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto, it being expressly understood, however, that the Buyer shall not transfer or assign this agreement without the written consent of the Seller.

**14. DEFAULT-TIME OF THE ESSENCE (1-79)** The said time for settlement and all other times referred to for the performance of any of the obligations of this agreement are hereby agreed to be of the essence of this agreement. Should the Buyer:

- (a) Fail to make any additional payments as specified in paragraph #3, or
- (b) Furnish false or incomplete information to the Seller, the Seller's agent, or the mortgage lender, concerning the Buyer's legal or financial status, or fail to cooperate in the processing of the mortgage loan application, which acts would result in the failure to obtain the approval of a mortgage loan commitment, or
- (c) Violate or fail to fulfill and perform any other terms or conditions of this agreement,

then in such case, all deposit money and other sums paid by the Buyer on account of the purchase price, whether required by this agreement or not, may be retained by the Seller:

- (1) On account of the purchase, or
- (2) As monies to be applied to the Seller's damages, or
- (3) As liquidated damages for such breach.

as the Seller may elect, and in the event that the Seller elects to retain the monies as liquidated damages in accordance with paragraph #14(c), the Seller shall be released from all liability or obligations and this agreement shall be NULL AND VOID and all copies will be returned to the Seller's agent for cancellation.

**15. AGENT(S) (3-85)** It is expressly understood and agreed between the parties that the named Agent, Broker, and any Sub Agent, Broker and their salespeople, employees, officers and or partners, are Agent(s) for the Seller, not the Buyer, however, the Agent(s) may perform services for the Buyer in connection with financing, insurance and document preparation.

**16. REPRESENTATIONS (3-85)** It is understood that Buyer has inspected the property, or hereby waives the right to do so and has agreed to purchase it as a result of such inspection and not because of or in reliance upon any representation made by the Seller or any other officer, partner or employee of Seller, or by the Agent, Sub Agent, if any, of the Seller, their salespeople and employees, officers and or partners.

The Buyer has agreed to purchase it in its present condition unless otherwise specified herein. It is further understood that this agreement contains the whole agreement between the Seller and the Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this agreement shall not be altered, amended, changed or modified except in writing executed by the parties.

**APPROVAL BY BUYER**

WITNESS AS TO BUYER: *R. J. M.*

WITNESS AS TO BUYER: *R. J. M.*

**APPROVAL BY SELLER**

Seller hereby approves the above contract this 27 day of March, A.D. 1987

and in consideration of the services rendered in procuring the Buyer, Seller agrees to pay the named Agent a fee of \_\_\_\_\_

of/from the herein specified sale price. In the event Buyer defaults hereunder, any monies paid on account shall be divided \_\_\_\_\_ Seller.

Agent, but in no event will the sum paid to the Agent be in excess of the above specified Agent's fee.

WITNESS AS TO SELLER: *R. J. M.*

WITNESS AS TO SELLER: *R. J. M.*

AGENT BY: *R. J. M.*

BUYER: *John P. Pazagn...*

BUYER: *Elizabeth Pazagn...*

BUYER: *...*

SELLER: *John P. Pazagn...*

SELLER: *Elizabeth Pazagn...*

SELLER: *...*

TO: *Dulles Realty, Inc. (Agent)* Date: 3-24-87 1987

In conjunction with the purchase of the premises described in this agreement of sale attached hereto, I/We hereby authorize your firm to perform the services as indicated below by my/our initials.

A. Order Title insurance in any reputable title insurance company \_\_\_\_\_ (INITIALS)

B. Order insurance in the amount of \$ \_\_\_\_\_ ☐ Homeowners ☐ Fire & Extended Coverage ☐ Flood \_\_\_\_\_ (INITIALS)

Any Abstract Co., Inc.  
 Agent For:  
 Meridian Title Insurance Company  
 U.S. Department of Housing  
 and Urban Development  
 26-28 E. Oakland Avenue  
 Leasstown, PA 18901  
 215-348-1848; 215-364-2652  
 No. 10070-86-NB  
 OMB No. 2502-0265

# **A. Settlement Statement**

Type of Loan <input type="checkbox"/> FHA 2-28 <input type="checkbox"/> FHA 3-1 <input type="checkbox"/> Con. Unins. <input type="checkbox"/> VA 2-28 <input type="checkbox"/> Con. Ins.		F. File Number 10070-86-NB	G. Loan Number	H. Mortgage Insurance Case Number
<p><b>C. Note:</b> This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.</p>				
B. Name and Address of Borrower JOHN POZSGAI AND GIZELLA POZSGAI, HIS WIFE		I. Name and Address of Seller FRANCES CASSALIA, PETER CASSALIA AND ALAN S. CASSALIA		J. Name and Address of Lender
K. Property Location WEST BRIDGE STREET FALLS TOWNSHIP BUCKS COUNTY, PA		L. Settlement Agent CAROL WATKINS Place of Settlement DEL VAL REAL ESTATE LEVITTOWN, PA		M. Settlement Date June 19, 1997
<b>1. Summary of Borrower's Transaction</b> 100. Gross Amount Due From Borrower 101. Contract Sales Price 102. Personal Property 103. Settlement Charges To Borrower (line 1400) 104. 105.		<b>2. Summary of Seller's Transaction</b> 400. Gross Amount Due To Seller 401. Contract Sales Price 402. Personal Property 403. 404. 405.		
Adjustments For Items Paid By Seller In Advance 106. City/Town Taxes 107. County Taxes 108. Assessments 109. School Taxes 110. Water Rent 111. Sewer Rent 112.		Adjustments For Items Paid By Seller In Advance 406. City/Town Taxes 407. County Taxes 408. Assessments 409. School Taxes 410. Water Rent 411. Sewer Rent 412.		
120. Gross Amount Due From Borrower 200. Amounts Paid By Or In Behalf Of Borrower 201. Deposit or Earnest Money 202. Principal Amount Of New Loan(s) 203. Existing Loan(s) Taken Subject To 204. 205. 206. 207. 208. 209.		420. Gross Amount Due To Seller 500. Reductions In Amount Due To Seller 501. Excess Deposit (see instructions) 502. Settlement Charges To Seller (line 1400) 503. Existing Loan(s) Taken Subject To 504. Payoff Of First Mortgage Loan 505. Payoff Of Second Mortgage Loan 506. ESCROW FOR: 509.		
Adjustments For Items Unpaid By Seller 210. City/Town Taxes 211. County Taxes 212. Assessments 213. School Taxes 214. Water Rent 215. Sewer Rent 216. 217. 218.		Adjustments For Items Unpaid By Seller 510. City/Town Taxes 511. County Taxes 512. Assessments 513. School Taxes 514. Water Rent 515. Sewer Rent 516. 517. 518. 519.		
220. Total Paid By/For Borrower 300. Cash At Settlement From/To Borrower 301. Gross Amount Due From Borrower (line 120) 302. Less Amounts Paid By/For Borrower (line 220)		520. Total Reduction Amount Due Seller 600. Cash At Settlement To/From Seller 601. Gross Amount Due To Seller (line 420) 602. Less Reductions In Amt. Due Seller (line 520)		
403. Cash <input checked="" type="checkbox"/> From <input type="checkbox"/> To Borrower 131566.63		603. Cash <input checked="" type="checkbox"/> To <input type="checkbox"/> From Seller 132049.81		

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

S. R. # 135-727-857

*John Pozsgai* (Purchaser) *John Pozsgai* (Seller)  
*Gizella Pozsgai* (Purchaser) *Gizella Pozsgai* (Seller)  
 14006 ADDRESS 516 W. Bridge St. Houshous, PA  
 WARNING: It is a crime to knowingly make false statements to a United States official on this or any other similar form. Penalties upon conviction can include fines and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

FILE # 0070-86-NB

L. Settlement Charges				Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales/Broker's Commission Based on Price \$ <u>44,400.00</u> @ % <u>6.00</u>					
Division of Commission (line 700) As Follows:					
701. \$ <u>44,400.00</u>	to	<u>Delaware Valley Real Estate</u>			
702. \$	to				
703. Commission Paid At Settlement					
704. Brokers Services/ Deed Preparation				<u>224.00</u>	<u>6400.00</u>
800. Items Payable in Connection With Loan					
801. Loan Origination Fee	%				
802. Loan Discount	%				
803. Appraisal Fee	to				
804. Credit Report	to				
805. Lender's Inspection Fee					
806. Mortgage Insurance Application Fee to					
807. Assumption Fee					
808.					
809.					
810.					
811.					
900. Items Required By Lender To Be Paid In Advance					
901. Interest from	to	@ \$	/day		
902. Mortgage Insurance Premium for			months to		
903. Hazard Insurance Premium for			years to		
904.			years to		
805.					
1000. Reserves Deposited With Lender					
1001. Hazard Insurance	months @ \$		per month		
1002. Mortgage Insurance	months @ \$		per month		
1003. City Property Taxes	months @ \$		per month		
1004. County Property Taxes	months @ \$		per month		
1005. Annual Assessments	months @ \$		per month		
1006. School Property Taxes	months @ \$		per month		
1007.	months @ \$		per month		
1008.	months @ \$		per month		
1100. Title Charges					
1101. Settlement or Closing Fee	to			<u>\$ 52.00</u>	
1102. Abstract or Title Search	to				
1103. Title Examination	to				
1104. Title Insurance Binder	to				
1105. Document Preparation	to				
1106. Notary Fees	to			<u>\$ 15.00</u>	<u>\$ 15.00</u>
1107. Attorney's Fees	to				
(includes above items numbers: )					
1108. Title Insurance	to			<u>\$ 976.50</u>	
(includes above items numbers: )					
1109. Lender's Coverage	\$				
1110. Owner's Coverage	\$ <u>143,000.00</u>				
1111. Endorsements	100; 300; 710; 800; 801			\$	
1112. Seller's Distribution Fee					<u>\$ 15.00</u>
1113. Reimburse for U & W tax/water/sewer certifications					<u>\$ 40.00</u>
1200. Government Recording and Transfer Charges					
1201. Recording Fees: Deed \$ <u>25.00</u> ; Mortgage \$				<u>\$ 25.00</u>	
1202. City/County Tax/Stamp: Deed \$ <u>143,000.00</u> ; Mortgage \$				<u>\$ 1430.00</u>	
1203. State Tax/Stamp: Deed \$ <u>143,000.00</u> ; Mortgage \$					<u>\$ 1430.00</u>
1204. IRS Reporting Fee					<u>\$ 40.00</u>
1205.					
1300. Additional Settlement Charges					
1301. Survey	to <u>John F. Hunt Associates</u>			<u>1752.88</u>	<u>1752.88</u>
1302. Pest Inspection to					
1303. Taxes due: 1987 County & Township to <u>John F. Hunt Associates</u>					<u>1130.07</u>
1304. Seyer Rent					
1305. Deed Pre preparation to <u>William J. Major Assoc.</u>				<u>87.25</u>	<u>87.25</u>
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				<u>4566.63</u>	<u>76910.19</u>

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

Settlement Agent Chad A. Watters 87 Date

<b>EXCLUSIV RIGHT TO SELL AGREEMENT</b> <b>FOR SALE OF REAL ESTATE</b> <small>This form approved for, and restricted to their individual use by members of the Bucks County Realtors Multiple Listing Service.</small>		FOR RMLS USE ONLY <b>HE</b>	
		100% <input type="checkbox"/> IS ( ) YES ( ) NO ( ) <b>AGENT'S FEE - REALTORS</b> TOTAL SUB-AGENT FEE CODE 7% 3% D-1 PHVA ( ) PRICE CONV. (X) ASSUMPT. ( ) \$ 215,000	
NO. <b>B</b>	AREA <b>PENNSBURY</b>	SCHOOL DISTRICT <b>FALLS TWP.</b>	MUNICIPALITY <b>FALLS TWP.</b>
2. TYPE: (Circle one only)    1. SINGLE FAMILY    2. CONDOMINIUM    3. TOWNHOUSE    4. TWIN    5. FARM    6.			
3. ZONE <u>Commercial lot</u> 4. PRICE \$ <u>215,000.00</u> 5. #ST./RD. <u>Bridge Street, Morrisville</u>			
UNDER THE FOLLOWING MANDATORY CATEGORIES, CIRCLE ONE NUMBER ONLY IN EACH CATEGORY: 7. STATUS: <input checked="" type="radio"/> 10. ACTIVE <input type="radio"/> 11. TO BE BUILT <input type="radio"/> 12. UNDER AGREEMENT <input type="radio"/> 13. EXPIRED <input type="radio"/> 14. WITHDRAWN <input type="radio"/> 15. LEASED/RENTED <input type="radio"/> 16. SALE/LEASE <input type="radio"/> 17. FOR LEASE <input type="radio"/> 18. BOTH 8. APPROX. AGE: <input type="radio"/> 0. UNKNOWN <input type="radio"/> 1. ONE <input type="radio"/> 2. TWO <input type="radio"/> 3. THREE <input type="radio"/> 4. FOUR <input type="radio"/> 5. 5-10 YRS. <input type="radio"/> 6. 11-25 YRS. <input type="radio"/> 7. 26-50 YRS. <input type="radio"/> 8. 51-100 YRS. <input type="radio"/> 9. 101 YRS. AND OVER 9. BATH: <input type="radio"/> 0. NONE <input type="radio"/> 1. ONE <input type="radio"/> 2. TWO <input type="radio"/> 3. THREE OR MORE 10. BASEMENT: <input type="radio"/> 0. NONE <input type="radio"/> 1. ONE <input type="radio"/> 2. TWO <input type="radio"/> 3. FOUR OR MORE 11. BATH-FULL: <input type="radio"/> 0. NONE <input type="radio"/> 1. ONE <input type="radio"/> 2. TWO <input type="radio"/> 3. THREE OR MORE 12. BATH-HALF: <input type="radio"/> 0. NONE <input type="radio"/> 1. ONE <input type="radio"/> 2. TWO <input type="radio"/> 3. THREE OR MORE 13. BEDROOMS: <input type="radio"/> 0. NONE <input type="radio"/> 1. ONE <input type="radio"/> 2. TWO <input type="radio"/> 3. THREE <input type="radio"/> 4. FOUR <input type="radio"/> 5. FIVE <input type="radio"/> 6. SIX OR MORE 14. GARAGE CAPACITY: <input type="radio"/> 0. NONE <input type="radio"/> 1. ONE <input type="radio"/> 2. TWO <input type="radio"/> 3. THREE OR MORE 15. GARAGE TYPE: <input type="radio"/> 0. NONE <input type="radio"/> 1. ATTACHED <input type="radio"/> 2. DETACHED <input type="radio"/> 3. UNDER <input type="radio"/> 4. CARPORT 16. LOT SIZE: <input type="radio"/> 0. LESS THAN 1/4 ACRE <input type="radio"/> 1. 1/4-1/2 ACRE <input type="radio"/> 2. 1/2-1 ACRE <input type="radio"/> 3. 1-3 ACRES <input type="radio"/> 4. 3-5 ACRES <input type="radio"/> 5. 5-10 ACRES <input type="radio"/> 6. 10-19 ACRES <input type="radio"/> 7. 20 OR MORE ACRES 17. SPECIAL FINANCING: <input type="radio"/> 0. NONE <input type="radio"/> 1. YES 18. STYLE: <input type="radio"/> 0. RANCH <input type="radio"/> 1. CAFE COD <input type="radio"/> 2. B-LEVEL <input type="radio"/> 3. COLUMBIAN <input type="radio"/> 4. 2 1/2 STORY <input type="radio"/> 5. SPLIT/MULTI-LEVEL <input type="radio"/> 6. VICTORIAN <input type="radio"/> 7. CONTEMPORARY <input type="radio"/> 8. FARMHOUSE <input type="radio"/> 9. OTHER-SEE REMARKS			
22. LISTING OFFICE <u>Delaware Valley R.E.</u> LISTING AGENT <u>Phil Antolino</u> OFFICE PHONE <u>943-3131</u> 23. FEE <u>35</u> 24. REALTOR I.D. <u>06200</u> 25. LOT SIZE <u>11.57 ACES</u> 26. LISTING DATE <u>1/20/86</u> 27. EXP. DATE <u>7/20/86</u> 28. OWNER <u>Dr. Peter Casalia</u> PHONE # <u>947-5032</u> 29. MODEL    30. APPROX. AGE 31. TAX MAP NO. <u>13-28-83</u> 32. D.B.P.    33. ASSMT. <u>16,260</u> 34. APPROX. TAXES <u>\$4,315.89</u> 35. SIGN <input checked="" type="radio"/> YN    36. LOCKBOX: Y/N    37. OCCUPIED: Y/N    38. SCHOOL DIST.    39. APPROX. SQ. FT.    40. # OF RMS. 41. APPROX. SIZE: KIT.    42. DR.    43. LR.    44. FAM. RM.    45. OTHER 3. M. BR.    47. BR.    BR.    BR.    BR. 48. INSULATION: R FACTOR (NEW CONST.-MANDATORY) CEILING    WALL    FLOOR			
50. CIRCLE NUMBERS IN FRONT OF ALL THAT APPLY:			
<b>LIVING AREAS</b> A. DINING ROOM 01. Fireplace 02. Formal 03. Kitchen Comb. 04. Livingrm. Comb. 05. Familyrm. Comb. 06. Wood Stove/Other 07. Wood Floor 08. Wall-Wall Carpet 09. Chair Rail 10. Sliding Glass Door 11. Other B. FAMILY ROOM 01. Fireplace 02. Wood Stove/Other 03. Ch/Ceiling 04. Beams 05. Wood Floor 06. Wall-Wall Carpet 07. Tile 08. Sliding Glass Door 09. Paneling 10. Bar 11. Skylight 12. Other C. LAUNDRY ROOM 01. Via 02. Mudroom Comb. 03. Kitchen 04. Bath Comb. 05. Closet 06. Fireplace 07. Eatin' 08. K/L Dining Area 09. Wood Stove/Other 10. Galley 11. Pantry 12. Sliding Glass Door 13. Remodeled 14. Other D. KITCHEN 01. None 02. Open Deck 03. Covered Deck 04. Open Patio 05. Covered Patio 06. Screened Porch 07. Glass End. Porch 08. Open Breezeway 09. Enclosed Breezeway	<b>STRUCTURAL DETAILS</b> J. AUXILIARY HEAT 01. Wood Stove 02. Coal Stove 03. Wood/Coal Stove 04. FP. Whistlestator K. BASEMENT 01. None 02. Full 03. Partial 04. Crawl Space 05. Walk-out 06. Partial Finish 07. Finished 08. Sump Pump 09. Slab 10. Dirt L. DOMESTIC H/W 01. Summer/Winter 02. Elect. 03. Gas 04. Oil 05. Frame 06. Passive Solar 07. Active Solar M. EXTERIOR 01. Shakes 02. Aluminum Siding 03. Vinyl Siding 04. Frame 05. Brick 06. Stone 07. Vertical Board 08. Asbestos 09. Stucco 10. Other N. HEATING COOLING 01. Oil 02. Gas 03. Electric 04. Passive Solar 05. Active Solar 06. Hot Water 07. Forced Hot Air 08. Hot Air 09. Radiant 10. Steam 11. Heat Pump 12. Wood 13. Coal 14. Central Air 15. No Heat 16. Attic Fan 17. Window A/C Unit 18. Baseboard 19. Other	<b>MISC. CATEGORIES</b> T. EASEMENTS/RESTRICTIONS 01. Shared Drive 02. Shared Well 03. Deed 04. Other U. EXISTING FINANCING 01. Assumable 02. Conventional 03. VA 04. FHA 05. Private 06. Farm Home 07. Lease Purchase 08. Other V. EXTERIOR FEATURES 01. Above Ground Pool 02. Inground Pool 03. Cabana 04. Tennis Court 05. Storage Shed 06. Barn 07. Paddock 08. Dog Run 09. Fencing 10. Awnings 11. Dock 12. TV Antenna 13. Other W. FIREPLACE 01. Yes 02. One 03. Two 04. Three 05. Four or More 06. None X. FLOOD INS 01. Required 02. Not Required 03. Unknown Y. LATENT DEFECTS KNOWN TO OWNER 01. Yes (Call Broken) 02. None Known Z. INTERIOR FEATURES (Included In Sale) 01. Humidifier 02. De-Humidifier 03. Security System 04. Smoke/Fire/Heat 05. Air Filter System 06. Intercom 07. Central Vacuum 08. Cable TV Avail. 09. Washer 10. Dryer 11. Water Softener Owned 12. Water Softener Rented 13. Blinds/Shades 14. Drapes/Curtains 15. Rods 16. Other A. OTHER AMENITIES 01. Tenant House 02. Dead End/Cul-de-sac 03. In-Law Apartment 04. Cable TV 05. Whirlpool Tub 06. Sauna 07. Hot Tub 08. Greenhouse 09. Other B. POSSESSION 01. Immediate 02. 30 Days 03. 60 Days 04. 90 Days 05. Negotiable 06. Subject to Lease 07. C. UFFI 08. Unknown 09. Historical 10. Bus/Comm. 11. Industrial 12. Agricultural 13. Other F. AGRICULTURAL LEASE 01. Yes 02. No G. MINERAL RIGHTS 01. Included 02. Excluded	
COMPLETE ALL APPLICABLE ITEMS 51. 1st MGT. ASSUM. (Y/N)    52. ACCELERATED (Y/N)    53. QUALIFY (Y/N)    54. ASSUM. AMT. (OTL) 55. ASSUM. P & I    56. TAX ASMT.    57. MORTGAGEE    58. APPROX. MTG. BAL. 59. TYPE MTG.    60. INT. RATE    61. APPROX. REMAIN TERM.    62. MO. ASSOC./CONDO FEE 63. ASSUMABLE PAYMENT (PITI)    64. OTHER 65. APPROX. HEAT, YR.    66. APPROX. ELECT. COST, YR.    67. APPROX. SEWER COST, YR. 68. APPROX. WATER COST, YR.    69. APPROX. GAS COST, YR.    70. APPROX. TRASH REMOVAL, YR. 71. SPECIAL FINANCING			



Meridian Abstract Co., Inc.  
Agent For:  
Meridian Title Insurance Company

U.S. Department of Housing  
and Urban Development

26-28 E. Oakland Avenue  
Doylestown, PA 18901  
215-348-1848; 215-364-2652

No. 10070-86-NB  
OMB No. 2502-0265

**A. Settlement Statement**

**B. Type of Loan**

1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FmHA 3. <input type="checkbox"/> Con. Unins.	4. <input type="checkbox"/> VA 5. <input type="checkbox"/> Conv. Ins.	6. File Number 10070-86-NB	7. Loan Number	8. Mortgage Insurance Case Number
--	---	-------------------------------	----------------	-----------------------------------

**C. Note:** This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

<b>D. Name and Address of Borrower</b> JOHN POZSGAI AND GIZELLA POZSGAI, HIS WIFE	<b>E. Name and Address of Seller</b> FRANCES CASSALIA, PETER CASSALIA AND ALAN B. CASSALIA	<b>F. Name and Address of Lender</b>
---	---	--------------------------------------

<b>G. Property Location</b> WEST BRIDGE STREET FALLS TOWNSHIP BUCKS COUNTY, PA	<b>H. Settlement Agent</b> CAROL WATKINS Place of Settlement DEL VAL REAL ESTATE LEVITTOWN, PA	<b>I. Settlement Date</b> June 19, 1987
---	--	--

<b>J. Summary of Borrower's Transaction</b>		<b>K. Summary of Seller's Transaction</b>	
100. Gross Amount Due From Borrower		400. Gross Amount Due To Seller	
101. Contract Sales Price	143,000.00	401. Contract Sales Price	143,000.00
102. Personal Property		402. Personal Property	
103. Settlement Charges To Borrower (line 1400)	4566.63	403.	
104.		404.	
105.		405.	
<b>Adjustments For Items Paid By Seller In Advance</b>		<b>Adjustments For Items Paid By Seller In Advance</b>	
106. City/Town Taxes		406. City/Town Taxes	
107. County Taxes		407. County Taxes	
108. Assessments		408. Assessments	
109. School Taxes		409. School Taxes	
110. Water Rent		410. Water Rent	
111. Sewer Rent		411. Sewer Rent	
112.		412.	
120. Gross Amount Due From Borrower	145,566.63	420. Gross Amount Due To Seller	143,000.00
200. Amounts Paid By Or In Behalf Of Borrower		500. Reductions In Amount Due To Seller	
201. Deposit or Earnest Money	14,000.00	501. Excess Deposit (see Instructions)	
202. Principal Amount Of New Loan(s)		502. Settlement Charges To Seller (line 1400)	10,910.19
203. Existing Loan(s) Taken Subject To		503. Existing Loan(s) Taken Subject To	
204.		504. Payoff Of First Mortgage Loan	
205.		505. Payoff Of Second Mortgage Loan	
206.		506.	
207.		507.	
208.		508. ESCROW FOR:	
209.		509.	
<b>Adjustments For Items Unpaid By Seller</b>		<b>Adjustments For Items Unpaid By Seller</b>	
210. City/Town Taxes		510. City/Town Taxes	
211. County Taxes		511. County Taxes	
212. Assessments		512. Assessments	
213. School Taxes		513. School Taxes	
214. Water Rent		514. Water Rent	
215. Sewer Rent		515. Sewer Rent	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower	14,000.00	520. Total Reduction Amount Due Seller	10,910.19
300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross Amount Due From Borrower (line 120)	145,566.63	601. Gross Amount Due To Seller (line 420)	143,000.00
302. Less Amounts Paid By/For Borrower (line 220)	(14,000.00)	602. Less Reductions in Amt. Due Seller (line 520)	(10,910.19)
303. Cash	131,566.63	603. Cash	132,089.81

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

S.S.# \_\_\_\_\_ (Purchaser) *John Pozsgai*  
 \_\_\_\_\_ (Purchaser) *Gizella Pozsgai*  
 \_\_\_\_\_ (Purchaser) *536 W. Bridge St. Doylestown, PA 18901*  
 ADDRESS \_\_\_\_\_  
 WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

FILE # 10070-86-NB

L. Settlement Charges				Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales/Broker's Commission Based on Price \$ <u>as agreed</u> @ <u>  </u> %					
Division of Commission (line 700) As Follows:					
701. \$ <u>6400.00</u>	to	<u>Bellevue Valley Real Estate</u>			
702. \$	to				
703. Commission Paid At Settlement					<u>6400.00</u>
704. Brokers Services/ Deed Preparation				<u>236.00</u>	
800. Items Payable In Connection With Loan					
801. Loan Origination Fee	%				
802. Loan Discount	%				
803. Appraisal Fee	to				
804. Credit Report	to				
805. Lender's Inspection Fee					
806. Mortgage Insurance Application Fee to					
807. Assumption Fee					
808.					
809.					
810.					
811.					
900. Items Required By Lender To Be Paid In Advance					
901. Interest from	to	@ \$	/day		
902. Mortgage Insurance Premium for			months to		
903. Hazard Insurance Premium for			years to		
904.			years to		
905.					
1000. Reserves Deposited With Lender					
1001. Hazard Insurance	months @ \$		per month		
1002. Mortgage Insurance	months @ \$		per month		
1003. City Property Taxes	months @ \$		per month		
1004. County Property Taxes	months @ \$		per month		
1005. Annual Assessments	months @ \$		per month		
1006. School Property Taxes	months @ \$		per month		
1007.	months @ \$		per month		
1008.	months @ \$		per month		
1100. Title Charges					
1101. Settlement or Closing Fee	to			<u>\$50.00</u>	
1102. Abstract or Title Search	to				
1103. Title Examination	to				
1104. Title Insurance Binder	to				
1105. Document Preparation	to				
1106. Notary Fees	to			<u>\$15.00</u>	<u>\$15.00</u>
1107. Attorney's Fees	to				
(includes above items numbers)					
1108. Title Insurance	to			<u>\$976.50</u>	
(includes above items numbers)					
1109. Lender's Coverage	\$				
1110. Owner's Coverage	\$ <u>1430.00</u>				
1111. Endorsements	100; 300; 710; 800; 801			\$	
1112. Seller's Distribution Fee					<u>\$15.00</u>
1113. Reimburse for U & G Tax/Water/sewer certifications					<u>\$40.00</u>
1200. Government Recording and Transfer Charges					
1201. Recording Fees: Deed \$ <u>25.00</u> ; Mortgage \$			Releases \$	<u>\$25.00</u>	
1202. City/County Tax/Stamp: Deed \$ <u>1430.00</u> ; Mortgage \$				<u>1430.00</u>	
1203. State Tax/Stamp: Deed \$ <u>1430.00</u> ; Mortgage \$				\$	<u>\$1430.00</u>
1204. IRS Reporting Fee					<u>\$40.00</u>
1205.					
1300. Additional Settlement Charges					
1301. Survey	to	<u>6700.00</u>		<u>1752.88</u>	<u>1752.88</u>
1302. Pest Inspection to					
1303. Taxes	<u>Due: 1987 County &amp; Township to Jan. 1st 1988</u>				<u>1130.00</u>
1304. Sewer Rent					
1305. <u>Deed Pre preparation to William H. Major Assoc.</u>				<u>87.25</u>	<u>87.25</u>
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				<u>4566.63</u>	<u>70910.19</u>

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

Settlement Agent Charles W. Watters Date 87

before me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, the  
the John D. Farber and Rosa J. Farber, his wife, personally appeared the above-named John D. Farber  
and in due form of law acknowledged the above  
INDENTURE to be their act and deed, and desired the same might be  
recorded as such.  
Witness my hand and Notarial seal the day and year aforesaid.

*Charles J. Schuster*  
Notary Public, Philadelphia, Philadelphia Co.  
My Commission Expires May 1, 1961

The address of the above-named Grantee  
is 1200 N. 1st St., Phila., Pa.  
John C. Clark  
On behalf of the Grantee

**DEED**

JOHN D. FARBER ET UX to ALAN B. CASSIDY

Premises: 15.944 Acres  
1200 N. 1st St., Phila., Pa.

712 John C. Clark Co., Inc. 643

**Recorded** in the office for recording of deeds in and for Bucks County  
in Deed Book No. 1772 page 761 &c.  
Witness my hand and seal of office this 5th, day of  
August Anno Domini 1961

*Donald J. Gimmann*  
RECORDER

D1772- 764

Aug 5 1 08 PM '61

7971 Volume 1772

013088

For Sample Book No. 2118

Printed for and sold by John C. Clark Co., Philadelphia, Pa.

**This Indenture** Made the 29th day of December in the year of our Lord one thousand nine hundred and Sixty-nine (1969)

**Between** BENNY CASSALIA, and FRANCES CASSALIA, his wife, of the City of Philadelphia, Commonwealth of Pennsylvania,

(hereinafter called the Grantor S), of the one part, and  
FRANCES CASSALIA, PETER CASSALIA, and ALAN B. CASSALIA, (Mother and two sons),

(hereinafter called the Grantee S), of the other part,

**Witnesseth** That the said Grantor S for and in consideration of the sum of One dollar

lawful money of the United States of America, unto them well and truly paid by the said Grantee S, at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained and sold, released and confirmed, and by these presents do grant, bargain and

sell, release and confirm unto the said Grantee S, their heirs and assigns, As Tenants in Common

ALL THAT CERTAIN tract or piece of ground, Situate in the Borough of Morrisville, and Township of Falls, County of Bucks and State of Pennsylvania, bounded and described according to a Survey of Harry H. Lee Jr., Registered Surveyor, as follows:-

BEGINNING at a point in the Southerly line of West Bridge Street at the Northeast corner of land recently conveyed to Herman Brownstein, said point being distant in an Easterly direction 600 feet from the Northerly corner of land now owned by the Penna. Railroad Company, and running thence (1) North Fifty-two degrees, 51 minutes East 621.75 feet along the Southerly line of West Bridge Street to a point in the middle of a concrete culvert, thence (2) South 35 degrees, 57 minutes East 377.6 feet along remaining land of the grantors, to a corner; thence (3) North 51 degrees 3 minutes East 72.3 feet along remaining land of the grantors to a stone monument at the North-west corner of Lot No. 266 in the Southerly line of Woodland Avenue, thence (4) South 35 degrees, 57 minutes East 360 feet along the Westerly line of Lot No. 266 and the Westerly line of tract No. 4 to a stone monument, thence (5) South 51 degrees, 3 minutes West 1099.6 feet along land now or formerly owned by the Pennsylvania Railroad Company to a corner; thence (6) North 65 degrees, 5 minutes 30 seconds West 301.02 feet along land of the Penna. Railroad Company to the Southerly corner of land now owned by Rose Mann, thence (7) North 52 degrees 51 minutes East 61.32 feet along the Southerly line of land now owned by Rose Mann to a point in the Westerly line of land now owned by Herman Brownstein, thence (8) South 37 degrees 0 minutes East 10 feet along said Brownstein's land to a corner, thence (9) North 52 degrees 51 minutes East 300 feet along said Brownstein's land to a corner, thence (10) North 37 degrees 9 minutes West 160 feet along said Brownstein's land to the point and place of beginning.

Containing 15.944 acres of land.

Excepting thereout and therefrom a piece of ground containing in front or breadth on West Bridge Street approximately 28 feet and extending in length or depth 10 feet, being the most Northeasterly corner of the above described tracts of land.

BOOK 1960 PAGE 1184

Fee Simple Deed No. 752-S

Printed for and Sold by John C. Clark Co., 1326 Walnut St., Phila.

# This Indenture Made the 19th day of

June in the year of our Lord one thousand nine hundred and Eighty-seven (1987)

## Between

Frances Cassalia, Peter Cassalia and Alan B. Cassalia

(hereinafter called the Grantors), of the one part, and

John Pozagai and Gizella Pozagai, husband and wife

(hereinafter called the Grantees), of the other part.

## Witnesseth That the said Grantor s

for and in consideration of the sum of One Hundred Forty-three Thousand Dollars (\$143,000.00) lawful money of the United States of America, unto them well and truly paid by the said Grantees, at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained and sold, released and confirmed, and by these presents do grant, bargain and sell, release and confirm unto the said Grantee s, their heirs and assigns, as Tenants by the Entireties.

ALL THAT CERTAIN lot or tract of ground, Situate partly in the Township of Falls and partly in the Borough of Morrisville and described according to a certain Plan thereof known as Survey Plan prepared for John Pozagai, made by Ezra Golub Assoc., Engineers & Surveyors, dated May 27, 1987, as follows, to wit:

BEGINNING at a point on the Southeasterly side of West Bridge Street (50.00 feet wide) at a corner of lands now or late of Julian & Genevieve Yakelevicz; thence extending from said point of beginning along the said Yakelevicz's land the two following courses and distances: (1) South 35 degrees, 57 minutes, 00 seconds East; 377.60 feet to an iron pin and (2) North 54 degrees, 03 minutes, 00 seconds East; 72.80 feet to an iron pin, a corner of lands now or late of Pranab Goswami; thence extending along the same South 35 degrees, 57 minutes, 00 seconds East; 360.00 feet to an iron pin in line of lands now or late of Penncentral Corp.; thence extending along the same, South 54 degrees, 03 minutes, 00 seconds West; 55.54 feet to an iron pin in line of lands now or late of Falls Township Partnership; thence extending along the same the two following courses and distances: (1) North 39 degrees, 00 minutes, 00 seconds West, 1.28 feet to an iron pin and (2) South 53 degrees, 57 minutes, 52 seconds West, 857.74 feet to an iron pin; thence extending North 34 degrees, 17 minutes, 37 seconds West, 258.56 feet to an iron pin; thence extending North 28 degrees, 40 minutes, 34 seconds West, 426.41 feet to an iron pin; thence extending in a Northerly direction on the arc of a circle curving to the right having a radius of 35.00 feet the arc distance of 49.80 feet to an iron pin; thence extending North 37 degrees, 09 minutes, 00 seconds West, 10.00 feet to an iron pin on the Southeasterly side of West Bridge Street; thence extending along the same North 52 degrees, 51 minutes, 00 seconds East, 745.47 feet to the first mentioned point and place of beginning.

CONTAINING 14.23 acres.

BEING part of the same premises which Benny Cassalia and Frances Cassalia, his

02758-0857



## BUCKS COUNTY CONSERVATION DISTRICT

100 Mechanic St., 2nd Floor  
DOYLESTOWN, PENNSYLVANIA 18901

Phone: (215) 345-7577

CERTIFIED MAIL #P-624-209-735  
RETURN RECEIPT REQUESTED

January 7, 1988

Mr. John Poszgai  
536 W. Bridge Street  
Morrisville, PA 19067

SUBJECT: NOTICE OF ADMINISTRATIVE HEARING/MEETING FOR VIOLATIONS  
EARTH DISTURBANCE ACTIVITY  
POSZGAI TRACT

Bucks County  
Falls Township

File No. 09-88-03  
Inspections: 11-19-87  
12-1-87

PROJECT DESCRIPTION & LOCATION: A 17-acre site known as the POSZGAI TRACT is located on River Road, Bridge Street, Falls Township. The site drains to a tributary of Rock Run Creek, a water of the Commonwealth.

LANDOWNER AND/OR  
RESPONSIBLE OFFICIAL

John Poszgai

Inspection of earthmoving activities being conducted at the above project site has revealed that erosion and sediment controls at the site are not adequate to meet the requirements of the Pennsylvania Department of Environmental Resources (Pa.DER) Erosion Control Regulations contained in 25 PA Code §102.1 et. seq. and adopted under authority of the Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §691.402. Specifically, the following violations of the Erosion Control Regulations have been identified at the referenced site:

Failure to develop, implement and maintain an erosion and sedimentation control plan as described in 25 PA Code 102.4. (102.5(a,b)).

Failure to prevent sediment pollution to waters of the Commonwealth as described in Section 401 of the Clean Streams Law. (691.401).

**1040** Department of the Treasury—Internal Revenue Service **1986**

OMB No. 1545-0074

For the year January 1-December 31, 1986, or other tax year beginning 1986, ending 19

**1** Your first name and initial (if joint return, also give spouse's name and initial) **JOHN & GIZELLA POZSGAI** Last name **POZSGAI** Your social security number **123-45-6789**

**2** Present home address (number and street or rural route). (If you have a P.O. Box, see page 4 of instructions.) **535 W. BRIDGE ST. MORRISVILLE PA 19067** Spouse's social security number **987-65-4321**

**3** City, town or post office, state, and ZIP code **MORRISVILLE PA 19067** If this address is different from the one shown on your 1985 return, check here ☐

**4** Do you want \$1 to go to this fund? **Yes** ☒ **No** ☐ (Note: Checking "Yes" and not changing your tax or reducing your refund will result in a refund of \$1 to the fund.)

**5** If joint return, does your spouse want \$1 to go to this fund? **Yes** ☒ **No** ☐ (Note: Checking "Yes" and not changing your tax or reducing your refund will result in a refund of \$1 to the fund.)

**Filing Status**

**1** ☒ **Single**

**2** ☒ **Married filing joint return (even if only one had income)**

**3** ☐ **Married filing separate returns. Enter spouse's social security no. above and full name here.**

**4** ☐ **Head of household (with qualifying person). (See page 5 of instructions.) If the qualifying person is your unmarried child but not your dependent, enter child's name here.**

**5** ☐ **Qualifying widow(er) with dependent child (year spouse died > 19 ). (See page 6 of instructions.)**

**Exemptions**

**6a** ☒ **Yourself** ☐ **65 or over** ☐ **Blind** Enter number of boxes checked on 6a and b **2**

**b** ☒ **Spouse** ☐ **65 or over** ☐ **Blind** Enter number of boxes checked on 6a and b **0**

**c** First names of your dependent children who lived with you **0**

**d** First names of your dependent children who did not live with you (see page 6). **0**

**e** Other dependents: (1) Name (2) Relationship (3) Number of months lived in your home (4) Did dependent have income of \$1,080 or more? (5) Did you provide more than one-half of dependent's support? Enter number of other dependents listed on 6d **0**

**f** Total number of exemptions claimed (also complete line 36) **2**

**Income**

**7** Wages, salaries, tips, etc. (attach Form(s) W-2) **1309**

**8** Interest income (also attach Schedule B if over \$400) **0**

**9a** Dividends (also attach Schedule B if over \$400) **0**

**9b** Exclusion **0**

**c** Subtract line 9b from line 9a and enter the result **0**

**10** Taxable refunds of state and local income taxes, if any, from the worksheet on page 9 of instructions. **0**

**11** Alimony received **0**

**12** Business income or (loss) (attach Schedule C) **29888**

**13** Capital gain or (loss) (attach Schedule D) **0**

**14** 40% of capital gain distributions not reported on line 13 (see page 9 of instructions) **0**

**15** Other gains or (losses) (attach Form 4797) **0**

**16** Fully taxable pensions, IRA distributions, and annuities not reported on line 17 (see page 9) **0**

**17a** Other pensions and annuities, including rollovers. Total received **0**

**b** Taxable amount, if any, from the worksheet on page 10 of instructions **0**

**18** Rents, royalties, partnerships, estates, trusts, etc. (attach Schedule E) **3917**

**19** Farm income or (loss) (attach Schedule F) **0**

**20a** Unemployment compensation (insurance). Total received **0**

**b** Taxable amount, if any, from the worksheet on page 10 of instructions **0**

**21a** Social security benefits (see page 10). **0**

**b** Taxable amount, if any, from worksheet on page 11. **0**

**22** Other income (list type and amount—see page 11 of instructions) **0**

**23** Add the amounts shown in the far right column for lines 7 through 22. This is your total income **35008**

**Adjustments to Income**

**24** Moving expenses (attach Form 3903 or 3903F) **0**

**25** Employee business expenses (attach Form 2106) **0**

**26** IRA deduction, from the worksheet on page 12 **0**

**27** Keogh retirement plan and self-employed SEP deduction **0**

**28** Penalty on early withdrawal of savings **0**

**29** Alimony paid (recipient's tax return) **0**

**30** Deduction for a married couple when both work (attach Schedule W) **0**

**31** Add lines 24 through 30. These are your total adjustments **0**

**Adjusted Gross Income** **35008**

Form 1040 (1986)		POZSGAI		135-32-7859		Page 2	
<b>Tax Computation</b>		33	Amount from line 32 (adjusted gross income)	33	35008		
34a If you itemize, attach Schedule A (Form 1040) and enter the amount from Schedule A, line 26.		34a		34a	0		
Caution: If you have unearned income and can be claimed as a dependent on your parents' return, see page 13 of Instructions and check here <input type="checkbox"/> . Also see page 13 if you are married (filing a separate return and your spouse itemizes deductions, or you are a dual-status alien).							
b If you do not itemize but you made charitable contributions, enter your cash contributions here. (If you gave \$3,000 or more to any one organization, see page 14.)		34b		34b			
c Enter your noncash contributions (you must attach Form 8283 if over \$500)		34c		34c			
d Add lines 34b and 34c. Enter the total		34d		34d			
35 Subtract line 34a or line 34d, whichever applies, from line 33		35		35	35008		
36 Multiply \$1,063 by the total number of exemptions claimed on line 5f (see page 14)		36		36	2160		
37 Taxable income. Subtract line 36 from line 35. Enter the result (but not less than zero)		37		37	32848		
38 Enter tax here. Check if from <input type="checkbox"/> Tax Table, <input type="checkbox"/> Tax Rate Schedule X, Y, or Z, or <input type="checkbox"/> Schedule G		38		38	2824		
39 Additional taxes (see page 14 of Instructions). Enter here and check if from <input type="checkbox"/> Form 4970, <input type="checkbox"/> Form 4972, or <input type="checkbox"/> Form 5544		39		39			
40 Add lines 38 and 39. Enter the total		40		40	2824		
<b>Credits</b>							
41 Credit for child and dependent care expenses (attach Form 2441)		41	0	41	0		
42 Credit for the elderly or for the permanently and totally disabled (attach Schedule R)		42	0	42	0		
43 Partial credit for political contributions for which you have receipts		43	0	43	0		
44 Add lines 41 through 43. Enter the total		44		44	0		
45 Subtract line 44 from line 40. Enter the result (but not less than zero)		45		45	2824		
46 Foreign tax credit (attach Form 1116)		46	0	46	0		
47 General business credit. Check if from <input type="checkbox"/> Form 3800, <input type="checkbox"/> Form 3438, <input type="checkbox"/> Form 5634, <input type="checkbox"/> Form 6478, or <input type="checkbox"/> Form 6765		47	0	47	0		
48 Add lines 46 and 47. Enter the total		48		48	0		
49 Subtract line 48 from line 45. Enter the result (but not less than zero)		49		49	2824		
<b>Other Taxes</b>							
50 Self-employment tax (attach Schedule SE)		50		50	3675		
51 Alternative minimum tax (attach Form 6251)		51	0	51	0		
52 Tax on recapture of investment credit (attach Form 4255)		52	0	52	0		
53 Social security tax on tip income not reported to employer (attach Form 4137)		53	0	53	0		
54 Tax on 529 IRA (attach Form 5329)		54	0	54	0		
55 Add lines 49 through 54. This is your total tax		55		55	6499		
<b>Payments</b>							
56 Federal income tax withheld		56	0	56	0		
57 1986 estimated tax payments and amount applied from 1985 return		57	3360	57	3360		
58 Earned income credit (see page 16)		58	0	58	0		
59 Amount paid with Form 4868		59	0	59	0		
60 Excess social security tax and RRTA tax withheld (two or more employers)		60	0	60	0		
61 Credit for Federal tax on gasoline and special fuels (attach Form 4138)		61	0	61	0		
62 Regulated investment company credit (attach Form 2439)		62	0	62	0		
63 Add lines 56 through 62. These are your total payments		63		63	3360		
<b>Refund or Amount You Owe</b>							
64 If line 63 is larger than line 55, enter amount OVERPAID		64	0	64	0		
65 Amount of line 64 to be REFUNDED TO YOU		65	0	65	0		
66 Amount of line 64 to be applied to your 1987 estimated tax		66	0	66	0		
67 If line 55 is larger than line 63, enter AMOUNT YOU OWE. Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number, daytime phone number, and "1986 Form 1040" on it		67		67	3139		
Check <input type="checkbox"/> if Form 2210 (2210-7) is attached. See page 17. Penalty \$							
Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.							
<b>Please Sign Here</b>		Your signature		Date	Your occupation		
		03-31-1987		03-31-1987			
		Spouse's signature (if joint return, BOTH must sign)		Date	Spouse's occupation		
		03-31-1987		03-31-1987	HOMEMAKER		
<b>Paid Preparer's Use Only</b>		Preparer's signature		Date	Preparer's social security no.		
		David J. DeImore		03-31-1987	63-2228661		
		Firm's name (or yours, if self-employed) and address		ZIP code 9056			



<b>2210</b> Department of the Treasury Internal Revenue Service (25)	<b>Underpayment of Estimated Tax by Individuals</b> ▶ See separate instructions ▶ Attach to Form 1040	OMB No. 1545-0140 <b>1986</b> Attachment Sequence No. 56
Name(s) as shown on Form 1040: <u>POZSGA</u>		Social security number: <u>[REDACTED]</u>

**Part I Figuring Your Underpayment**

1 1986 tax after credits (from Form 1040, line 49) . . . . .	1	2824
2 Other taxes (see instructions). . . . .	2	3675
3 Add lines 1 and 2. . . . .	3	6499
4 Earned income credit . . . . .	4	
5 Credit for Federal tax on gasoline and special fuels . . . . .	5	
6 Credit for overpaid windfall profit tax attributable to amounts withheld . . . . .	6	
7 Add lines 4, 5, and 6. . . . .	7	—
8 Subtract line 7 from line 3. . . . .	8	6499
9 Multiply line 8 by 80% (.80) . . . . .	9	5199
10 Withholding taxes from 1986 Form 1040, lines 56 and 60. (Include any credit from Form 4469.) . . . . .	10	—
11 Subtract line 10 from line 9. If the result is less than \$500, do not complete rest of form . . . . .	11	6499
12 Enter your 1985 tax (see instructions). . . . .	12	0-
13 Enter the smaller of line 9 or line 12 . . . . .	13	0-

	Payment Due Dates			
	(a) Apr. 15, 1986	(b) June 15, 1986	(c) Sept. 15, 1986	(d) Jan. 15, 1987
14 Divide line 13 by four (4) and enter the result in each column. However, if you use the annualized income installment method, complete the worksheet in the instructions and enter the amount from line 26 in each column of line 14 . . . . .	14 <i>tax liability in</i>			
15 Estimated tax paid and tax withheld. (For column (a) only, enter the amount from line 15 on line 19) . . . . .	15 <i>1985 was 0-</i>			
16 Enter amount, if any, from line 22 of previous column . . . . .	16 <i>86 payment was</i>			
17 Add lines 15 and 16 . . . . .	17 <i>above this amount</i>			
18 Add amounts on lines 20 and 21 of the previous column and enter the result . . . . .	18 <i>Penalty waived</i>			
19 Enter line 17 minus line 18. If zero or less, enter zero. (For column (a) only, enter the amount from line 15). . . . .				
20 Remaining underpayment from previous period. If the amount on line 19 is zero, enter line 18 minus line 17 . . . . .				
21 UNDERPAYMENT. If line 14 is larger than or equal to line 19, enter line 14 minus line 19. Then go to line 15 of next column. Otherwise, go to line 22 . . . . .				
22 OVERPAYMENT. If line 19 is larger than line 14, enter line 19 minus line 14. Then go to line 15 of next column . . . . .				

For Paperwork Reduction Act Notice, see page 1 of separate instructions. Form 2210 (1986)





47  
JOHN PODSGAI  
GIZELLA PODSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

PAGE
1
STATEMENT DATE
02/11/86

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NOW CHECKING				SS									
LAST STATEMENT DATE		BEGINNING BALANCE		DEPOSITS/ADDITIONS NUMBER AMOUNT		CHECKS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE					
01/10/86		10,588.52		10,365.92		47 12,263.38		6,691.06					
DEPOSITS AND ADDITIONS		DATE	REF NO.	AMOUNT	DESCRIPTION								
		01/14	20739622	668.46	DEPOSIT								
		01/21	20929201	500.00	DEPOSIT								
		01/21	21118157	872.70	DEPOSIT								
		01/23	20616387	900.00	DEPOSIT								
		01/23	20717510	1,053.87	DEPOSIT								
		01/27	20431736	861.60	DEPOSIT								
		01/30	20435771	700.00	DEPOSIT								
		02/03	20719481	670.00	DEPOSIT								
		02/10	10316455	2,105.00	DEPOSIT								
		02/11		34.29	INTEREST								
		CHECKS		DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.
01/13	20132098			2621	397.90	01/27	10102960	2640	90.50	01/31	20511239	2659*	100.00
01/14	20327423			2623	72.67	01/28	20127726	2641	5.00	01/28	20704388	2660	1,495.00
01/13	20617222			2624	1,495.00	01/21	21000578	2642	200.00	02/03	10023653	2661	95.00
01/14	20218935			2626	19.79	01/28	20115151	2643	161.70	01/30	20011150	2662	119.31
01/14	20803203			2627	200.00	01/30	20009640	2644	24.00	02/04	20030463	2663	62.28
01/14	20115175			2628	125.90	01/24	20525487	2645	304.53	02/04	20030326	2664	19.79
01/16	20026204			2629	362.00	01/29	20124809	2646	148.58	02/07	20122877	2665	356.88
01/21	20103500			2630	411.00	01/27	10121375	2647	111.39	02/06	20052669	2666	25.84
01/16	20017886			2631	300.00	01/27	10121377	2648	78.38	02/05	20039238	2667	479.00
01/21	20016556			2632	332.00	01/27	20509813	2649	248.82	02/05	20025224	2668	61.53
01/17	20224701			2633	200.00	01/27	10126363	2650	117.87	02/03	20719555	2670*	600.00
01/23	20030735	2635	500.00	01/30	20020442	2651	27.10	02/04	20014316	2672	50.83		
01/29	20210020	2636	350.00	02/06	20107403	2652	37.99	02/07	20227591	2673	403.00		
01/22	10103974	2637	19.79	01/28	20101800	2655*	19.79	02/11	20217474	2675*	19.79		
01/21	21328324	2638	500.00	01/28	20259352	2656	56.00	02/11	20215933	2678*	741.43		
01/22	10226124	2639	215.00	01/27	20228740	2657	500.00						
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS													
DAILY BALANCE SUMMARY		DATE	BALANCE		DATE	BALANCE		DATE	BALANCE				
		01/13	8,695.62		01/24	8,926.97		02/04	6,677.23				
		01/14	8,944.72		01/27	8,641.61		02/05	6,589.86				
		01/16	8,282.72		01/28	6,904.12		02/06	6,072.87				
		01/17	8,082.72		01/29	6,405.54		02/07	5,312.99				
		01/21	8,012.42		01/30	6,935.13		02/10	7,417.99				
		01/22	7,777.63		01/31	6,835.13		02/11	6,691.06				
01/23		9,231.50		02/03	6,810.13								
INTEREST PAID YEAR-TO-DATE				41.42									

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

42  
JOHN POZSGAI  
GIZELLA POZSGAI  
538 BRIDGE ST W  
MORRISVILLE PA 19067



PAGE
1
STATEMENT DATE
03/11/86

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NOW CHECKING				DEPOSITS/ADDITIONS				CHECKS/DEDUCTIONS				SS
LAST STATEMENT DATE		BEGINNING BALANCE		NUMBER		AMOUNT		NUMBER		AMOUNT		ENDING BALANCE
02/11/86		6,691.06		12		10,124.79		42		7,003.53		9,812.32
DEPOSITS AND ADDITIONS												
DATE	REF. NO.	AMOUNT		DESCRIPTION								
02/13	21022927	1,500.00		DEPOSIT								
02/18	21107301	600.00		DEPOSIT								
02/24	21117999	150.00		DEPOSIT								
02/24	21118064	230.84		DEPOSIT								
02/26	20506308	505.00		DEPOSIT								
03/03	21017852	1,607.32		DEPOSIT								
03/04	20314737	2,296.77		DEPOSIT								
03/06	20432008	750.00		DEPOSIT								
03/10	02700215	1,000.00		WIRE TRANSFER CREDIT								
03/10	20911953	250.00		DEPOSIT								
03/11	20819337	1,207.10		DEPOSIT								
03/11		27.76		INTEREST								
DEDUCTIONS												
DATE	REF. NO.	AMOUNT		DESCRIPTION								
03/10	20718642	6.50		DEBIT MEMO								
CHECKS												
DATE	REF. NO.	CHECK NO.	AMOUNT	DATE	REF. NO.	CHECK NO.	AMOUNT	DATE	REF. NO.	CHECK NO.	AMOUNT	
02/20	20203052	2653	70.99	02/18	21128673	2688	400.00	03/06	20112304	2707	94.21	
02/13	20213989	2654	7.00	02/19	20625385	2690*	66.54	03/07	20039905	2708	60.59	
02/13	20204368	2658*	365.00	02/25	20431933	2691	248.82	03/08	20039047	2709	140.25	
02/13	20225769	2674*	80.00	02/20	20416803	2692	62.01	03/03	20529960	2711*	170.00	
02/19	20138447	2676*	294.21	02/25	20120238	2693	19.79	03/03	20529825	2712	500.00	
02/13	20225729	2677	208.00	02/24	21118068	2695*	480.00	03/08	20113468	2713	94.71	
02/18	20230637	2679*	19.92	02/25	20001841	2697*	82.23	03/05	20102884	2715*	880.00	
02/19	20138446	2681*	274.44	02/26	20206136	2699*	200.00	03/05	20513678	2716	40.00	
02/14	10327586	2682	100.00	03/03	20233453	2700	25.00	03/07	20031228	2717	114.87	
02/18	20210373	2683	393.08	02/28	20420113	2702*	200.00	03/06	20435654	2718	40.00	
02/20	20024840	2684	19.79	03/04	10026305	2703	19.79	03/11	20114586	2720*	19.93	
02/18	20115012	2685	50.00	03/05	20025151	2704	300.00	03/10	10347995	2722*	400.00	
02/18	21129553	2686	114.48	03/06	20106258	2705	9.81	03/11	20633009	2723*	182.50	
02/19	20203353	2687	100.00	03/06	20110359	2706	146.67					
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS												
DAILY BALANCE SUMMARY												
DATE	BALANCE		DATE	BALANCE		DATE	BALANCE		DATE	BALANCE		
02/13	7,851.06		02/25	6,065.60		03/05	7,792.79					
02/14	7,751.06		02/26	6,370.60		03/06	8,111.84					
02/18	7,373.59		02/28	6,170.60		03/07	7,936.38					
02/19	6,638.39		03/03	7,082.92		03/10	8,779.88					
02/20	6,485.60		03/04	9,359.90		03/11	9,812.32					
02/24	6,416.44											
INTEREST PAID YEAR-TO-DATE				69.18								

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



42  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

PAGE	1
STATEMENT DATE	04/09/86

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NOW CHECKING				SS				
LAST STATEMENT DATE		BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER	AMOUNT	CHECKS/DEDUCTIONS NUMBER	AMOUNT	ENDING BALANCE	
03/11/86		9,812.32	8	9,082.77	42	10,764.99	8,130.10	
DEPOSITS AND ADDITIONS	DATE	REF. NO.	AMOUNT	DESCRIPTION				
	03/13	20618466	2,733.14	DEPOSIT				
	03/18	20913172	2,400.00	DEPOSIT				
	03/24	20419809	405.54	DEPOSIT				
	03/26	20425561	674.55	DEPOSIT				
	03/31	20315011	1,836.30	DEPOSIT				
	04/04	20414098	429.00	DEPOSIT				
	04/07	20709009	568.11	DEPOSIT				
	04/09		35.73	INTEREST				
CHECKS	DATE	REF. NO.	CHECK NO.	AMOUNT	DATE	REF. NO.	CHECK NO.	AMOUNT
	03/12	20037858	2719	27.74	03/18	20515148	2737	90.00
	03/12	20107223	2721*	19.75	04/04	20030861	2738	301.04
	03/17	20108449	2724*	50.00	03/24	20027327	2740*	19.75
	03/12	20502736	2726*	1,495.00	03/26	20120700	2741	143.37
	03/14	10001346	2727	50.38	03/24	20412700	2742	255.64
	03/12	20021584	2728	1,500.00	03/25	20008711	2743	100.85
	03/14	10012572	2729	337.40	03/26	20114523	2744	94.89
	03/17	20116368	2730	741.05	03/31	10509115	2745	128.33
	03/18	20034074	2731	685.99	03/24	20624655	2748*	400.00
	03/17	10137992	2732	124.41	03/25	20723670	2749	379.29
	03/21	20134561	2733	251.45	03/27	10006643	2750	106.47
	03/17	20031474	2734	407.62	04/02	20005177	2751	68.53
	03/19	20103425	2735	19.79	03/26	20425409	2752	97.43
	03/18	20013683	2736	65.95	03/31	10206806	2753	400.00
					04/07	20934904	2771	200.00
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS								
DAILY BALANCE SUMMARY	DATE	BALANCE	DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
	03/12	6,769.83	03/24	9,053.08	04/02	9,528.04		
	03/13	9,502.97	03/25	8,572.54	04/03	8,526.04		
	03/14	9,399.19	03/26	8,912.20	04/04	8,356.00		
	03/17	8,036.11	03/27	8,805.73	04/07	8,422.11		
	03/18	9,594.17	03/31	9,772.48	04/08	8,319.37		
	03/19	9,574.38	04/01	9,722.48	04/09	8,130.10		
	03/21	9,322.83						
INTEREST PAID YEAR-TO-DATE			104.91					

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



0  
JOHN POZSGAI  
GIZELLA POZSGAI  
538 BRIDGE ST W  
MORRISVILLE PA 19067

PAGE
1
STATEMENT DATE
04/23/86

FOR CUSTOMER SERVICE  
CALL (800) 222-0246

PERSONAL MONEY MKT INVESTMENT						SS#
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER	AMOUNT	CHECKS/DEDUCTIONS NUMBER	AMOUNT	ENDING BALANCE
03/25/86	26,383.06	1	126.93	0	.00	26,509.99
DEPOSITS AND ADDITIONS	DATE	REF NO	AMOUNT	DESCRIPTION	DATE	BALANCE
DAILY	04/23		126.93	INTEREST		
BALANCE	04/23		26,509.99			
SUMMARY	04/23		549.80			
INTEREST PAID YEAR-TO-DATE			6.23	RATE EARNED		6.06
NEW JERSEY NATIONAL WANTS TO LEND YOU MONEY. CALL 1-800-542-5626 FOR 24 HOUR APPROVAL.						



53  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 18067

PAGE
1
STATEMENT DATE
05/09/86

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NOW CHECKING				SS				
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER	AMOUNT	CHECKS/DEDUCTIONS NUMBER	AMOUNT	ENDING BALANCE		
04/09/86	9,130.10	11	11,566.49	53	15,834.63	3,861.96		
DEPOSITS AND ADDITIONS	DATE	REF. NO.	AMOUNT	DESCRIPTION	DATE	REF. NO.	AMOUNT	
	04/14	20101522	740.00 ✓	DEPOSIT				
	04/14	21025925	3,749.34 ✓	DEPOSIT				
	04/21	20008890	75.00 ✓	DEPOSIT				
	04/22	20702302	207.02 ✓	DEPOSIT				
	04/25	10301879	1,650.00 ✓	DEPOSIT				
	04/28	20927424	210.00 ✓	DEPOSIT				
	04/28	20925292	1,435.51 ✓	DEPOSIT				
	04/29	10208335	2,811.07 ✓	DEPOSIT				
	05/05	20427762	612.46 ✓	DEPOSIT				
	05/09	10212637	45.00 ✓	DEPOSIT				
	05/09		31.09	INTEREST				
CHECKS	DATE	REF. NO.	CHECK NO.	AMOUNT	DATE	REF. NO.	CHECK NO.	AMOUNT
	04/10	20418861	2739	107.00	04/22	20218173	2789	19.75
	04/15	10007191	2761*	25.00	05/01	20023340	2790	29.68
	04/10	20024595	2767*	901.02	04/23	20009831	2791	185.40
	04/10	20148587	2773*	224.74	04/21	20008796	2792	300.00
	04/11	10202992	2774	63.00	04/28	20149244	2793	45.00
	04/16	20003319	2775	20.00	04/21	20219377	2794	243.22
	04/14	20520479	2776	200.00	04/23	20100679	2795	19.92
	04/15	10200645	2777	19.75	04/23	20012828	2796	74.63
	04/14	20155474	2779*	31.80	04/23	20002675	2797	71.00
	04/15	10103743	2780	158.03	04/22	20917253	2798	460.08
	04/11	10417336	2781	201.27	04/22	10103044	2799	200.00
	04/17	10130972	2782	46.42	04/30	20108861	2800	100.00
	04/14	20520480	2783	500.00	04/28	20927423	2802*	750.00
	04/30	20008648	2784	132.00	04/29	20110504	2804*	49.70
	04/15	10012218	2785	109.99	05/02	10531979	2805	142.00
	04/18	10102452	2786	856.00	04/30	20306714	2806	124.41
	04/17	10005677	2787	109.51	05/02	20038027	2807	95.59
	04/21	10010086	2788	92.50	05/01	20030852	2808	122.99
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS								
DAILY BALANCE SUMMARY	DATE	BALANCE	DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
	04/10	6,897.34	04/21	8,485.19	05/01	7,381.26		
	04/11	6,633.07	04/22	8,012.38	05/02	5,180.72		
	04/14	10,390.61	04/23	7,661.43	05/05	4,538.62		
	04/15	10,077.84	04/25	9,311.43	05/06	4,507.92		
	04/16	10,057.84	04/28	10,151.94	05/07	4,375.42		
	04/17	9,901.91	04/29	12,929.31	05/08	4,275.42		
	04/18	9,045.91	04/30	12,572.90	05/09	3,861.96		
INTEREST PAID YEAR-TO-DATE				136.00				

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



0  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

PAGE	1
STATEMENT DATE	05/23/86

FOR CUSTOMER SERVICE  
CALL (800) 222-0246

PERSONAL MONEY MKT INVESTMENT				SS#	
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	CHECKS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE	
04/23/86	26,508.99	1 124.26	0 .00	26,634.25	
DEPOSITS AND ADDITIONS	DATE	REF. NO.	AMOUNT	DESCRIPTION	
DAILY BALANCE SUMMARY	05/23		124.26	INTEREST	
INTEREST PAID YEAR-TO-DATE	05/23		26,634.25		
YIELD EARNED	5.86		673.76	RATE EARNED	5.70

NEW JERSEY NATIONAL WANTS TO LEND  
YOU MONEY. CALL 1-800-542-5626 FOR  
24 HOUR APPROVAL.

26,767.42





50  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

PAGE
1
STATEMENT DATE
05/10/86

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NOW CHECKING				SS				
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER	AMOUNT	CHECKS/DEDUCTIONS NUMBER	AMOUNT	ENDING BALANCE		
05/09/86	3,861.98	12	12,958.96	50	8,902.43	7,918.49		
DEPOSITS AND ADDITIONS	DATE	REF NO.	AMOUNT	DESCRIPTION	DATE	REF NO.	AMOUNT	
	05/14	20322100	979.82	DEPOSIT				
	05/15	10203019	707.17	DEPOSIT				
	05/16	20308891	575.00	DEPOSIT				
	05/20	20322674	3,643.21	DEPOSIT				
	05/27	20129398	467.00	DEPOSIT				
	05/28	10235181	1,407.00	DEPOSIT				
	06/02	20711026	1,046.51	DEPOSIT				
	06/02	20400961	1,264.71	DEPOSIT				
	06/03	10129418	658.00	DEPOSIT				
	06/04	10712671	900.00	DEPOSIT				
	06/06	20322751	1,286.70	DEPOSIT				
	06/10		23.84	INTEREST				
CHECKS	DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT
	05/12	20205308	2819	1,001.37	05/22	20128077	2845	99.60
	05/16	20020266	2826*	84.88	05/21	20134637	2846	153.76
	05/14	20023920	2828*	19.92	05/22	20019089	2847	77.96
	05/13	20034832	2829	38.90	05/19	10433810	2848	400.00
	05/13	20231259	2830	124.08	05/20	20229734	2849	200.00
	05/12	20049794	2831	57.84	05/27	20133850	2850	178.22
	05/20	10112522	2832	30.70	05/28	20202115	2851	9.81
	05/13	20006746	2835*	58.44	05/29	20034720	2853*	498.30
	05/12	20011559	2836	250.00	05/30	20034089	2854	179.95
	05/21	20204350	2837	100.00	05/27	10039508	2855	30.70
	05/16	20002404	2838	174.86	05/29	20010433	2857*	24.00
	05/14	20036068	2839	297.50	05/30	20007467	2858	24.00
	05/22	20103258	2840	5.00	05/30	20040653	2859	143.62
	05/14	20400615	2841	529.82	05/29	20035754	2860	76.65
	05/22	20103359	2842	5.00	05/29	20035746	2861	41.87
	05/27	10012817	2843	32.78	05/29	20025420	2862	118.69
	05/20	10112521	2844	30.70	05/27	20021512	2863	600.00
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS								
DAILY BALANCE SUMMARY	DATE	BALANCE	DATE	BALANCE	DATE	BALANCE		
	05/12	2,552.65	05/21	6,214.29	06/03	7,875.04		
	05/13	2,331.23	05/22	6,026.73	06/04	8,475.04		
	05/14	2,463.81	05/27	5,652.03	06/05	7,410.63		
	05/15	3,170.98	05/28	6,807.85	06/06	7,995.94		
	05/16	3,486.24	05/29	6,048.34	06/09	7,975.94		
	05/19	3,086.24	06/30	5,515.55	06/10	7,918.49		
		6,468.05	06/02	7,626.77				
INTEREST PAID YEAR-TO-DATE				189.84				

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

PAGE
1
STATEMENT DATE
07/10/86

NEW CHECKING				SSA				
LAST STATEMENT DATE		BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	CHECKS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE			
06/10/88		7,918.49	10 11,972.07	51 13,758.02	6,132.54			
DEPOSITS AND ADDITIONS	DATE	REF NO.	AMOUNT	DESCRIPTION	DATE	REF NO.	CHECK NO.	AMOUNT
	06/13	10414632	2,850.00	DEPOSIT				
	06/16	10600045	1,708.13	DEPOSIT				
	06/17	10134224	362.36	DEPOSIT				
	06/22	20614285	1,038.39	DEPOSIT				
	06/26	10507927	245.00	DEPOSIT				
	06/30	10431974	1,853.63	DEPOSIT				
	07/07	10607405	870.00	DEPOSIT				
	07/07	20003856	1,886.91	DEPOSIT				
	07/09	20308860	1,029.93	DEPOSIT				
	07/10		27.05	INTEREST				
CHECKS	DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT
	06/20	10433025		500.00	06/19	20310271	2896	334.81
	06/23	20125316	2867*	90.97	06/23	20200207	2897	134.26
	06/26	10104647	2875*	12.00	06/18	20142869	2898	115.96
	06/16	20136935	2876	10.00	06/25	20130608	2899	31.72
	06/11	10008087	2877	40.00	06/18	20160465	2900	300.00
	06/11	10017473	2881*	157.00	06/24	20432611	2901	1,779.38
	06/22	20634989	2885*	480.00	06/24	20106805	2902	30.70
	06/26	20421781	2886	370.80	06/28	201001550	2903	500.00
	06/16	20110864	2887	80.00	07/27	20101065	2904	177.88
	06/13	10432332	2888	530.45	06/23	10200425	2905	400.00
	06/19	20102423	2889	396.83	06/26	201115931	2906	282.80
	06/17	20031291	2890	33.30	06/27	201001607	2907	69.08
	06/17	20103005	2891	182.60	06/30	20103523	2908	326.48
	06/20	20138709	2892	505.00	06/30	20103698	2909	26.48
	06/16	10128816	2893	68.00	07/02	20014332	2911	231.55
	06/17	20105885	2894	996.59	07/02	10110705	2912	47.62
	06/23	20032106	2895	21.71	07/02	10024014	2913	127.38
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS								
DAILY BALANCE SUMMARY	DATE	BALANCE		DATE	BALANCE		DATE	BALANCE
	06/11	7,721.49		06/23	6,308.41		07/02	5,007.42
	06/13	9,941.04		06/24	6,877.71		07/03	4,184.71
	06/16	10,708.57		06/25	6,245.99		07/07	6,244.00
	06/17	9,858.44		06/26	6,196.19		07/08	5,125.56
	06/18	9,442.48		06/27	5,948.43		07/09	6,105.49
	06/19	8,710.74		06/30	6,770.10		07/10	6,132.54
	06/20	6,896.36		07/01	5,379.41			
INTEREST PAID YEAR TO-DATE 186.39								

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



34  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

PAGE
1
STATEMENT DATE
08/11/86

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NOW CHECKING				SS#				
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	CHECKS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE				
07/10/86	6,132.54	8 11,497.57	34 10,195.18	7,334.93				
DEPOSITS AND ADDITIONS	DATE	REF. NO.	AMOUNT	DESCRIPTION				
	07/14	20327077	1,307.00 ✓	DEPOSIT				
	07/15	20226940	3,338.62 ✓	DEPOSIT				
	07/28	10634756	1,981.15 ✓	DEPOSIT				
	07/29	20038643	1,398.82 ✓	DEPOSIT				
	08/01	10613005	1,795.04 ✓	DEPOSIT				
	08/06	20401414	1,165.23 ✓	DEPOSIT				
	08/07	20224155	481.00 ✓	DEPOSIT				
	08/11		30.71	INTEREST				
CHECKS	DATE	REF. NO.	CHECK NO.	AMOUNT	DATE	REF. NO.	CHECK NO.	AMOUNT
	07/18	10030027	2933	127.20	07/24	10130951	2951	127.51
	07/14	20014521	2935*	23.34	07/23	10105793	2952	205.00
	07/21	10223096	2937*	19.42	07/22	20528982	2953	243.38
	07/15	10526914	2938	29.48	07/28	10316896	2954	322.53
	07/15	10604350	2939	206.00	07/31	10135516	2956*	344.34
	07/14	20327152	2940	3,000.00	07/30	10102835	2957	29.24
	07/28	10218224	2844*	250.00	07/29	10027267	2958	18.53
	07/22	20144118	2945	29.48	07/28	10634761	2959	601.91
	07/24	10107026	2947*	115.44	07/29	10201759	2960	525.00
	07/23	10035811	2948	119.23	08/07	10026668	2961	100.00
	07/23	10035807	2949	74.27	08/05	20118898	2962	324.36
	07/25	10035818	2950	41.46				
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS								
DAILY BALANCE SUMMARY	DATE	BALANCE		DATE	BALANCE		DATE	BALANCE
	07/14	4,415.60		07/24	6,457.81		08/01	8,238.74
	07/15	4,180.12		07/25	6,416.25		08/05	7,871.90
	07/16	7,518.74		07/28	6,223.06		08/06	8,912.13
	07/18	7,351.54		07/29	7,078.35		08/07	9,160.63
	07/21	7,372.12		07/30	6,788.04		08/08	7,640.48
	07/22	7,089.26		07/31	6,443.70		08/11	7,434.93
	07/23	6,700.78						
INTEREST PAID YEAR-TO-DATE				217.80				

PERSONAL MONEY MKT INVESTMENT						SS#	
LAST STATEMENT DATE		BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT		CHECKS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE
07/24/86		.00	0	.00	0	.00	.00
INTEREST PAID YEAR-TO-DATE			805.93				
NEW JERSEY NATIONAL WANTS TO LEND YOU MONEY. CALL 1-800-542-5626 FOR 24 HOUR APPROVAL.							

STATEMENT SAVINGS				SS#	
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	WITHDRAWALS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE	
08/30/86	3,855.34	0 .00	0 .00	3,855.34	
INTEREST PAID YEAR-TO-DATE		94.41			

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

PAGE
1
STATEMENT DATE
09/10/86

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NOW CHECKING									
JOHN POZSGAI									
GIZELLA POZSGAI									
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER	AMOUNT	CHECKS/DEDUCTIONS NUMBER	AMOUNT	ENDING BALANCE			
08/11/86	7,434.93	11	10,453.58	41	9,070.05	8,818.46			
DATE	REF NO.	CHECK NO.	AMOUNT	DESCRIPTION	DATE	REF NO.	CHECK NO.	AMOUNT	DESCRIPTION
DEPOSITS AND ADDITIONS									
08/15	10523766		900.00	DEPOSIT					
08/18	20208187		750.00	DEPOSIT					
08/25	20002856		688.00	DEPOSIT					
08/25	20002966		1,120.00	DEPOSIT					
08/26	10132493		2,000.00	DEPOSIT					
08/27	20301848		535.00	DEPOSIT					
08/28	10330277		600.00	DEPOSIT					
08/29	20233260		900.00	DEPOSIT					
09/03	20339176		1,938.70	DEPOSIT					
09/10	10519752		987.00	DEPOSIT					
09/10			34.88	INTEREST					
CHECKS									
08/25	20190895	2910	30.00	08/25 20100654 2988	29.48	09/09	10118897	3002	161.68
09/08	10322792	2873*	65.00	09/02 20112680 2989	29.48	09/10	10014718	3003	300.00
08/13	10107308	2975*	815.40	08/18 10142181 2990	600.00	09/03	20413746	3004	300.00
08/12	10126754	2976	638.00	08/25 20209084 2991	30.00	09/10	10000372	3005	160.00
08/13	10100572	2978*	29.48	08/21 10005942 2992	174.37	09/08	10218783	3006	185.77
08/12	10017201	2979	65.75	08/25 20003085 2993	400.00	09/08	20002478	3007	44.58
08/12	20127985	2980	300.00	09/04 10105760 2994	71.50	09/08	10309410	3008	125.00
08/18	20019836	2981	83.78	08/29 20205188 2995	500.00	09/09	10212313	3009	29.48
08/14	10204597	2982	132.00	09/03 20405741 2996	100.00	09/10	10102715	3010	19.94
09/08	10203779	2983	31.00	09/04 10524390 2997	1,527.17	09/10	10026591	3011	12.70
09/05	10116424	2984	12.00	09/09 10203504 2998	1,202.67	09/05	20302963	3012	400.00
08/15	10104716	2985	44.25	09/08 10301519 2999	73.08	09/09	10108524	3013	109.92
08/13	10105887	2986	19.92	09/09 10230912 3000	34.55	09/09	10205023	3014	50.00
08/19	10105729	2987	29.48	09/09 10205445 3001	84.50				
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS									
DATE	BALANCE	DATE	BALANCE	DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
08/12	6,433.18	08/25	7,453.02	09/03	12,487.24				
08/13	6,588.30	08/26	9,453.02	09/04	10,896.57				
08/14	5,456.30	08/27	9,988.02	09/05	10,486.57				
08/15	6,312.05	08/28	10,588.02	09/08	10,220.99				
08/18	6,378.27	08/29	10,988.02	09/09	8,289.22				
08/19	6,328.97	09/02	10,956.54	09/10	8,818.46				
08/21	6,154.50								
INTEREST PAID YEAR-TO-DATE 252.48									

PERSONAL MONEY MKT INVESTMENT										SS	
JOHN POZSGAI											
GIZELLA POZSGAI											
LAST STATEMENT DATE		BEGINNING BALANCE		DEPOSITS/ADDITIONS NUMBER AMOUNT		CHECKS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE			
08/11/86		.00		0 .00		0 .00				.00	
INTEREST PAID YEAR-TO-DATE				806.93							
NEW JERSEY NATIONAL WANTS TO LEND YOU MONEY. CALL 1-800-542-5626 FOR 24 HOUR APPROVAL.											

SEE REVERSE SIDE FOR IMPORTANT INFORMATION





JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

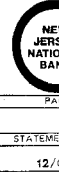
PAGE
1
STATEMENT DATE
11/13/86

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NOW CHECKING		SS	
JOHN POZSGAI			
GIZELLA POZSGAI			
LAST			
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	CHECKS/DEDUCTIONS NUMBER AMOUNT
10/09/86	10,941.34	14 16,422.42	49 25,706.27
ENDING BALANCE			1,657.49
DEPOSITS AND ADDITIONS	DATE REF NO. AMOUNT DESCRIPTION		
	10/10 20309460 600.00 DEPOSIT		
	10/14 10145897 1,875.00 DEPOSIT		
	10/17 20124970 100.00 DEPOSIT		
	10/17 10318462 1,125.00 DEPOSIT		
	10/20 10406906 350.00 DEPOSIT		
	10/21 20200949 395.00 DEPOSIT		
	10/29 10503977 866.70 DEPOSIT		
	10/31 20111850 790.00 DEPOSIT		
	11/03 10405565 431.61 DEPOSIT		
	11/05 10509137 2,046.26 DEPOSIT		
	11/10 10713924 3,000.00 DEPOSIT		
	11/10 10709328 3,842.35 DEPOSIT		
	11/13 10440309 1,175.00 DEPOSIT		
	11/13 75.50 INTEREST		
DEDUCTIONS	DATE REF NO. AMOUNT DESCRIPTION		
	11/13 5.00 SERVICE FEE		
CHECKS	DATE REF NO. CHECK NO. AMOUNT DATE REF NO. CHECK NO. AMOUNT DATE REF NO. CHECK NO. AMOUNT		
	10/10 10104247 3063 16.76 10/20 20514930 3081 89.99 10/31 10039535 3098 173.75		
	10/17 10036572 3064 3,089.55 10/21 20200688 3082 200.00 11/03 10039265 3099 20.00		
	10/16 10251688 3065 29.48 10/27 10119301 3083 109.92 11/03 20050709 3100 89.76		
	10/17 10023426 3066 371.80 10/28 10120704 3084 51.65 11/03 20038775 3101 246.00		
	10/10 20320914 3067 500.00 10/28 10120708 3085 42.42 11/03 20053397 3102 1,500.00		
	10/14 20836611 3068 100.00 10/28 10120712 3086 85.73 11/03 20045901 3103 875.31		
	10/22 10021966 3069 250.00 10/23 20114307 3087 94.80 11/05 10109366 3104 29.48		
	10/17 10032319 3070 19.52 10/27 10126256 3088 14.72 11/06 10024690 3105 35.00		
	10/16 10312861 3071 46.00 10/23 20314246 3089 500.00 11/07 10028413 3106 71.55		
	10/20 10201127 3072 500.00 11/03 20134882 3090 64.76 11/07 10130582 3107 57.54		
	10/24 10024893 3075 538.00 10/24 10024587 3091 760.00 11/12 20140021 3108 29.56		
	10/20 10113026 3076 113.72 10/28 10031443 3092 29.48 11/12 20104734 3110 75.00		
	10/22 10030144 3077 50.00 10/30 10023790 3093 139.54 11/13 10218053 3111 140.00		
	10/22 10140750 3078 29.48 10/29 10029255 3095 14.72 11/13 10129660 3112 135.68		
	10/17 20125037 3079 500.00 10/30 10001480 3096 130.00 11/12 20011358 3113 56.00		
	10/20 20300835 3080 5,000.00 10/28 10003906 3097 175.00 11/13 10116155 3114 8,500.00		
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS			
DAILY BALANCE SUMMARY	DATE / BALANCE	DATE / BALANCE	DATE / BALANCE
	10/10 11,024.58	10/23 3,684.74	11/03 703.29
	10/14 12,599.58	10/24 2,386.74	11/05 2,720.07
	10/15 12,553.58	10/27 2,262.10	11/06 2,685.07
	10/16 12,524.10	10/28 1,867.82	11/07 2,555.88
	10/17 9,767.73	10/29 2,719.80	11/10 9,398.23
	10/20 4,414.02	10/30 2,450.26	11/12 9,237.67
	10/21 4,609.02	10/31 3,066.51	11/13 1,657.49
	10/22 4,278.54		
INTEREST PAID YEAR-TO-DATE		323.57	

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067



FOR CUSTOMER  
CALL (800) 22

NOW CHECKING										SS41		
JOHN POZSGAI												
GIZELLA POZSGAI												
LAST STATEMENT DATE		BEGINNING BALANCE		DEPOSITS/ADDITIONS NUMBER AMOUNT		CHECKS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE				
11/13/86		1,657.49		9 5,296.32		27 4,338.90		2,614.91				
DEPOSITS AND ADDITIONS		DATE	REF NO.	AMOUNT	DESCRIPTION							
		11/14	20439049	432.85 ✓	DEPOSIT							
		11/14	20207985	725.05 ✓	DEPOSIT							
		11/17	20003958	515.00 ✓	DEPOSIT							
		11/20	10129559	466.80 ✓	DEPOSIT							
		12/01	10527481	175.00 ✓	DEPOSIT							
		12/01	10812610	650.00 ✓	DEPOSIT							
		12/02	10633525	450.00 ✓	DEPOSIT							
		12/08	10606530	1,875.60 ✓	DEPOSIT							
		12/09		5.02 ✓	INTEREST							
DEDUCTIONS		DATE	REF NO.	AMOUNT	DESCRIPTION							
		12/09		5.00	SERVICE FEE							
CHECKS		DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.
		11/25	10236475		200.00	11/24	10109111	3124	29.56	12/02	10137397	3123
		11/17	10005710	3115	45.55	11/24	20016560	3125	600.00	12/01	10041541	3134
		11/14	10120508	3116	157.33	11/25	10001771	3126	166.59	12/01	10800750	3135
		11/19	20029550	3117	19.92	11/26	10026840	3127	100.00	12/09	10128785	3136
		11/17	10027688	3118	132.29	11/26	10102301	3128	371.12	12/09	10126913	3186
		11/18	10129156	3119	29.56	11/26	10153959	3129	157.74	12/09	10116207	3140
		11/14	20439092	3120	300.00	11/28	10012385	3130	334.08	12/09	10132536	3192
		11/17	10027537	3121	35.00	11/26	10005493	3131	42.11	12/09	10014722	3143
		11/19	20207391	3122	158.15	12/01	10041955	3132	500.00			
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS												
DAILY BALANCE SUMMARY		DATE	BALANCE		DATE	BALANCE		DATE	BALANCE		DATE	BALANCE
		11/14	2,358.06		11/24	2,289.83		12/01			71	
		11/17	2,660.22		11/25	1,923.24		12/02			1,13	
		11/18	2,630.66		11/26	1,252.27		12/08			3,01	
		11/19	2,452.59		11/28	918.19		12/09			2,61	
		11/20	2,319.39									
INTEREST PAID YEAR-TO-DATE 329.59												

PERSONAL MONEY MKT INVESTMENT

SS#

JOHN POZSGAI

GIZELLA POZSGAI

LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER	DEPOSITS/ADDITIONS AMOUNT	CHECKS/DEDUCTIONS NUMBER	CHECKS/DEDUCTIONS AMOUNT	ENDING BALANCE
11/13/86	29,181.05	1	101.85	0	.00	

DEPOSITS AND ADDITIONS	DATE	REF NO.	AMOUNT	DESCRIPTION	
DAILY BALANCE SUMMARY	12/09		101.85	INTEREST	
	DATE		BALANCE	DATE	BALANCE DA
	12/09		29,282.90		
INTEREST PAID YEAR-TO-DATE 1,101.70					
YIELD EARNED		5.02	RATE EARNED		4.90

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

PAGE
1
STATEMENT DATE
01/12/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

JOHN POZSGAI									
GIZELLA POZSGAI									
STATEMENT DATE									
12/09/86									
2,614.91									
15									
12,234.81									
45									
8,855.11									
5,994.61									
DEPOSITS									
DATE REF NO. AMOUNT DESCRIPTION									
12/10 10439264 100.00 DEPOSIT									
12/15 11106681 1,030.00 DEPOSIT									
12/17 20415307 1,100.00 DEPOSIT									
12/22 20209020 550.00 DEPOSIT									
12/22 10802520 1,370.34 DEPOSIT									
12/29 10425545 450.00 DEPOSIT									
12/30 10701173 3,783.70 DEPOSIT									
01/02 10430932 1,000.00 DEPOSIT									
01/05 10504154 200.00 DEPOSIT									
01/06 11001177 575.00 DEPOSIT									
01/06 10702113 193.00 DEPOSIT									
01/12 10718771 175.00 DEPOSIT									
01/12 10533204 200.00 DEPOSIT									
01/12 10533123 1,487.65 DEPOSIT									
01/12 20.12 INTEREST									
DEDUCTIONS									
DATE REF NO. AMOUNT DESCRIPTION									
01/02 10426211 10.00 DEBIT MEMO									
CHECKS									
DATE REF NO. CHECK NO. AMOUNT DATE REF NO. CHECK NO. AMOUNT DATE REF NO. CHECK NO. AMOUNT									
12/10 10022493 3137 38.63 12/23 10307851 3156 60.01 01/06 10119879 3172 64.99									
12/10 10050387 3139 38.03 12/22 10001992 3157 400.00 01/07 10018293 3173 44.00									
12/12 10124922 3141 20.00 12/22 10516587 3158 208.59 01/07 10113129 3174 40.00									
12/12 10112539 3144 150.00 12/22 10516683 3159 100.00 01/06 10009083 3175 162.81									
12/15 10207640 3145 264.62 12/23 10120821 3160 45.00 01/06 10522725 3176 1,331.62									
12/16 10210870 3146 29.56 12/24 10007347 3161 100.16 01/07 10018982 3177 29.56									
12/16 10803602 3147 500.00 01/02 10212004 3162 362.42 01/02 20116945 3178 530.00									
12/26 10229826 3148 105.73 12/26 10102048 3163 50.00 01/02 10606606 3179 400.00									
12/19 10410731 3149 157.84 12/24 20111026 3164 300.00 01/07 20001401 3180 205.60									
12/19 10039974 3150 78.72 12/26 10602482 3166 100.00 01/09 10112615 3181 728.75									
12/19 10039980 3151 42.42 12/30 10154114 3167 29.56 01/12 10324878 3182 49.00									
12/22 10114632 3152 19.92 12/30 10115005 3168 75.40 01/12 10122335 3183 50.80									
12/18 10154487 3153 460.12 01/02 20109244 3169 135.00 01/12 10637717 3184 418.28									
12/22 10114296 3154 29.56 12/30 10700972 3170 200.00 01/12 10533308 3186 500.00									
12/19 10013892 3155 39.44 01/06 10009695 3171 152.03									
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS									
DAILY BALANCE SUMMARY									
DATE BALANCE DATE BALANCE DATE BALANCE									
12/10 2,638.25 12/22 4,190.80 01/02 6,918.22									
12/12 2,468.25 12/23 4,085.79 01/05 7,693.22									
12/15 2,736.63 12/24 3,682.63 01/06 6,177.83									
12/16 2,707.07 12/26 3,426.80 01/07 5,858.67									
12/17 3,807.07 12/29 3,876.90 01/09 5,129.92									
12/18 3,546.95 12/30 7,355.64 01/12 5,994.61									
12/19 3,028.53									
INTEREST PAID YEAR-TO-DATE									
329.59									

SEE REVERSE SIDE FOR IMPORTANT INFORMATION





45  
JOHN POZSGAI  
GIZELLA POZSGAI  
508 BRIDGE ST W  
MORRISVILLE PA 19067

PAGE	2
STATEMENT DATE	01/12/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0248

PERSONAL MONEY MCT INVESTMENT										55
JOHN POZSGAI										
GIZELLA POZSGAI										
LAST STATEMENT DATE		BEGINNING BALANCE			DEPOSITS/ADDITIONS NUMBER AMOUNT		CHECKS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE	
12/09/86		29,282.90			1 133.66		0 .00		29,416.56	
DEPOSITS AND ADDITIONS	DATE	REF NO.	AMOUNT	DESCRIPTION						
	01/12		133.66	INTEREST						
DAILY BALANCE	DATE	BALANCE		DATE	BALANCE		DATE	BALANCE		
SUMMARY	01/12	29,416.56								
INTEREST PAID YEAR-TO-DATE			1,101.70							
FIELD EARNED			5.02		RATE EARNED			4.90		
"BUY ANYTHING YOU WANT AND WRITE OFF THE INTEREST WITH EQUIPOWER...THE ONLY CREDIT YOU'LL EVER NEED."										

STATEMENT SAVINGS										SSA	
JOHN POZSGAI											
GIZELLA POZSGAI											
LAST STATEMENT DATE		BEGINNING BALANCE			DEPOSITS/ADDITIONS NUMBER AMOUNT		WITHDRAWALS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE		
12/09/86		3,904.23			1 49.51		0 .00		3,953.74		
DEPOSITS AND ADDITIONS	DATE	REF NO.	AMOUNT	DESCRIPTION							
	12/31		49.51	INTEREST							
DAILY BALANCE	DATE		BALANCE	DATE		BALANCE	DATE		BALANCE		
SUMMARY	12/31		3,953.74								
INTEREST PAID YEAR-TO-DATE			192.81								

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

PAGE
1
STATEMENT DATE
02/10/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NOW CHECKING												
JOHN POZSGAI												
GIZELLA POZSGAI												
LAST												
STATEMENT DATE	BEGINNING BALANCE			DEPOSITS/ADDITIONS NUMBER AMOUNT		CHECKS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE				
01/12/87	5,994.61			8 5,951.03		37 6,836.36		5,109.28				
DEPOSITS AND ADDITIONS	DATE	REF NO.	AMOUNT	DESCRIPTION								
	01/14	10731991	1,196.00 ✓	DEPOSIT								
	01/16	10609282	550.00	DEPOSIT								
	01/21	20149804	1,266.29	DEPOSIT								
	01/26	20632749	950.00	DEPOSIT								
	01/30	20424404	209.00	DEPOSIT								
	02/03	20802358	1,055.45	DEPOSIT								
	02/06	20301274	700.00	DEPOSIT								
	02/10		24.29	INTEREST								
CHECKS	DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT
	01/13	10100897	3185	29.56	01/21	10411650	3199	300.00	02/03	20008326	3212	36.32
	01/15	10019895	3187*	114.02	01/28	20022023	3200	559.30	02/03	20030855	3213	538.00
	01/28	20006836	3188	125.00	01/27	10001447	3201	153.83	02/04	20127393	3214	142.00
	01/22	20116185	3189	19.92	01/22	20126548	3202	864.30	01/30	20102231	3215	29.00
	01/16	10133249	3190	219.40	02/02	20124495	3203	140.00	02/03	20207338	3216	175.29
	01/26	20206811	3191	5.00	01/27	10021554	3205*	29.56	02/03	20035119	3217	125.00
	01/20	10045293	3192	73.00	01/27	20520819	3206	750.00	02/03	20029120	3218	517.40
	01/20	10120179	3193	137.11	01/26	20523857	3207	300.00	02/04	20025788	3219	18.48
	01/20	10051509	3194	44.75	01/28	20001099	3208	45.00	02/10	20009033	3221*	24.00
	01/21	10202455	3195	29.56	02/03	20038114	3209	158.38	02/06	20011810	3222	150.86
	01/16	10423548	3196	400.00	02/05	20033436	3210	48.09	02/09	10106789	3223	165.00
	01/21	10134547	3197	110.70	02/02	20230018	3211	87.23	02/09	10028589	3226*	121.82
	01/22	20118858	3198	149.50								
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS												
DAILY BALANCE SUMMARY	DATE	BALANCE		DATE	BALANCE		DATE	BALANCE				
	01/13	5,965.05		01/22	6,715.08		02/03	5,055.22				
	01/14	7,161.05		01/26	7,360.08		02/04	4,894.76				
	01/15	7,047.03		01/27	6,426.89		02/06	4,846.67				
	01/16	6,977.63		01/28	5,397.39		02/08	5,395.81				
	01/20	6,722.77		01/30	5,777.39		02/09	5,108.99				
	01/21	7,548.80		02/02	5,550.16		02/10	5,109.28				
INTEREST PAID YEAR-TO-DATE				44.41								

PERSONAL MONEY MKT INVESTMENT										50		
JOHN POZSGAI												
GIZELLA POZSGAI												
LAST												
STATEMENT DATE		BEGINNING BALANCE		DEPOSITS/ADDITIONS NUMBER		AMOUNT		CHECKS/DEDUCTIONS NUMBER		AMOUNT		ENDING BALANCE
01/12/87		29,416.56		1		114.52		0		.00		29,531.08
DEPOSITS AND ADDITIONS		DATE	REF NO.	AMOUNT		DESCRIPTION						
		02/10		114.52		INTEREST						
DAILY BALANCE SUMMARY		DATE	BALANCE		DATE	BALANCE		DATE	BALANCE			
		02/10	29,531.08									
INTEREST PAID YEAR-TO-DATE				248.18								
YIELD EARNED			5.02		RATE EARNED			4.90				

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



37  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

PAGE
2
STATEMENT DATE
02/10/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0246

PERSONAL MONEY MKT INVESTMENT	(CONTINUED)
JOHN POZSGAI	
GIZELLA POZSGAI	
"DON'T LET THE OPPORTUNITY PASS YOU BY. IRA CONTRIBUTIONS ARE STILL DEDUCTIBLE FOR 1986."	

STATEMENT SAVINGS					SS#
JOHN POZSGAI					
GIZELLA POZSGAI					
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER	AMOUNT	WITHDRAWALS/DEDUCTIONS NUMBER	ENDING BALANCE
01/12/87	3,953.74	0	.00	0	3,953.74



31  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH NUMBER	PAGE
	1
MAIL CODE	STATEMENT DATE
BF	03/10/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NON CHECKING									
JOHN POZSGAI									
GIZELLA POZSGAI									
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	CHECKS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE					
02/10/87	5,109.28	6 6,850.26	31 4,468.47	7,491.07					
DEPOSITS AND ADDITIONS	DATE REF. NO. AMOUNT DESCRIPTION								
	02/13 70213870 1,100.00 DEPOSIT								
	02/17 70050516 418.00 DEPOSIT								
	02/18 20112900 2,375.00 DEPOSIT								
	03/04 50413007 871.97 DEPOSIT								
	03/09 70021446 2,060.81 DEPOSIT								
	03/10 24.48 INTEREST								
CHECKS	DATE REF. NO. CHECK NO. AMOUNT DATE REF. NO. CHECK NO. AMOUNT DATE REF. NO. CHECK NO. AMOUNT								
	02/17 60139115 3109 -94.60 02/25 60209716 3235 -18.46 03/05 20222528 3248 -46.55								
	02/17 60227498 3220* -50.00 02/25 60229807 3236 -140.00 03/04 10129996 3249 -135.32								
	02/19 60204478 3224* -18.46 03/04 10205760 3240* -19.10 03/03 20410898 3250 -45.83								
	02/11 10030759 3225 -851.78 03/06 60210260 3241 -23.56 03/09 20303605 3252* -95.16								
	02/17 60106892 3227* -45.00 03/03 20518158 3242 -90.79 03/04 10223160 3253 -65.00								
	02/23 60229886 3228 -167.50 03/03 20122136 3243 -14.72 03/10 40239081 3250* -29.08								
	02/17 70131757 3230* -300.00 03/05 10151341 3244 -141.00 03/09 20229831 3259 -20.08								
	02/23 60414894 3231 -250.00 03/05 10131344 3245 -27.56 03/10 40309560 3261* -19.10								
	02/23 60333344 3232 -5.00 03/04 10216233 3246 -23.98 03/09 70621033 3262 -1,099.94								
	02/26 20306477 3233 -8.83 03/03 20222527 3247 -81.12 03/10 40236400 3263 -152.05								
	02/18 50236153 3234 -389.00								
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS									
DAILY BALANCE SUMMARY	DATE BALANCE DATE BALANCE DATE BALANCE								
	02/11 4,257.50 02/23 6,690.94 03/05 6,844.65								
	02/13 5,257.50 02/25 6,672.48 03/06 6,821.09								
	02/17 5,285.90 02/26 6,663.65 03/09 7,666.72								
	02/18 7,271.90 03/03 6,384.64 03/10 7,491.07								
	02/19 7,253.44 03/04 7,013.21								
INTEREST PAID YEAR-TO-DATE 68.89									
PERSONAL MONEY MGT INVESTMENT									
JOHN POZSGAI									
GIZELLA POZSGAI									
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	CHECKS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE					
02/10/87	29,531.08	1 111.00	0 .00	29,642.08					
DEPOSITS AND ADDITIONS	DATE REF. NO. AMOUNT DESCRIPTION								
	03/10 111.00 INTEREST								
DAILY BALANCE SUMMARY	DATE BALANCE DATE BALANCE								
	03/10 29,642.08								
INTEREST PAID YEAR-TO-DATE 359.18									
YIELD EARNED 5.02 RATE EARNED 4.90									
"DON'T LET THE OPPORTUNITY PASS YOU BY. IRA CONTRIBUTIONS ARE STILL DEDUCTIBLE FOR 1986."									

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH NUMBER	PAGE 2
MAIL OF CODE CODE	STATEMENT DATE
	03/10/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

STATEMENT SAVINGS					SSN
JOHN POZSGAI					
GIZELLA POZSGAI					
LAST					
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	WITHDRAWALS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE	
02/10/87	3,953.74	0 .00	0 .00	3,953.74	

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



37  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST H  
MORRISVILLE, PA 19067

BRANCH NUMBER	PAGE 1
MAIL CODE	STATEMENT DATE
04/09/87	

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NON CHECKING									
JOHN POZSGAI									
GIZELLA POZSGAI									
LAST STATEMENT DATE									
STATEMENT DATE		BEGINNING BALANCE		DEPOSITS/ADDITIONS		CHECKS/DEDUCTIONS		ENDING BALANCE	
03/10/87		7,491.07		12,692.34		5,171.72			
DEPOSITS AND ADDITIONS	DATE	REF. NO.	AMOUNT	DESCRIPTION	DATE	REF. NO.	AMOUNT	DESCRIPTION	
	03/11	30411525	1,000.00	DEPOSIT					
	03/16	70031874	800.00	DEPOSIT					
	03/18	30026273	1,388.00	DEPOSIT					
	03/19	70100693	844.00	DEPOSIT					
	03/23	70545142	650.00	DEPOSIT					
	03/25	70507266	734.00	DEPOSIT					
	03/25	70527141	2,473.79	DEPOSIT					
	03/27	30135940	250.00	DEPOSIT					
	03/30	10030957	700.00	DEPOSIT					
	04/01	10423034	1,440.00	DEPOSIT					
	04/08	10323985	1,380.40	DEPOSIT					
	04/09		32.80	INTEREST					
DEDUCTIONS	DATE	REF. NO.	AMOUNT	DESCRIPTION	DATE	REF. NO.	AMOUNT	DESCRIPTION	
	03/27	04100623	3.00	SERVICE FEE					
	03/27	04100622	2,473.79	DEPOSITED CHECK RETURNED					
CHECKS	DATE	REF. NO.	CHECK NO.	AMOUNT	DATE	REF. NO.	CHECK NO.	AMOUNT	
	03/11	40311373	3237	150.00	03/30	70017644	3273	150.00	03/31 50104035 3286 400.00
	03/17	30112170	3251*	25.00	04/03	50040440	3274	150.00	03/31 50111967 3287 595.11
	04/09	60024436	3255*	1,500.00	03/24	70724272	3275	588.43	03/31 50123111 3288 19.10
	04/09	60024435	3257*	500.00	03/26	60029288	3276	21.40	03/30 70017809 3289 160.00
	03/11	40311374	3260*	185.00	03/27	60128425	3277	89.57	03/30 10124518 3291* 200.00
	04/03	30227723	3264*	352.00	03/30	70119032	3278	19.60	04/07 40333345 3292 128.09
	03/13	20223236	3265	219.40	03/23	70613001	3279	182.60	04/06 50212347 3293 49.38
	03/19	10136482	3266	21.83	03/25	40123606	3280	159.34	04/07 40333344 3294 79.94
	03/17	30226868	3268*	19.10	03/25	70124750	3281	25.00	04/06 50117521 3296* 38.58
	03/23	70417433	3269	40.00	03/23	70549702	3282	300.00	04/07 40331276 3297 19.10
	03/16	70423312	3270	400.00	03/25	40115998	3283	40.00	04/09 60225927 3299* 107.00
	03/23	70115562	3271	90.00	03/25	40127606	3285*	4,000.00	04/09 60121481 3300 49.50
	03/23	70115023	3272	111.48					
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS									
DAILY BALANCE SUMMARY	DATE	BALANCE	DATE	BALANCE	DATE	BALANCE	DATE	BALANCE	
	03/11	8,156.07	03/24	9,840.23	04/01	7,162.11			
	03/13	7,956.67	03/25	8,823.68	04/03	6,630.11			
	03/16	8,356.67	03/26	8,602.28	04/06	6,542.15			
	03/17	8,692.57	03/27	6,488.92	04/07	6,515.02			
	03/18	9,680.57	03/30	6,736.32	04/08	7,695.42			
	03/19	10,502.74	03/31	5,722.11	04/09	5,571.72			
	03/23	10,428.66							
INTEREST PAID YEAR-TO-DATE 101.67									
PERSONAL MONEY MKT INVESTMENT									
JOHN POZSGAI									
GIZELLA POZSGAI									
LAST STATEMENT DATE									
STATEMENT DATE		BEGINNING BALANCE		DEPOSITS/ADDITIONS		CHECKS/DEDUCTIONS		ENDING BALANCE	
03/10/87		29,642.08		119.38		0		29,761.46	
DEPOSITS AND ADDITIONS	DATE	REF. NO.	AMOUNT	DESCRIPTION	DATE	REF. NO.	AMOUNT	DESCRIPTION	
	04/09		119.38	INTEREST					

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH NUMBER	PAGE
	2
MAIL CODE	STATEMENT DATE
	04/09/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0246

PERSONAL MONEY MKT INVESTMENT (CONTINUED)					
JOHN POZSGAI GIZELLA POZSGAI					
DAILY BALANCE	DATE	BALANCE	DATE	BALANCE	DATE
SUMMARY	04/09	29,761.46			
INTEREST PAID YEAR-TO-DATE 478.56					
YIELD EARNED 6.02 RATE EARNED 4.90					
<p>"DON'T LET THE OPPORTUNITY PASS YOU BY. IRA CONTRIBUTIONS ARE STILL DEDUCTIBLE FOR 1986."</p>					
STATEMENT SAVINGS					
JOHN POZSGAI GIZELLA POZSGAI					
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER	AMOUNT	WITHDRAWALS/DEDUCTIONS NUMBER	AMOUNT
03/10/87	3,953.74	1	49.04	0	.00
ENDING BALANCE	4,002.78				
DEPOSITS AND ADDITIONS	DATE	REF. NO.	AMOUNT	DESCRIPTION	
DAILY BALANCE	03/31		49.04	INTEREST	
SUMMARY	03/31		4,002.78		
INTEREST PAID YEAR-TO-DATE 49.04					

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



37  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH	PAGE
NUMBER	3
MAIL CODE	STATEMENT
DATE	DATE
	04/09/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

LAST		DEPOSITS/ADDITIONS		CHECKS/DEDUCTIONS		ENDING BALANCE
STATEMENT DATE	BEGINNING BALANCE	NUMBER	AMOUNT	NUMBER	AMOUNT	
03/10/87	7,491.07	1	119.39	0	.00	5,571.72
DEPOSITS AND ADDITIONS		DEPOSITS		CHECKS		ENDING BALANCE
DATE	REF NO.	AMOUNT	DESCRIPTION	DATE	REF NO.	
03/11	30411325	1,000.00	DEPOSIT	03/11	30411325	6,571.72
03/16	70051874	800.00	DEPOSIT	03/16	70051874	5,771.72
03/18	30026873	1,388.00	DEPOSIT	03/18	30026873	4,383.72
03/19	70100693	844.00	DEPOSIT	03/19	70100693	3,539.72
03/23	70543142	650.00	DEPOSIT	03/23	70543142	2,889.72
03/25	70507266	734.00	DEPOSIT	03/25	70507266	2,155.72
03/25	70527141	2,475.79	DEPOSIT	03/25	70527141	4,631.51
03/27	30115940	250.00	DEPOSIT	03/27	30115940	4,881.51
03/30	10030957	780.00	DEPOSIT	03/30	10030957	5,661.51
04/01	10423034	1,440.00	DEPOSIT	04/01	10423034	7,101.51
04/08	10323985	1,380.40	DEPOSIT	04/08	10323985	8,481.91
04/09		32.80	INTEREST	04/09		8,514.71
DEDUCTIONS		DEDUCTIONS		CHECKS		ENDING BALANCE
DATE	REF NO.	AMOUNT	DESCRIPTION	DATE	REF NO.	
03/27	04100623	3.00	SERVICE FEE	03/27	04100623	8,511.71
03/27	04100623	2,475.79	DEPOSITED CHECK RETURNED	03/27	04100623	6,035.92
CHECKS		CHECKS		CHECKS		ENDING BALANCE
DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	
03/11	40311373	3237	150.00	03/30	70017624	5,885.92
03/17	30112170	3251*	25.00	04/03	50040440	5,860.92
04/09	60024436	3255*	1,500.00	03/24	70724272	4,360.92
04/09	60024435	3257*	500.00	03/26	60023288	3,860.92
05/11	40311374	3260*	185.00	03/27	40128425	3,675.92
04/03	30227723	3264*	382.00	03/30	70119032	3,293.92
03/13	20222326	3265	219.40	03/23	70613001	2,974.52
03/19	10136482	3266	21.83	03/25	40123606	2,952.69
03/17	30226868	3268*	19.10	03/25	70126760	2,933.59
05/23	70417433	3269	40.00	03/23	70549702	2,893.59
03/16	70422312	3270	400.00	03/25	40115998	2,493.59
03/23	70115562	3271	90.00	03/25	40127606	2,403.59
03/23	70115023	3272	111.48	04/09	60121481	2,292.11
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS						
DAILY BALANCE SUMMARY		DAILY BALANCE SUMMARY		DAILY BALANCE SUMMARY		ENDING BALANCE
DATE	BALANCE	DATE	BALANCE	DATE	BALANCE	
03/11	8,156.07	03/24	9,840.23	04/01	7,162.11	7,162.11
03/13	7,936.67	03/25	8,823.69	04/05	6,630.11	6,630.11
03/16	8,336.67	03/26	8,802.28	04/06	6,542.15	6,542.15
03/17	8,292.57	03/27	6,465.32	04/07	6,315.02	6,315.02
03/18	9,680.57	03/30	6,736.32	04/08	7,695.42	7,695.42
03/19	10,502.74	03/31	5,722.11	04/09	5,571.72	5,571.72
03/23	10,428.66					
INTEREST PAID YEAR-TO-DATE		101.69				
PERSONAL MONEY MKT INVESTMENT						
LAST		DEPOSITS/ADDITIONS		CHECKS/DEDUCTIONS		ENDING BALANCE
STATEMENT DATE	BEGINNING BALANCE	NUMBER	AMOUNT	NUMBER	AMOUNT	
03/10/87	29,642.08	1	119.39	0	.00	29,761.46
DEPOSITS AND ADDITIONS		DEPOSITS		CHECKS		ENDING BALANCE
DATE	REF NO.	AMOUNT	DESCRIPTION	DATE	REF NO.	
04/09		119.39	INTEREST			29,880.85





JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH NUMBER	PAGE
	2
MAIL CODE	STATEMENT DATE
	04/09/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0246

PERSONAL MONEY MKT INVESTMENT		(CONTINUED)	
JOHN POZSGAI GIZELLA POZSGAI			
DAILY BALANCE	DATE	BALANCE	DATE
SUMMARY	04/09	29,761.46	
INTEREST PAID YEAR-TO-DATE		478.56	
YIELD EARNED		5.02 RATE EARNED 4.50	
<p>DON'T LET THE OPPORTUNITY PASS YOU BY. IRA CONTRIBUTIONS ARE STILL DEDUCTIBLE FOR 1986.</p>			
STATEMENT SAVINGS		SSP	
JOHN POZSGAI GIZELLA POZSGAI			
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	WITHDRAWALS/DEDUCTIONS NUMBER AMOUNT
03/10/87	3,953.74	1 49.04	0 00
ENDING BALANCE	4,002.78		
DEPOSITS AND ADDITIONS	DATE	REF NO.	AMOUNT DESCRIPTION
DAILY BALANCE	03/31		49.04 INTEREST
SUMMARY	03/31		4,002.78
INTEREST PAID YEAR-TO-DATE		49.04	

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH NUMBER	PAGE 2
MAIL CODE	STATEMENT DATE
	05/11/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0246

PERSONAL MONEY MKT INVESTMENT						SSR
JOHN POZSGAI						
GIZELLA POZSGAI						
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	CHECKS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE		
04/09/87	22,761.46	1 66.64	1 24,000.00	5,828.10		
DEPOSITS AND ADDITIONS	DATE REF NO. AMOUNT DESCRIPTION					
DEDUCTIONS	DATE REF NO. AMOUNT DESCRIPTION					
DAILY BALANCE	DATE BALANCE DATE BALANCE					
SUMMARY	04/23 5,761.46	05/11 5,828.10				
INTEREST PAID YEAR-TO-DATE	545.20					
YIELD EARNED	5.02	RATE EARNED	4.90			
<p>NUMB IS HAVING A MONEY CLEARANCE SALE WITH RATES AS LOW AS 0.5%. CHALLENGE OUR RATES. STOP BY AND APPLY TODAY.</p>						
STATEMENT SAVINGS						SSR
JOHN POZSGAI						
GIZELLA POZSGAI						
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	WITHDRAWALS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE		
04/09/87	4,002.78	0 .00	1 4,002.78	.00		
WITHDRAWALS AND DEDUCTIONS	DATE REF NO. AMOUNT DESCRIPTION					
DAILY BALANCE	DATE BALANCE DATE BALANCE					
SUMMARY	04/24 .00					
INTEREST PAID YEAR-TO-DATE	49.04					

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



52  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH NUMBER		PAGE
		1
MAIL CODE	BF CODE	STATEMEN DATE
		05/11/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NON CHECKING									
JOHN POZSGAI									
GIZELLA POZSGAI									
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	CHECKS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE					
04/09/87	5,571.72	12 20,882.07	52 10,802.44	15,651.35					
DEPOSITS AND ADDITIONS	DATE	REF NO.	CHECK NO.	AMOUNT	DESCRIPTION	DATE	REF NO.	CHECK NO.	AMOUNT
	04/10	40108128		1,935.71	DEPOSIT				
	04/15	10839086		2,628.50	DEPOSIT				
	04/17	10226086		1,250.00	DEPOSIT				
	04/23	10509953		4,002.78	DEPOSIT				
	04/27	10016440		1,738.00	DEPOSIT				
	04/27	10407610		2,001.47	DEPOSIT				
	05/01	10139852		5,010.79	DEPOSIT				
	05/04	20131081		350.00	DEPOSIT				
	05/07	10119204		950.00	DEPOSIT				
	05/08	10113382		770.00	DEPOSIT				
	05/11	20104029		200.00	DEPOSIT				
	05/11			44.82	INTEREST				
CHECKS	DATE	REF NO.	CHECK NO.	AMOUNT	DESCRIPTION	DATE	REF NO.	CHECK NO.	AMOUNT
	04/10	30108759	3256	500.00		04/27	30113149	3317	7.50
	04/15	10613903	3290*	635.77		04/27	30112862	3318	150.00
	04/13	10137045	3295*	16.30		04/20	10814747	3319	1,050.00
	04/21	10106078	3301*	34.87		04/20	10814410	3320	300.00
	04/13	10134766	3302	40.00		04/23	30135396	3321	102.14
	04/10	30115455	3303	135.00		04/27	30119978	3322	49.79
	04/13	50128660	3305*	19.10		04/28	30014644	3323	173.70
	04/16	60229874	3306	29.00		05/01	30103543	3324	132.50
	04/21	20320126	3307	196.00		04/23	10415482	3325	200.00
	04/14	10316072	3308	200.00		04/27	10112751	3327*	200.00
	04/17	50206462	3309	551.51		04/28	30223128	3328	19.10
	04/17	50002966	3310	189.94		05/04	50123085	3329	219.40
	04/20	10402342	3311	146.83		05/01	30218554	3330	93.93
	05/07	30111912	3312	160.00		04/27	10335810	3331	126.00
	04/22	40116284	3313	52.41		04/29	40122730	3332	35.00
	04/21	20314597	3314	19.10		04/27	10300443	3333	400.00
	04/24	50214725	3315	1,056.86		04/29	40026919	3334	600.00
	04/17	10226014	3316	500.00					
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS									
DAILY BALANCE SUMMARY	DATE	BALANCE	DATE	BALANCE	DATE	BALANCE	DATE	BALANCE	DATE
	04/10	6,872.43	04/21	7,022.71	05/01	16,110.84			
	04/13	6,797.03	04/22	6,970.30	05/04	15,866.44			
	04/14	6,597.03	04/23	10,670.94	05/05	15,580.48			
	04/15	8,589.76	04/24	9,614.08	05/06	15,555.48			
	04/16	8,560.76	04/27	12,420.26	05/07	15,654.03			
	04/17	8,769.51	04/28	12,227.46	05/08	16,424.03			
	04/20	7,872.68	04/29	11,572.46	05/11	15,651.35			
INTEREST PAID YEAR-TO-DATE 144.51									
NJNB IS HAVING A MONEY CLEARANCE SALE WITH RATES AS LOW AS 8.5%. CHALLENGE OUR RATES. STOP BY AND APPLY TODAY.									

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



52  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST N  
MORRISVILLE PA 19067

BRANCH	PAGE
NUMBER	1
MAIL	STATEMENT
CODE	DATE
	06/09/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NOW CHECKING									
JOHN POZSGAI									
GIZELLA POZSGAI									
LAST		DEPOSITS/ADDITIONS			CHECKS/DEDUCTIONS				
STATEMENT DATE	BEGINNING BALANCE	NUMBER	AMOUNT	NUMBER	AMOUNT	ENDING BALANCE			
05/11/87	15,651.35	10	6,973.11	52	14,435.96	8,188.50			
DEPOSITS AND ADDITIONS									
DATE	REF NO.	AMOUNT	DESCRIPTION						
05/12	10705995	400.00	DEPOSIT						
05/18	101327068	1,060.00	DEPOSIT						
05/18	10018331	1,471.00	DEPOSIT						
05/26	10111636	460.00	DEPOSIT						
05/28	40315521	1,175.00	DEPOSIT						
06/01	10102945	345.34	DEPOSIT						
06/01	20011373	1,750.00	DEPOSIT						
06/02	20327924	60.00	DEPOSIT						
06/08	10507376	200.00	DEPOSIT						
06/09		51.77	INTEREST						
DEDUCTIONS									
DATE	REF NO.	AMOUNT	DESCRIPTION						
06/02	20327923	700.00	CERTIFIED CHECK						
CHECKS									
DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.
05/20	50234585	3344	1,248.41	05/27	70119047	3372	150.00	06/03	40310875
05/12	20106323	3350*	75.00	05/26	50232460	3373	170.00	06/03	40310419
05/14	40215539	3351	235.10	05/26	10112240	3374	120.00	06/03	40315696
05/19	60315294	3353*	37.95	05/28	60316111	3375	100.00	06/01	10112664
05/12	20233747	3354	19.10	05/26	10111642	3376	900.00	06/02	10515665
05/14	40304142	3355	35.00	05/26	10110053	3377	450.00	06/09	60213886
05/20	50103901	3360*	100.00	05/27	70003641	3378	165.69	06/08	40101556
05/21	30111217	3361	55.83	05/29	50106215	3379	24.00	06/08	40320640
05/18	60312258	3362	5.00	05/29	50106216	3380	24.00	06/04	20206469
05/19	60315749	3363	5.00	06/02	10112519	3381	21.00	06/08	40302875
05/20	50206006	3364	650.00	05/29	50214816	3382	94.96	06/08	40235091
05/18	60127518	3365	457.63	05/29	50214815	3383	70.92	06/08	40302876
05/19	60302595	3366	19.10	05/27	70106997	3384	14.72	06/09	60503873
05/27	70232502	3367	35.00	05/28	60221344	3385	686.81	06/09	60521346
05/20	50206876	3368	1,128.34	05/28	30339161	3386	70.00	06/09	60232972
05/22	50039958	3369	1,039.02	05/28	40221599	3387	300.00	06/08	10237197
05/28	60228218	3371*	28.41	06/03	40310411	3388	59.53	06/09	60116960
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS									
DAILY BALANCE SUMMARY									
DATE	BALANCE			DATE	BALANCE			DATE	BALANCE
05/12	15,557.25			05/21	14,312.89			06/01	13,199.70
05/13	15,957.25			05/22	13,273.87			06/02	12,418.70
05/14	15,687.15			05/26	12,023.87			06/03	12,129.44
05/18	17,555.52			05/27	11,658.46			06/04	12,056.15
05/19	17,493.47			05/28	11,718.24			06/08	10,505.14
05/20	14,356.72			05/29	11,504.58			06/09	8,188.50
INTEREST PAID YEAR-TO-DATE									
198.28									
NAB IS HAVING A MONEY CLEARANCE SALE WITH RATES AS LOW AS 9.5%. CHALLENGE OUR RATES. STOP BY AND APPLY TODAY.									

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST N  
MORRISVILLE PA 19067

BRANCH NUMBER	PAGE
	2
MAIL CODE	STATEMENT DATE
BF	06/09/97

FOR CUSTOMER SERVICE  
CALL (800) 222-0246

PERSONAL MONEY MKT INVESTMENT						SS#	
JOHN POZSGAI							
GIZELLA POZSGAI							
LAST							
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT		CHECKS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE	
05/11/97	5,828.10	1	22.69	0	.00	5,850.79	
DEPOSITS AND							
DATE	REF. NO.	AMOUNT	DESCRIPTION				
06/02		22.69	INTEREST				
DAILY							
DATE	BALANCE	DATE	BALANCE	DATE	BALANCE	BALANCE	
06/02	5,850.79						
SUMMARY							
INTEREST PAID YEAR-TO-DATE		567.89					
YIELD EARNED		5.02		RATE EARNED		4.90	
<p>NUMB IS HAVING A MONEY CLEARANCE SALE WITH RATES AS LOW AS 9.5%. CHALLENGE OUR RATES. STOP BY AND APPLY TODAY.</p>							
STATEMENT SAVINGS							
JOHN POZSGAI							
GIZELLA POZSGAI							
LAST							
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT		WITHDRAWALS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE	
05/11/97	.00	0	.00	0	.00	.00	
INTEREST PAID YEAR-TO-DATE		49.04					

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



37  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH NUMBER	PAGE
	1
MAIL CODE	STATEMENT DATE
BF	07/09/97

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NON CHECKING											
JOHN POZSGAI											
GIZELLA POZSGAI											
SS#											
LAST STATEMENT DATE		BEGINNING BALANCE		DEPOSITS/ADDITIONS NUMBER AMOUNT		CHECKS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE			
06/09/87		8,188.50		6 7,805.82		37 9,995.15		5,999.17			
DEPOSITS AND ADDITIONS											
DATE	REF NO.	AMOUNT	DESCRIPTION								
06/15	20110329	3,108.40	DEPOSIT								
06/17	20404921	1,000.00	DEPOSIT								
06/18	40229050	325.00	DEPOSIT								
06/26	10124506	2,590.25	DEPOSIT								
06/30	10238591	950.00	DEPOSIT								
07/09		32.17	INTEREST								
CHECKS											
DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT
06/30	50230562	3394	80.00	06/29	40218238	3420	1,128.34	07/02	50103039	3432	21.00
06/10	70204485	3403*	25.00	06/23	50237278	3421	1,137.60	07/03	20220118	3433	97.65
06/12	60034774	3409*	54.06	06/24	10400746	3422	159.65	07/01	40119109	3434	11.90
06/15	60017320	3410	114.00	06/26	40131195	3423	1,001.54	07/09	10108662	3435	62.70
06/15	60210085	3411	150.00	06/30	50356024	3424	219.40	06/30	50124634	3436	657.63
06/16	10507768	3412	19.12	06/29	30120940	3425	19.12	07/06	40108532	3437	27.44
06/15	20110722	3413	500.00	06/29	30306120	3426	374.44	07/02	50117315	3438	44.89
06/16	10317581	3414	140.00	06/30	50314625	3427	97.52	07/03	10237203	3439	350.00
06/23	50219209	3415	50.00	06/30	50314621	3428	40.46	07/09	50101759	3440	100.00
06/25	30112560	3416	76.06	06/30	50316903	3429	138.78	07/08	40228474	3441	35.00
06/23	50301779	3417	19.12	07/01	40214828	3430	92.36	07/08	40161567	3442	220.00
06/23	50223553	3418	75.00	07/01	40214830	3431	68.54	07/09	50101542	3443	20.00
06/22	40225948	3419	2,566.43								
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS											
DAILY BALANCE SUMMARY											
DATE	BALANCE		DATE	BALANCE		DATE	BALANCE				
06/10	8,163.50		06/23	7,771.37		07/01	6,945.88				
06/12	8,109.44		06/24	7,611.72		07/02	6,879.99				
06/15	10,453.84		06/25	7,535.66		07/03	6,432.34				
06/16	10,294.72		06/26	8,924.37		07/06	6,404.70				
06/17	11,294.72		06/29	7,402.47		07/08	6,149.70				
06/20	11,619.72		06/30	7,118.68		07/09	5,999.17				
06/22	9,053.09										
INTEREST PAID YEAR-TO-DATE 230.45											
PERSONAL MONEY MKT INVESTMENT											
JOHN POZSGAI											
GIZELLA POZSGAI											
SS#											
LAST STATEMENT DATE		BEGINNING BALANCE		DEPOSITS/ADDITIONS NUMBER AMOUNT		CHECKS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE			
06/09/87		5,850.79		1 23.56		0 .00		5,874.35			
DEPOSITS AND ADDITIONS											
DATE	REF NO.	AMOUNT	DESCRIPTION								
07/09		23.56	INTEREST								
DAILY BALANCE SUMMARY											
DATE	BALANCE		DATE	BALANCE		DATE	BALANCE				
07/09	5,874.35										
INTEREST PAID YEAR-TO-DATE 591.45											
YIELD EARNED 5.02 RATE EARNED 4.90											

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH		PAGE
NUMBER		2
MAIL	OF	STATEMENT
CODE	CODE	DATE
		07/09/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

STATEMENT SAVINGS					SSE
JOHN POZSGAI					
GIZELLA POZSGAI					
LAST					
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER	AMOUNT	WITHDRAWALS/DEDUCTIONS NUMBER	ENDING BALANCE
06/09/87	.00	0	.00	0	.00
INTEREST PAID YEAR-TO-DATE		49.04			

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



37  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH NUMBER	PAGE
	1
MAIL CODE	STATEMENT DATE
BF	08/11/97

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NON CHECKING									
JOHN POZSGAI									
GIZELLA POZSGAI									
SS#									
LAST									
STATEMENT DATE		BEGINNING BALANCE		DEPOSITS/ADDITIONS NUMBER AMOUNT		CHECKS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE	
07/09/87		5,999.17		9 9,315.97		37 10,382.91		4,932.23	
DEPOSITS AND ADDITIONS		DATE	REF NO.	AMOUNT	DESCRIPTION				
		07/14	20304810	1,950.00	DEPOSIT				
		07/17	21004025	1,138.45	DEPOSIT				
		07/22	20512905	850.00	DEPOSIT				
		07/24	20225666	850.00	DEPOSIT				
		07/29	20301591	2,006.25	DEPOSIT				
		08/03	10102021	1,089.20	DEPOSIT				
		08/10	10100324	250.00	DEPOSIT				
		08/11	10110861	1,163.00	DEPOSIT				
		08/11		19.07	INTEREST				
DEDUCTIONS		DATE	REF NO.	AMOUNT	DESCRIPTION				
		07/14	20304809	3,750.00	CERTIFIED CHECK				
CHECKS		DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT
		07/14	40307658	3444	160.00	07/27	70112584	3458	184.50
		07/14	40327418	3445	39.00	07/27	70208804	3459	1,128.34
		07/14	40319927	3446	38.24	07/28	70116343	3460	80.28
		07/20	20218991	3447	52.66	07/28	70324845	3461	19.12
		07/16	30115871	3450*	35.00	08/03	70303782	3462	134.00
		07/23	70200805	3451	400.00	07/30	70032137	3463	116.45
		07/23	70303536	3452	400.00	07/31	70230850	3464	554.00
		07/21	10419908	3453	19.12	07/31	70133103	3465	85.01
		07/17	21023126	3454	400.00	08/03	70108939	3466	25.29
		07/21	10323277	3455	100.00	07/30	20319779	3467	400.00
		07/27	70232472	3456	300.00	08/04	70216539	3468	44.19
		07/31	70201703	3457	850.00	08/05	70300459	3469	73.69
						08/11	50201361	3484	81.50
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS									
DAILY BALANCE SUMMARY		DATE	BALANCE		DATE	BALANCE		DATE	BALANCE
		07/14	3,970.93		07/24	3,402.60		08/04	4,325.95
		07/16	3,955.93		07/27	3,789.76		08/05	4,245.93
		07/17	4,674.38		07/28	3,690.56		08/06	4,077.49
		07/20	4,621.72		07/29	5,696.61		08/07	3,783.22
		07/21	4,502.60		07/30	5,180.16		08/10	3,978.22
		07/22	5,352.60		07/31	3,691.15		08/11	4,932.23
		07/23	4,552.60		08/03	4,547.37			
INTEREST PAID YEAR-TO-DATE 249.52									
PERSONAL MONEY MKT INVESTMENT									
JOHN POZSGAI									
GIZELLA POZSGAI									
SS#									
LAST									
STATEMENT DATE		BEGINNING BALANCE		DEPOSITS/ADDITIONS NUMBER AMOUNT		CHECKS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE	
07/09/87		5,874.35		1 26.02		0 .00		5,900.37	
DEPOSITS AND ADDITIONS		DATE	REF NO.	AMOUNT	DESCRIPTION				
		08/11		26.02	INTEREST				
DAILY BALANCE SUMMARY		DATE	BALANCE		DATE	BALANCE		DATE	BALANCE
		08/11	5,900.37						
INTEREST PAID YEAR-TO-DATE 617.47									
YIELD EARNED 5.02 RATE EARNED 4.90									

SEE REVERSE SIDE FOR IMPORTANT INFORMATION





JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH NUMBER	PAGE 2
MAIL CODE	BF CODE
STATE DATE	DATE 08/11

FOR CUSTOMER SERV  
CALL (800) 222-00

STATEMENT SAVINGS					
JOHN POZSGAI					
GIZELLA POZSGAI					
LAST STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	WITHDRAWALS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE	
07/09/87	.00	0 .00	0 .00		.00
INTEREST PAID YEAR-TO-DATE		49.04			

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



37  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST M  
MORRISVILLE PA 19067

BRANCH NUMBER	PAGE
	1
MAIL CODE	STATEMENT DATE
BF	09/10/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NON CHECKING									
JOHN POZSGAI									
GIZELLA POZSGAI									
LAST		DEPOSITS/ADDITIONS		CHECKS/DEDUCTIONS		ENDING BALANCE			
STATEMENT DATE	BEGINNING BALANCE	NUMBER	AMOUNT	NUMBER	AMOUNT	NUMBER	AMOUNT	ENDING BALANCE	
08/11/87	4,952.23	5	4,385.45	37	5,791.89			3,525.79	
DEPOSITS AND ADDITIONS									
DATE	REF NO.	AMOUNT	DESCRIPTION						
08/14	20116716	1,000.00	DEPOSIT						
08/17	20217433	1,310.00	DEPOSIT						
09/02	20101523	1,350.00	DEPOSIT						
09/09	20406010	708.72	DEPOSIT						
09/10		16.73	INTEREST						
CHECKS									
DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.
08/27	70138081	3478	20.00	08/25	40229593	3498*	19.12	09/03	70211796
08/14	70209001	3481*	280.00	08/24	20305094	3499	400.00	09/10	60118765
08/13	70111438	3485*	40.06	08/25	40206496	3500	62.67	09/01	70325283
08/13	70106139	3486	23.80	08/28	30131025	3501	33.43	09/01	70325308
08/14	20116933	3487	400.00	09/01	70116278	3502	117.45	09/01	70325280
08/17	40235017	3488	107.70	08/28	30135392	3503	68.50	09/01	70317060
08/18	50209363	3489	19.12	08/31	50122252	3504	36.00	09/02	50210531
08/18	50112416	3490	76.39	08/28	20203216	3505	209.78	09/03	70201079
08/20	30135393	3491	153.75	09/01	70132717	3506	219.40	09/08	70316018
08/17	20515630	3492	200.00	08/31	50225686	3507	130.82	09/08	70121657
08/20	70103795	3493	520.54	09/02	30110116	3508	115.51	09/09	60224889
08/25	40212782	3494	1,128.34	09/01	70103705	3509	14.72	09/08	20521337
08/27	70234595	3496*	245.00						
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS									
DAILY BALANCE SUMMARY									
DATE	BALANCE		DATE	BALANCE		DATE	BALANCE		
08/13	4,868.37		08/25	3,964.49		09/02	3,370.04		
08/14	5,188.37		08/27	3,699.49		09/03	3,224.46		
08/17	6,190.67		08/28	3,234.03		09/08	2,921.34		
08/18	6,095.16		08/31	3,067.21		09/09	3,530.06		
08/20	5,574.62		09/01	2,424.69		09/10	3,525.79		
08/24	5,174.62								
INTEREST PAID YEAR-TO-DATE 266.25									
PERSONAL MONEY MKT INVESTMENT									
JOHN POZSGAI									
GIZELLA POZSGAI									
LAST		DEPOSITS/ADDITIONS		CHECKS/DEDUCTIONS		ENDING BALANCE			
STATEMENT DATE	BEGINNING BALANCE	NUMBER	AMOUNT	NUMBER	AMOUNT	NUMBER	AMOUNT	ENDING BALANCE	
08/11/87	5,900.37	1	23.76	0	.00			5,924.13	
DEPOSITS AND ADDITIONS									
DATE	REF NO.	AMOUNT	DESCRIPTION						
09/10		23.76	INTEREST						
DAILY BALANCE SUMMARY									
DATE	BALANCE		DATE	BALANCE		DATE	BALANCE		
09/10	5,924.13								
INTEREST PAID YEAR-TO-DATE 641.23									
YIELD EARNED 5.02 RATE EARNED 4.90									
STATEMENT SAVINGS									
JOHN POZSGAI									
GIZELLA POZSGAI									
LAST		DEPOSITS/ADDITIONS		WITHDRAWALS/DEDUCTIONS		ENDING BALANCE			
STATEMENT DATE	BEGINNING BALANCE	NUMBER	AMOUNT	NUMBER	AMOUNT	NUMBER	AMOUNT	ENDING BALANCE	
08/11/87	.00	0	.00	0	.00			.00	
INTEREST PAID YEAR-TO-DATE 49.04									

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



40  
JOHN POZSGAI  
GIZELLA POZSGAI  
556 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH	PAGE
NUMBER	3
MAIL OF	STATEMENT
CODE CODE	DATE
	10/09/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NOM CHECKING											
JOHN POZSGAI											
GIZELLA POZSGAI											
LAST											
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS		CHECKS/DEDUCTIONS		ENDING BALANCE					
		NUMBER	AMOUNT	NUMBER	AMOUNT						
09/10/87	3,525.79	9	9,001.39	40	5,950.88	6,596.30					
DEPOSITS AND ADDITIONS											
DATE	REF NO.	AMOUNT	DESCRIPTION								
09/14	20414714	459.00	DEPOSIT								
09/18	20239038	1,108.00	DEPOSIT								
09/28	20334906	615.50	DEPOSIT								
09/30	30206029	2,450.00	DEPOSIT								
10/01	20310447	1,194.27	DEPOSIT								
10/05	50237907	537.08	DEPOSIT								
10/06	20105974	32.40	DEPOSIT								
10/09	10105328	2,601.48	DEPOSIT								
10/09		12.66	INTEREST								
CHECKS											
DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO.	AMOUNT
09/23	70138818	3477	240.00	09/29	40214019	3535	37.50	10/06	50110514	3551	23.80
09/29	40228210	3518*	12.00	09/22	40116345	3534	70.00	09/29	40320199	3553*	252.00
09/15	40234039	3523*	19.12	09/21	40102706	3537	400.00	10/05	20009548	3554	21.00
09/11	30103746	3524	500.00	09/24	70125516	3538	1,128.34	10/02	40138082	3555	30.29
09/14	20627592	3525	59.99	09/24	70115708	3539	23.56	10/02	10101798	3557*	100.00
09/15	40221504	3526	118.50	09/25	20139712	3540	41.02	10/06	50216032	3558	19.63
09/15	40241797	3527	45.00	09/25	20604387	3541	347.34	10/07	60115474	3559	37.08
09/15	40241801	3528	62.90	09/25	40208795	3543*	19.12	10/05	50202295	3560	400.00
09/21	40204747	3529	70.00	09/28	10108841	3544	400.00	10/09	60307103	3561	78.28
09/17	20124642	3530	25.00	09/29	40214020	3545	126.25	10/09	10432402	3562	115.07
09/18	50101714	3531	55.00	09/30	50200357	3547*	32.28	10/09	60307090	3564*	59.93
09/17	20121245	3532	124.95	10/09	60131282	3548	141.36	10/06	50219161	3565	35.00
09/30	50112804	3533	40.25	09/29	20405661	3550*	164.72	10/09	60128822	3567*	427.28
09/22	60132584	3534	19.12								
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS											
DAILY BALANCE SUMMARY											
DATE	BALANCE		DATE	BALANCE		DATE	BALANCE				
09/11	3,025.79		09/23	3,254.21		10/01	4,901.40				
09/24	3,415.80		09/24	2,102.31		10/02	4,771.11				
09/15	3,150.28		09/25	1,743.75		10/05	4,687.19				
09/17	3,000.33		09/28	1,929.25		10/06	4,841.16				
09/18	4,053.55		09/29	1,337.66		10/07	4,504.08				
09/21	3,503.33		09/30	3,707.13		10/09	6,596.30				
09/22	3,434.21										
INTEREST PAID YEAR-TO-DATE 278.21											
PERSONAL MONEY MKT INVESTMENT											
JOHN POZSGAI											
GIZELLA POZSGAI											
LAST											
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS		CHECKS/DEDUCTIONS		ENDING BALANCE					
		NUMBER	AMOUNT	NUMBER	AMOUNT						
09/10/87	5,924.13	1	23.55	0	.00	5,947.68					
DEPOSITS AND ADDITIONS											
DATE	REF NO.	AMOUNT	DESCRIPTION								
10/09		23.55	INTEREST								
DAILY BALANCE SUMMARY											
DATE	BALANCE		DATE	BALANCE		DATE	BALANCE				
10/09	5,947.68										
INTEREST PAID YEAR-TO-DATE 664.78											
YIELD EARNED 5.12 RATE EARNED 5.00											

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH NUMBER	PAGE
	2
MAIL OF CODE CODE	STATEMENT DATE
	10/09/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

STATEMENT SAVINGS					SS#		
JOHN POZSGAI							
GIZELLA POZSGAI							
LAST STATEMENT DATE		BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT		WITHDRAWALS/DEDUCTIONS NUMBER AMOUNT		ENDING BALANCE
09/10/87		.00	0 .00		0 .00		.00
INTEREST PAID YEAR-TO-DATE			49.04				

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



50  
JOHN POZSGAI  
GIZELLA POZSGAI  
556 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH	PAGE
NUMBER	1
MAIL	STATEMENT
CODE	DATE
	11/10/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NON CHECKING						
JOHN POZSGAI						
GIZELLA POZSGAI						
LAST						
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	CHECKS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE		
10/09/87	6,596.30	9 10,488.67	50 7,683.94	9,401.03		
DEPOSITS AND ADDITIONS						
DATE	REF NO.	AMOUNT	DESCRIPTION			
10/23	10513044	1,062.99	✓ DEPOSIT			
10/19	20117177	1,036.00	✓ DEPOSIT			
10/22	10240474	2,475.79	✓ DEPOSIT			
10/27	10307334	2,514.02	✓ DEPOSIT			
10/29	10403732	651.00	✓ DEPOSIT			
11/02	10711975	480.00	✓ DEPOSIT			
11/09	20103739	1,000.00	✓ DEPOSIT			
11/10	20732650	1,269.14	✓ DEPOSIT			
11/10		30.93	INTEREST			
CHECKS						
DATE	REF NO.	CHECK NO.	AMOUNT	DATE	REF NO.	CHECK NO. AMOUNT
10/19	20117320		200.00	10/28	70324493	3580 ✓ 136.20
10/13	60234167	3546 ✓	36.78	10/27	70104803	3582 ✓ 32.23
10/23	50211678	3594 ✓	200.00	10/27	70213597	3583 ✓ 100.00
10/14	70334680	3563 ✓	119.25	10/23	50209074	3584 ✓ 400.00
10/19	50102991	3564 ✓	30.00	10/23	50111542	3585 ✓ 25.00
10/14	70419393	3568 ✓	30.00	10/22	70201097	3586 ✓ 25.00
10/24	70303895	3569 ✓	115.75	10/27	70233482	3587 ✓ 1,129.34
10/13	60204280	3570 ✓	188.59	10/22	10500224	3588 ✓ 400.00
10/13	60105760	3571 ✓	37.08	10/27	70118249	3589 ✓ 165.66
10/14	70329944	3572 ✓	19.63	10/28	70203759	3590 ✓ 114.78
10/14	70304129	3573 ✓	139.00	10/28	70203778	3591 ✓ 50.85
10/13	10719016	3574 ✓	400.00	10/28	70203742	3592 ✓ 77.17
10/14	70111659	3575 ✓	43.00	10/28	70102489	3593 ✓ 19.63
10/14	10304219	3576 ✓	210.00	10/28	70129984	3594 ✓ 186.71
10/19	50102990	3577 ✓	170.00	10/29	10111133	3595 ✓ 30.00
10/15	10423909	3578 ✓	200.00	10/27	70213598	3596 ✓ 138.50
10/22	70128969	3579 ✓	19.63	10/28	10403914	3597 ✓ 92.33
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS						
DAILY BALANCE SUMMARY						
DATE	BALANCE		DATE	BALANCE		DATE
10/13	6,996.04		10/23	8,141.19		10/30
10/14	6,510.23		10/26	7,891.19		11/02
10/15	6,310.23		10/27	8,571.08		11/03
10/16	6,100.23		10/28	7,835.04		11/09
10/19	6,737.03		10/29	8,202.15		11/10
10/22	8,766.19					
INTEREST PAID YEAR-TO-DATE 309.84						
PERSONAL MONEY MKT INVESTMENT						
JOHN POZSGAI						
GIZELLA POZSGAI						
LAST						
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER AMOUNT	CHECKS/DEDUCTIONS NUMBER AMOUNT	ENDING BALANCE		
10/09/87	5,957.68	1 26.62	0 .00	5,974.30		
DEPOSITS AND ADDITIONS						
DATE	REF NO.	AMOUNT	DESCRIPTION			
11/10		26.62	INTEREST			
DAILY BALANCE SUMMARY						
DATE	BALANCE		DATE	BALANCE		DATE
11/10	5,974.30					
INTEREST PAID YEAR-TO-DATE 691.40						
YIELD EARNED 5.23 RATE EARNED 5.11						

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



JOHN POZSGAI  
GIZELLA POZSGAI  
556 BRIDGE ST N  
MORRISVILLE PA 19067

BRANCH NUMBER	PAGE 2
MAIL OF CODE CODE	STATEMENT DATE
	11/10/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

STATEMENT SAVINGS						SSS	
JOHN POZSGAI							
GIZELLA POZSGAI							
LAST							
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS NUMBER      AMOUNT		WITHDRAWALS/DEDUCTIONS NUMBER      AMOUNT		ENDING BALANCE	
10/09/87	.00	0	.00	0	.00	.00	
INTEREST PAID YEAR-TO-DATE		49.04					

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



40  
JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH	PAGE
NUMBER	1
MAIL CODE	STATEMENT DATE
BF	12/08/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

NON CHECKING									
JOHN POZSGAI									
GIZELLA POZSGAI									
LAST	DEPOSITS/ADDITIONS			CHECKS/DEDUCTIONS			ENDING BALANCE		
STATEMENT DATE	BEGINNING BALANCE	NUMBER	AMOUNT	NUMBER	AMOUNT				
11/10/87	9,401.03	6	4,729.51	40	7,113.71				7,016.83
DEPOSITS AND ADDITIONS	DATE	REF. NO.	AMOUNT	DESCRIPTION					
	11/12	20410046	2,214.00	DEPOSIT					
	11/23	20410046	90.00	DEPOSIT					
	11/25	20305646	570.00	DEPOSIT					
	11/30	30104744	300.00	DEPOSIT					
	12/01	20308238	1,520.00	DEPOSIT					
	12/08		55.51	INTEREST					
CHECKS	DATE	REF. NO.	CHECK NO.	AMOUNT	DATE	REF. NO.	CHECK NO.	AMOUNT	
	12/01	70230390	3605	448.67	11/16	20105078	3630	42.00	11/30 20611299 3643 221.85
	11/16	70220691	3608*	109.50	11/16	20528280	3631	400.00	11/25 20305759 3644 300.00
	11/12	60101534	3613*	21.00	11/16	20340324	3632	54.00	12/01 70218734 3645 19.63
	11/16	70119844	3619*	41.74	11/17	20128170	3633	200.00	12/01 70228019 3646 50.00
	11/24	10107037	3620	60.00	11/23	50139116	3634	19.63	11/30 30104698 3647 400.00
	11/18	20417481	3621	60.00	11/24	10205753	3635	40.00	12/03 70216816 3648 102.47
	11/16	70120314	3622	39.95	11/25	70204942	3636	60.00	12/04 20134151 3649 203.50
	11/13	70105409	3623	54.19	12/07	50206716	3637	300.00	12/07 20807894 3651* 529.09
	11/16	70138028	3624	74.53	11/25	70203394	3638	1,128.34	12/07 50417574 3652 449.99
	11/16	70138022	3625	50.85	11/25	20538722	3639	300.00	12/08 50138047 3653 19.63
	11/16	70158025	3626	92.51	11/30	50238468	3640	125.49	12/08 50301683 3655* 277.08
	11/19	20110634	3627	154.40	11/30	20611306	3641	108.12	12/08 50306701 3657* 14.72
	11/17	40219098	3628	19.63	12/04	20134135	3642	11.00	12/07 20114540 3659* 350.00
	11/16	70220692	3629	160.00					
* INDICATES SKIP IN SEQUENCE OF CHECK NUMBERS									
DAILY BALANCE SUMMARY	DATE	BALANCE		DATE	BALANCE		DATE	BALANCE	
	11/12	11,594.03		11/19	10,040.73		12/01	9,238.80	
	11/13	11,539.84		11/23	9,811.10		12/03	9,136.33	
	11/16	10,474.76		11/24	9,711.10		12/04	8,921.83	
	11/17	10,255.13		11/25	8,792.76		12/07	7,292.75	
	11/18	10,195.13		11/30	8,237.10		12/08	7,016.83	
INTEREST PAID YEAR-TO-DATE 345.35									
PERSONAL MONEY MKT INVESTMENT									
JOHN POZSGAI									
GIZELLA POZSGAI									
LAST	DEPOSITS/ADDITIONS			CHECKS/DEDUCTIONS			ENDING BALANCE		
STATEMENT DATE	BEGINNING BALANCE	NUMBER	AMOUNT	NUMBER	AMOUNT				
11/10/87	5,974.30	1	23.46	0	.00				5,997.76
DEPOSITS AND ADDITIONS	DATE	REF. NO.	AMOUNT	DESCRIPTION					
	12/08		23.46	INTEREST					
DAILY BALANCE SUMMARY	DATE	BALANCE		DATE	BALANCE		DATE	BALANCE	
	12/08	5,997.76							
INTEREST PAID YEAR-TO-DATE 714.86									
YIELD EARNED 5.25			RATE EARNED 5.12						

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



JOHN POZSGAI  
GIZELLA POZSGAI  
536 BRIDGE ST W  
MORRISVILLE PA 19067

BRANCH		PAGE
NUMBER		2
MAIL		STATEMENT
CODE	BF	DATE
	CODE	12/09/87

FOR CUSTOMER SERVICE  
CALL (800) 222-0033

STATEMENT SAVINGS					
JOHN POZSGAI					
GIZELLA POZSGAI					
LAST					
STATEMENT DATE	BEGINNING BALANCE	DEPOSITS/ADDITIONS		WITHDRAWALS/DEDUCTIONS	
		NUMBER	AMOUNT	NUMBER	AMOUNT
11/10/87	.00	0	.00	0	.00
INTEREST PAID YEAR-TO-DATE 49.04					
ENDING BALANCE					

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



**NewsLibrary**

Search

Passport Signup

Billing Options

Thank you for using NewsLibrary

**PHILADELPHIA INQUIRER**

Monday, January 6, 1992

Section: EDITORIAL

Edition: FINAL

Page: A06

**A WELL-ENGINEERED SCAM  
MUNICIPAL ENGINEERS IN BUCKS COUNTY ARE  
CHARGING HUGE FEES FOR NEEDLESS WORK**

TEXT: The county engineers are running amok in Bucks County, and nobody seems to care much about it.

A series of articles called "The high cost of engineering" written by staff writers in the Inquirer's Bucks County bureau - Jeffrey Fleishman, Karl Stark, Kathy Boccella and Kimberly J. McLarin - showed how the engineers who oversee building plans to make sure they meet legal requirements are often involved in conflicts of interest, charge outrageous fees and break campaign-finance laws. Township and county political organizations appear to be running a contest in which the engineering firm that contributes the most gets the business.

Here's a sampling of what the reporters found:

\* An engineer's 16-year-old son was paid \$257 to spend 50 minutes checking a paving job in Buckingham Township.

\* Engineer William G. Major charged a Bristol Township developer first for drawing up plans for a project in Bristol Township, and then to review his own plans as Bristol Township's engineer.

\* The cost of getting approval for a drainage ditch in Bristol Township went from \$23,000 to \$727,000, as it had to be approved again after each of three changes in political control. It still hasn't been built. ✱

The victims are the people who end up paying more than they should to buy a house subject to these inflated engineering fees, and something should be done about the situation fast. Competitive bidding for this kind of engineering work would be a good place to start. And the bidding shouldn't be limited to engineers inside a particular township or county.

Second, there ought to be a state law limiting the size of campaign contributions. A bill already proposed by State Sen. Craig H. Lewis (D., Bucks), and Rep. Alan Kukovich (D., Westmoreland), if extended to include campaigns for local and county offices, would help.

Agencies responsible for enforcing election campaign finance laws ought to start enforcing them, including the office of State Attorney General Ernie Preate Jr. Mr. Preate makes a good suggestion in urging that the state Bureau of Elections be given some enforcement powers, including the right to levy fines for failure to report contributions and other violations of election law.

The state Bureau of Occupational and Professional Affairs, which has the right to revoke licenses of engineers, ought to start revoking the licenses of engineers who violate professional standards for ethics. At present many of the engineers cited in the articles routinely break the code of the National Society of Professional Engineers, which says engineers should not "give, solicit or receive . . . any political contribution intended to influence the award of a contract."

Nicholas J. Moran, president of J.G. Park Associates Inc., helpfully explained the way things really work for engineers in Bucks at the present time: "If you're not going to be part of the team, then you're not going to share in the wealth or spoils . . ."

— GAVE  
DEMOCRATES  
\$ 3300 IN  
1991

All content © 1992 PHILADELPHIA INQUIRER  
and may not be republished without permission.

All archives are stored on a SAVE (tm) newspaper library system from MediaStream Inc.,  
a Knight Ridder, Inc. company.

Search	Passport Signup	Billing Options
--------	-----------------	-----------------

**NewsLibrary**

Search

Passport Signup

Billing Options

Thank you for using NewsLibrary

## PHILADELPHIA INQUIRER

Tuesday, December 31, 1991

Section: LOCAL

Edition: FINAL

Page: A01

Memo: THE HIGH COST OF ENGINEERING  
Last in a series.

YOU HAVE TO PAY TO PLAY IN BUCKS  
"I THINK IT'S VIRTUALLY IMPOSSIBLE TO BECOME A  
MUNICIPAL ENGINEER  
TODAY WITHOUT HAVING SOME INVOLVEMENT IN  
WHOEVER THE WINNING PARTY IS."

By Jeffrey Fleishman, Karl Stark and  
Kathy Boccia, Inquirer Staff Writers

TEXT: William G. Major, an engineer by trade and a political oddsmaker by necessity, stood next to a troubled Hal Saxton on that cloudless August day in 1989 as a 60-foot yacht carried them down the Delaware River.

They were on a \$500-a-head fund-raising voyage to rescue Saxton's stumbling Republican campaign for Bristol Township executive.

A beefy former semipro football player with an appetite for Don Diego cigars, Major had a lot riding on Saxton. Major needed a Saxton victory to guarantee his staying on as township engineer, a political appointment that was worth almost \$500,000 in fees to Major's firm in 1989.

But Major was no Saxton flag-waver. He said he was loyal only to the odds. And the smart money was on Saxton's Democratic opponent, former State Rep. James J.A. Gallagher.

Major, who wears a pinky ring and a fedora, said he played chameleon. He contributed \$1,500 to Saxton and the Republicans and \$1,100 to Gallagher and the Democrats.

"Sometimes you hedge your bets," Major said recently as he cut a cigar tip with a razor blade.

Major wasn't the only engineer hedging. Presidents and employees from nine engineering firms, most of whom did not even live in Bristol Township, contributed \$22,830 to township Republican and Democratic Parties in 1989 and 1990.

Gallagher and his ticket received the lion's share of the engineers' contributions - \$18,500. That was 21 percent of all the money raised by the township Democrats. Five engineers gave to both parties.

These engineers say they bank on an important political reality: Most firms that get large municipal contracts have made heavy political contributions. Not \$50 here or \$75 there. But

Daniel S. Winokur's \$3,600 and Nicholas J. Moran's \$3,300 in one township's political contests.

Management staff from one Bucks County firm, Carroll Engineering Inc., contributed nearly \$100,000 to political races, mainly in Bucks and Montgomery Counties, over three years. That was still only a fraction of the more than \$10 million in contracts the firm received from county and local governments during that period.

Not all engineering firms disclose their employees' political donations, even though they are required to report contributions greater than \$1,000 to the state Bureau of Elections.

"I think it's virtually impossible to become a municipal engineer today without having some involvement in whoever the winning party is," said Major, a municipal engineer for 40 years. "Politics doesn't run on anything but money."

Consider:

\* Nicholas J. Moran, president of *J.G. Park Associates Inc.*, said he reimbursed four employees for \$1,700 in political contributions. Pennsylvania campaign laws prohibit employers from reimbursing their employees for political contributions.

"I can't expect any of my people here to pull money out of their pocket for a political contribution. Why should they?" Moran said. "It's all part of your cost of doing business."

Moran, whose firm is engineer to Bristol Township, said he was not aware of the state law. "I never really looked into it too much. Many other people are probably in the same category."

\* Herbert T. Scheuren Jr. was not a licensed engineer when he was named Bensalem Township's engineer in 1987. But the at-large 30-year-old was a big campaign contributor. He used a company petty cash fund to contribute to and entertain elected officials; his company also donated \$5,000 to the Bucks County GOP. The law permits individuals to make contributions, but prohibits companies from doing so.

\* Falls Township engineer Daniel S. Winokur contributed \$3,600 to the Democratic slate in one municipal election. When asked why he donated, Winokur said that the candidates "were kind and decent people." When asked who the six candidates were, Winokur could name only one. Winokur was not registered to vote when he made the contributions.

\* Carroll Engineering Inc., the largest municipal engineering firm in Bucks County, requires its upper management employees to donate to municipal races. This is legal. "As (employees) grow in the organization," said Carroll president Harry J. Barford Jr., "we'll tell them, 'Look, this is part of doing business.'"

Engineers contribute much more heavily to local races than to state and federal campaigns. The reason is simple: Local government is where the bulk of contracts lie.

The political action committee for the Pennsylvania Society of Professional Engineers contributed only \$744 statewide to legislators in 1990. That contrasts with the nine engineers, or their employees, who gave a total of more than \$20,000 just in Bristol Township's political race in 1989-90.

Political contributions should not have the "appearance of influencing the award of contracts involving a public authority," says the policy of the National Society of Professional Engineers.

A nominal political contribution is all right, said Herbert G. Koogler, past president of the society. "Once a contribution reaches \$500," he said, "then a question develops with regard to its ethical propriety."

With millions of dollars in engineering fees in the balance, some engineers say money often overpowers ethics.

"How many of the largest (engineering) companies do you think would be at the size where they're at, or still maintain the business level of what they have, if it would not be for their active participation in the political arena?" asked Moran, of *J.G. Park Associates*.


"If you want to go right by the book and be very righteous and all that, and don't want to partake

and all the rest of the stuff, you know, you can be that way, but you're not going to have an office.

"But look," continued Moran, "if you're not going to be part of the team, then you're not going to share in the wealth or spoils. . . . There's nothing hidden about it."

Competition for municipal engineering jobs is fierce in all counties, but it has intensified in Bucks, which over the last decade added 62,000 residents and grew more than any county in the state.

Over the last 40 years, the county's population has grown from 200,000 to nearly 600,000. Houses, roads and strip shopping centers have replaced pasture land, forcing local governments to enact regulations that would protect the environment during massive growth.

Most engineers in Bucks County say they find themselves having to give sizable contributions to be considered for municipal contracts. 

Chuck Pennoni, president of the American Society of Civil Engineers, contributed \$8,000 to political candidates last year, and his Philadelphia-based firm, which represents 20 municipalities in the area, was one of the smaller contributors to several key local races in Bucks County.

"You have to keep in mind the process," Pennoni said. "Campaigns are funded by political contributions and people are going to solicit, and they're going to solicit from people they know and people they work with, and people are generally going to support them."


Pennoni said he agreed with the society's ethical standards and added, "It is not illegal or unethical for engineers to make political contributions. . . . But you cannot give any political contributions in exchange for work."

The Pennoni firm did not file employee contributions with the state, as the law requires. Pennoni's employees donated more than \$8,200 to Bucks County's Republican and Democratic Parties from 1988 to 1990.

Pennoni said he was not aware that the law required his firm to file the names of employees who contributed more than \$1,000. "I was amazed at how few people are listed (with the state)," Pennoni said.

The state law is intended to identify contributions of more than \$1,000 made by employees of companies that receive no-bid government contracts, including municipal engineers. Although some firms do not file their contributions with the state, the parties and candidates disclose the contributions in their campaign reports.

Eric Flicker, president of the Pennsylvania Society of Professional Engineers, said that over the years, "there has been a significant amount of concern" about the size of political contributions made by engineers. There are "likely cases," he said, in which a large contribution is made in hopes of winning a job. "I don't condone that."

State and local laws, Koogle said, should have stricter campaign regulations, calling for an engineer's license to be revoked or suspended if unreported political contributions are discovered. 

Pennsylvania law has no such requirement. In fact, the state's Bureau of Occupational and Professional Affairs, which licenses all engineers, has revoked no licenses over the last three years.

Out of the 115 investigations done by the bureau since 1989, only one resulted in a suspension.

Herbert T. Scheuren Jr. did not disclose his big political contributions between 1987 and 1990, as state law requires. Records filed by the Republican Party in Bucks County show that Scheuren and his business associates contributed \$17,300 to the GOP during that time.

In 1989, his firm was paid \$611,000 as Bensalem Township's engineer.

When Scheuren was named township engineer in 1987, he was a 26-year-old Pennsylvania State University environmental engineering graduate. He was a fresh face in the aging ranks of Bucks County municipal engineers, many of whom had been tolling over blueprints since before Scheuren was born.

Scheuren lacked a few things, however, including a professional engineering license. State law requires that a municipality the size of Bensalem have a licensed engineer. Scheuren fulfilled that requirement by taking a partner who was a licensed chemical engineer.

What Scheuren did have was political connections. His father, Herbert Sr., was an elementary school principal and a close friend of township Supervisor Jack Maher. Maher put in a good word for Scheuren with his fellow supervisors and with the township manager. Scheuren was the only candidate the township interviewed for the job.

And Scheuren also showed that, although young, he understood that politics involved money.

In addition to the \$17,300 Scheuren and his business associates contributed to the county GOP, records show that he and a partner gave \$2,400 to Bensalem candidates in 1988 and 1989. Scheuren bought supervisors 25-pound turkeys at Thanksgiving and dinners and drinks at Fisher's Tudor House. For a wedding gift, Scheuren gave then-Township Manager Carmen Raddi a \$500 gift certificate from Best stores.

Raddi said that Scheuren's congeniality and his political contributions kept Scheuren in his post, even though questions about his business dealings and abilities were raised. "He was untouchable," said Raddi.

Until the election in the fall of 1989 changed the politics of Bensalem.

Scheuren, who was being investigated by the state Ethics Commission, became a liability. The investigation was into Scheuren's purchase of a home for a low price from a developer whose residential project Scheuren had earlier approved. The Ethics Commission would not comment on the matter.

Scheuren was fired when the new administration took office. This year, he was convicted in Bucks County Court of false swearing and tampering with records in a scheme to alter plans to help a developer.

But his contributions to the county GOP did not go unrewarded. Soon after he was fired by Bensalem, Scheuren received a \$103,428 government contract from the Republican-controlled county to design two parking lots, three walking paths, two playgrounds and a restroom in Peace Valley Park near Doylestown.

In the late 1980s, Daniel S. Winokur was trying to break into the government contract arena. And like Scheuren, Winokur used cocktail parties, money and politics.

From 1988 to 1990, Bucks County records show that Winokur contributed \$12,504 - more than any other engineer - to the Bucks County Democratic Party. In those three years, Winokur did not report to the state that he made the contributions.

State law requires owners and employees of businesses that receive no-bid government work, and their immediate families, to report contributions of \$1,000 or more. Winokur, in a recent interview, said he was not aware of the law.

Winokur was appointed Falls Township engineer in 1988. In 1989, Winokur's fees in Falls were \$844,000, the highest that year of any municipal engineer in Bucks County.

Winokur said he did not think his contributions got him the Falls job, but added that without them he would not have been considered.

"If I wouldn't have given to that political campaign or to that cocktail party where I ended up going around and I met (then-Falls Supervisor) Richard Goulding, I would never have Falls Township," said Winokur.

"How much money does Mobil Oil Corp. give every time to the presidential campaign?" Winokur asked. "We have corporations that give millions of dollars to senators and congressmen. Why do they do that? They want their name to be known that they are part of the establishment. All that I want to do is to have my name be part of the establishment."

Political contributions buy name recognition, not jobs, Winokur said.

"I like to be retained for my capabilities," he said. "And I hope that every time (the government) makes a decision to hire me, (it) appreciates my capabilities. Do I sound naive? Maybe."

Winokur did more than contribute to the Democratic Party; he solicited for it. Some of those he solicited included developers in Falls Township who needed Winokur's approval before their projects could be completed.

A Feb. 12, 1990, letter on Winokur's stationery sought \$1,000 contributions for an annual Democratic benefit. At least three developers and contractors whose projects Winokur had approved contributed.

In late 1989, Winokur was a major campaign contributor to Gallagher's ticket, which would take control of Bristol Township government. But Winokur lost the township engineering contract to J.G. Park Associates Inc., whose president, Nicholas Moran, has long been involved in Bristol politics.

"Politically, in Bucks County, Dan Winokur is a new fellow on the block," said Moran. "He's only arisen in the last two or three years. . . . I've been on the political scene for the past 25 years."

Moran said newcomers such as Winokur had to rely on political contributions and "connections as well" to get government work.

Carroll Engineering Inc., with about 85 employees, has some of the most prized government contracts.

Over the last three years, the firm has made \$7.7 million representing the Bucks County Water and Sewer Authority. In 1990, it earned more than \$1.5 million as engineer for eight other government bodies in Bucks and Montgomery Counties.

Carroll's president, Harry Barford Jr., said the company's philosophy on political contributions is simple:

"If somebody helps you get a job and you're able to make some money off of it and then they say, 'Hey, I've got two tickets for 25 bucks each. I'm running for school board; can you help me out?' He helped us, so you try to help him."

Seven Carroll employees contributed a total of \$51,434 to political campaigns in 1990. Most of the time Barford and his employees contributed on the same day.

By the end of 1990, Barford personally had contributed \$9,400 to local, county, state and federal races.

William G. Major knows all about political races.

As Saxton's fund-raiser yacht sliced through the Delaware that day in 1989, Major said, he knew that the odds were against his being Bristol Township engineer in 1990. But he donated \$2,600 to both political parties anyway. That's the way the game was played. He would lose, but he had won before. And Bristol had been good to him: From 1986 through 1989, Major's firm earned nearly \$1.5 million as township engineer.

"All of us are creatures of the political environment. You can never escape that," Major said recently in his office, an unlit Don Diego cigar rolling between his lips. "But it's a little more

dog-eat-dog today."

#### POLITICAL GIFTS IN BRISTOL TWP.

Following are contributions made by engineering firms, through their employees, to political parties in Bristol Township in 1989-90. The contributions went to the races for township executive and council.

#### DEMOCRATS

The principals of engineering firms and their employees contributed \$18,500, or 21 percent of the \$88,256 raised by Democrats.

##### FIRM GIFT

Unitech Engineering \$8,200  
D.S. Winokur Associates 3,600  
J.G. Park Associates 3,300  
Christina Kurtz 3,100  
William G. Major Associates 1,100  
Mid. Atl. States Engineering 700  
Herbert T. Scheuren Jr. 500

#### REPUBLICANS

The principals of engineering firms and their employees donated \$4,330, or 7 percent of the \$64,878 raised by Republicans.

##### FIRM GIFT

William G. Major Associates \$1,500  
Unitech Engineering 1,040  
Canroll Engineering Inc. 700  
Pennoni Associates Inc. 500  
J.G. Park Associates 250  
Mid. Atl. States Engineering 240  
Herbert T. Scheuren Jr. 100

All content © 1991 PHILADELPHIA INQUIRER  
and may not be republished without permission.

All archives are stored on a SAVE (tm) newspaper library system from MediaStream Inc.,  
a Knight Ridder, Inc. company.

Search	Passport Signup	Billing Options
--------	-----------------	-----------------



**NewsLibrary**

Search

Passport Signup

Billing Options

Thank you for using NewsLibrary

**PHILADELPHIA INQUIRER**

Monday, December 30, 1991

Section: LOCAL

Edition: FINAL

Page: A01

Memo: THE HIGH COST OF ENGINEERING

Second in a series.

TOMORROW: Campaign contributions and political appointments.

**NICKEL-AND-DIMING THEIR WAY TO FAT FEES  
ENGINEERS IN BUCKS COUNTY HAVE BEEN KNOWN TO  
BILL DEVELOPERS FOR THE TIME  
THE DEVELOPERS SPEND COMPLAINING TO THEM ABOUT  
THE SIZE OF THEIR BILLS.**

*By Karl Stark, Jeffrey Fleishman and  
Kimberly J. McLarin, Inquirer Staff Writers*

TEXT: The construction site in Bristol Township was muddy and quiet on Feb. 12, 1990, except for the tapping of falling rain and the footsteps of an inspector from the engineering firm of J.G. Park Associates Inc.

There was no construction going on that day on an industrial building that the firm of Lanard & Axilbund was putting up at the Keystone Industrial Park off Interstate 95. With no work being done, company officials didn't expect the township's engineering firm to conduct an inspection. They were wrong.

Invoices show that even though Lanard & Axilbund had no construction crew on site, Park Associates billed the company for one hour of an inspector's time and for 10 miles in travel costs. The invoice says that the inspector did nothing while on site - simply went there, then left because no work was being done.

At other times, Park inspectors billed for other things: watching as trees were planted, watching as trees were watered and mulched.

These hour-there, hour-there bills are barely noticeable to a developer on a daily basis. But they add up.

Over five months, Park Associates billed Lanard & Axilbund \$8,170 for engineering work, including inspections done on rainy days, inspections that were never done, and inspections in which one inspector watched - at \$35 an hour - as dirt was shoveled into a dump truck.

These types of bills are common among municipal engineering firms, and they are one reason development costs in Bucks County suburbs have soared.

Most municipal engineers in the county are private consultants who are appointed by politicians to posts that can earn their firms \$200,000 to \$800,000 a year. Those fees, which are paid largely by developers, make municipal engineers among the highest-paid of local government officials anywhere.

The municipal engineer's job is to design public works projects and to ensure that developers follow state and local development laws. Some municipal engineers in Bucks County use their authority to bill for hundreds of hours of nitpicking and questionable reviews and inspections.

Some bill for giving estimates on how much their final bill will be. Others bill developers for the time the developers spend complaining to the engineer about the engineer's excessive bills.

The fees can cost developers tens of thousands of dollars a year, ultimately pushing up prices for home buyers and businesses.

Commercial developer Don Keenan said a client of his paid \$20,000 extra for a small office building in Buckingham Township because of excessive engineering costs.

And consider the case of residential developer Doug Sanders in the same township. In his Hunter's Crossing development, homes sell for \$325,000 each. Between Sanders' own engineer and the township engineer, he has paid \$161,325 in fees for the 28-home project. That comes to \$5,760 in engineering fees for each home.

What is \$5,760 to the home buyer? "That means you could go from an oak kitchen to a cherry kitchen," said Sanders. "Or from a brick fireplace to a stone fireplace, or from a 20-year roof to a 40-year roof."

Developers hesitate to challenge engineers, because developers know that the engineer can shut down a project quicker than you can turn off a bulldozer.

"Basically, they're stealing from us," said Gary G. Whelan, director of construction for the Korngold Co. "They've devised a wonderful way to make money. They know they've got you by the short ones."

Art Rothe, who has worked for a private engineer and is now a full-time government engineer, said that many in the industry had a "mentality" to bill heavily. "Sometimes you can do an inspection in 15 minutes and stay there two hours," he said.

The private firms look for ways to bill for an eight-hour day even though they have only an hour's work to do, he said.

Consider:

- \* Faith Baptist Church officials say that Falls Township engineer Daniel S. Winokur padded his inspection hours and billed for inspections that never occurred during construction of a recreation center. Church officials say that, in one case, Winokur billed the church for five hours of inspections when the inspector was on site for only 15 minutes. Winokur denied overbilling.

- \* The hourly rates of some engineering firms have approached those of doctors and lawyers. O'Donnell & Naccarato, the engineering firm for Bucks County for more than a decade, charges a top rate of \$150 an hour - almost double the going top rate of other firms.

- \* State law requires municipal engineers to approve or reject a developer's building plans within three months. But that time is pushed to as long as 18 months, often because municipal engineers - who bill by the hour - find reams of minor objections to the plans each month.

"The clock keeps on ticking," said lawyer John Van LuVane, who represents developers, "and those costs get passed on to the buyer."

There are also isolated cases in which engineers get high fees because they work for the township and the developer on the same project.

For example, engineer William G. Major billed on both sides of the development process in Bristol Township - public and private - at the same time. Major received \$80,000 as township

engineer between 1987 and 1989 for reviewing and inspecting work on a business park developed by Pitcairn Properties Inc. Major also had been paid by Pitcairn to design the very plans he was paid to review.

Municipal engineers say their bills are not excessive. They say the time they spend on reviews and inspections is dictated by the Municipalities Planning Code and by regulations governing wetlands, drainage, traffic, architectural work and other factors that weren't on the books 30 years ago. These laws have made the engineer liable to the municipality for such things as poor construction and faulty road design.

"I can relate to my early days," said Nicholas J. Moran, president of J.G. Park Associates Inc. "I recall doing a 24-lot subdivision on one (blueprint). . . . Back in those days it wasn't as sophisticated as it is now." Moran said that that same subdivision today would take 15 blueprints.

"Municipal engineers can get sued by the municipality if we sign off on a project and all the things the builder was supposed to do weren't done," said Moran.

And, engineers say, developers will often submit sloppy building plans and will cut corners if not watched closely. Engineers say they frequently hear complaints about their fees, especially in a down economy when developers' profits are threatened.

But developers and government officials say they often need protection from engineers.

Here's part of what one engineer, Major, president of William G. Major Associates Inc., submitted in a \$6,523.75 bill on a storm water drainage project for Bristol Township:

- \* Review status and phone call: 1 hour = \$65.
- \* Photos of project: 3 hours = \$105.
- \* Pick up (developed) photos of project: 0.5 hours = \$17.50.
- \* Organize photos of project: 1.5 hours = \$52.50.
- \* Administration: 1 hour = \$65.

Even if developers believe such bills are excessive, they feel compelled to pay them.

"That same (engineer) is going to be inspecting your job," said Van LuVane, the lawyer who represents many developers. "There are a lot of ways he can kill you."

David D. Reel, executive vice president of the Home Builders Association of Bucks and Montgomery Counties, said many engineering fees amounted to "the old featherbedding. It's horrible."

Bristol Township Councilman Carl Cini, who voted to pay Major's bill on the storm water project, said, "Frankly, I'm not sure how you beat these people."

Some engineers say that gouging is threatening the profession's reputation.

"They're milking somebody," said J.G. Park, an engineer for 37 years who saw the county grow threefold before he sold his firm, J.G. Park Associates Inc., in 1980.

Major, who said all his bills were legitimate, is more blunt. "Yes, I think the developers in a lot of cases have been raped," he said. "You have a position of public trust. You're only supposed to do what you're supposed to do. You're not supposed to gild the lily."

Lanard & Axilbund decided it was worth it to challenge Bristol Township engineer J.G. Park Associates.

And it paid off.

In an uncharacteristic move, the development company refused to pay \$8,170 in what it said

were excessive engineering fees, forcing a showdown with Park Associates and township officials. The result: Lanard & Axilbund's bill was reduced to \$2,670.

Work sheets supplied by Park Associates to the township show how Park Associates billed Lanard & Axilbund. Here's what the Park inspectors wrote:

\* "Told Fred (the construction foreman) to install inlet protection and clean up streets and cul-de-sac." 1 hour. 20 miles travel. Total cost: \$37.50.

\* "Checked job site today to see if subcontractor was (working). Not working today, not on site. Probably due to weather conditions." 1 hour. 10 miles travel. Total cost: \$36.50.

These and other similar billings added up to \$8,170.

Lanard & Axilbund was especially upset with one bill for 12 inspections, totaling \$1,025.

"This particular invoice, in my opinion, does not contain one inspection which can be considered reasonable and necessary," wrote Frank Barietta, Lanard & Axilbund's director of operations, to Bristol Township manager Carmen Raddi.

Park Associates' bills troubled Bristol Township solicitor Clyde Waite. "We need to be assured that we will not have any future problems along those lines," Waite wrote in a letter to Raddi. "You or I and *Nick Moran* should sit down to work out future details."

Moran said he decided to reduce the fees after the meeting with Lanard & Axilbund.

"Hey, none of us are saints," Moran said in an interview. "We have a lot of people out there doing a lot of things and there's nothing that says that everyone is going to be the most uprighteous of all people."

The family-owned Arnold Precision Manufacturing Inc. wanted to build a simple warehouse in an industrial park in Falls Township, a once-bustling steel town of 35,000 along the Delaware River.

Township engineer Daniel S. Winokur's review of the building plans was anything but simple.

Records show that Winokur's engineers spent 63 hours the first month reviewing the Arnold company's blueprints and listing deficiencies for the 33,000-square-foot warehouse.

The scrutiny continued for two hours the next month and 51 hours the month after that.

Still, the reviews weren't over. The next month, it was 27 hours, the following month 30 hours, the month after that 1 1/2 hours, and the final month 8 1/2 hours.

When it was all done, Winokur's engineers had billed Arnold Precision 183 hours just for plan reviews - the same as if one engineer had done nothing but review the Arnold project for 4 1/2 straight weeks of eight-hour days.

And actual construction hadn't even begun.

How expensive was Winokur's review? Arnold paid its own architect \$6,800 to draw up the plans. The review of those plans by Winokur - usually a far simpler process because the project is already designed - ended up costing Arnold \$9,256.

It was common for the cost of Winokur's reviews to rival or exceed what developers spent to have private engineers and architects draft plans from scratch.

Writing in June 1989 to the Falls Township manager, developer Kevin D. Flynn complained that the Winokur firm spent 42 hours reviewing a Flynn plan for a business center that took 57 hours to draft.

Winokur, in interviews, said his bills were appropriate. He said townships needed thorough reviews to bring problems to light.

"Just because it's going to cost the developer maybe a few more hours of review, I should put a limit on myself?" he asked. "My responsibility is to make that board (of supervisors) aware of all the facts."

The Arnold review cost so much, Winokur said, because the company had to redesign a railroad siding when it failed to get access through another property.

Arnold's owner Len Arnold said the railroad siding changes were no big deal. What was more significant, he said, were Winokur's repeated requests for revisions.

At least half a dozen times, Winokur requested minor changes from Arnold, including planting more trees and adding curbs. For each alteration, no matter how small, Arnold had to revise his plans and the costs went up.

In frustration, Arnold said, he sent his own engineer to try to resolve the Winokur firm's criticisms, to no avail.

"They just dragged it out," Arnold said. "It didn't seem that they were really interested in solving the problem in a fairly reasonable way."

Consider two projects by the Nickerson Corp. of Yardley.

The firm built the stylish, neo-colonial Moreland Mews - two commercial offices totaling 50,330 square feet - in upscale Abington, Montgomery County.

About 24 miles to the east, the firm also built the Shops at Oxford Crossing in Falls Township, Bucks County. On paper, the 38,000-square-foot complex looks like a smaller cousin of Nickerson's buildings at Moreland Mews.

The similarities end when it comes to engineering fees.

The Nickerson Corp. paid a total of \$300 for Abington's engineer and other government officials to review plans for Moreland Mews. In Falls, Winokur's review fees were \$7,717.69.

Why such a disparity in costs for two similar projects?

In Abington, the township engineer is a full-time government employee whose salary and review fees are set by ordinance. In Falls Township, Winokur is a politically appointed private consultant, and there is no limit to his review fees. He bills by the hour.

Records show that the Winokur firm took 10 months to review the plans. Engineers and draftsmen spent more than 100 hours scrutinizing the Nickerson firm's plans.

Winokur said it cost Abington far more than \$300 in engineering time to review plans. He said the taxpayer picked up most of the tab under Abington's system. "As a taxpayer," Winokur said, "I wouldn't be very happy."

Matt Lahaza, Abington's planning and zoning official, said the township is revising its fee structure to reflect the actual hours spent on reviews. Even with Abington's new fees, a review like Moreland Mews would cost \$800, Lahaza said.

"I couldn't imagine (review fees) being \$8,000," Lahaza said. "Not here in Abington. We just wouldn't spend that much . . . time. I couldn't envision it going that high."

Pitcairn Properties Inc. used to pay engineer William G. Major twice.


Pitcairn inherited Major as its private engineer when it began developing the Keystone Industrial Park in Bristol Township.

Major had designed the park for the site's previous owner, and Pitcairn figured that Major's knowledge would simplify development. It didn't hurt, Pitcairn said, that in 1986 Major was

appointed the engineer for Bristol Township and would be reviewing his own plans.

J. Harold Shannon, a Pitcairn vice president, said he was surprised that Bristol Township permitted Major to wear two hats.


"I can't see why the township would allow an engineer to represent a developer and the township on the same project," said Shannon.

The Republican-controlled government sanctioned the relationship because Pitcairn was a client of Major's before Major was appointed township engineer. Councilman Carl Cini said, "Major was pretty much up front" in informing the township that he was Pitcairn's engineer. 


Shannon said he thought Major's dual role would save Pitcairn time and money.

He ended up paying Major twice.

A November 1988 bill shows that as township engineer, Major billed Pitcairn \$1,216 for reviewing a Keystone subdivision plan to make sure it met state and local laws. That puzzled Shannon. It was Major - acting as Pitcairn's engineer - who drew the subdivision plan in the first place. He knew when he drew up the plan that it complied with state and local laws, said Shannon.

"We felt it was unfair to pay the engineer twice," said Shannon. "I didn't think there were ethical problems, I just thought we were paying too much." 

Pitcairn paid Major for wearing two hats from 1986 into 1989. Township records show that from 1987 through 1989, Pitcairn paid Major - as township engineer - nearly \$80,000 for reviews and inspections. That figure does not include what Pitcairn paid Major as its private engineer. Pitcairn would not release those figures.

In New Jersey, it is illegal for a municipal engineer to represent developers in the same municipality. The practice is legal in Pennsylvania so long as both sides approve. 

"I don't think it's really a conflict," said Major. "In fact, sometimes you become more critical and you make [the developer] do a little bit more so someone can't say you gave them preferential treatment."

Tom Gross has had to have a sharp eye for expenses. As project manager for the gymnasium and kitchen facility that Faith Baptist Church built in Falls Township, he didn't have a choice.

The shell for the 10,000-square-foot recreation center was up last January, but the church's 300 parishioners couldn't get inside for nearly a year because the church had trouble raising the money to finish it.

So Gross, a church member who is studying to be a teacher, had to be keen on costs. Like engineering bills.

Earlier this year, Gross said, a Winokur inspector stopped by the site for 15 minutes to check on construction. Gross later got a bill for five hours of engineering inspections and review.

"That's a little dear," he said of the \$236 bill. Winokur said the bill was justified.

It wasn't the church's first complaint.

Months earlier, Gross said, a Winokur engineer had stopped by Faith Baptist when no building was occurring at the site. "I got a bill later for some odd hours," Gross said. "But there had been no change in the construction for him to examine."

That occasion was striking because a Winokur employee actually met Gross during an engineering inspection. Usually, Gross said, the firm's inspectors went undetected, and Gross just got a bill.

Winokur denied that his inspectors overbilled Faith Baptist or other builders for engineering inspections. He said Faith Baptist officials were "inexperienced" in construction and "have a hard

time understanding costs."

Gross didn't agree. "I've seen them come in, drive around the driveway and leave. Then we get a bill," Gross said. "They should have at least stopped and told me what what they were doing."

---

All content © 1991 PHILADELPHIA INQUIRER  
and may not be republished without permission.

---

*All archives are stored on a SAVE (tm) newspaper library system from MediaStream Inc.,  
a Knight Ridder, Inc. company.*

Search	Passport Signup	Billing Options
--------	-----------------	-----------------

## NewsLibrary

Search

Passport Signup

Billing Options

Thank you for using NewsLibrary

### PHILADELPHIA INQUIRER

Tuesday, December 31, 1991

Section: LOCAL

Edition: FINAL

Page: A01

Memo: THE HIGH COST OF ENGINEERING  
Last in a series.

#### YOU HAVE TO PAY TO PLAY IN BUCKS "I THINK IT'S VIRTUALLY IMPOSSIBLE TO BECOME A MUNICIPAL ENGINEER TODAY WITHOUT HAVING SOME INVOLVEMENT IN WHOEVER THE WINNING PARTY IS."

By Jeffrey Fleishman, Karl Stark and  
Kathy Boccia, Inquirer Staff Writers

TEXT: William G. Major, an engineer by trade and a political oddsmaker by necessity, stood next to a troubled Hal Saxton on that cloudless August day in 1989 as a 60-foot yacht carried them down the Delaware River.

They were on a \$500-a-head fund-raising voyage to rescue Saxton's stumbling Republican campaign for Bristol Township executive.

A beely former semipro football player with an appetite for Don Diego cigars, Major had a lot riding on Saxton. Major needed a Saxton victory to guarantee his staying on as township engineer, a political appointment that was worth almost \$500,000 in fees to Major's firm in 1989.

But Major was no Saxton flag-waver. He said he was loyal only to the odds. And the smart money was on Saxton's Democratic opponent, former State Rep. James J.A. Gallagher.

Major, who wears a pinky ring and a fedora, said he played chameleon. He contributed \$1,500 to Saxton and the Republicans and \$1,100 to Gallagher and the Democrats.

"Sometimes you hedge your bets," Major said recently as he cut a cigar tip with a razor blade.

Major wasn't the only engineer hedging. Presidents and employees from nine engineering firms, most of whom did not even live in Bristol Township, contributed \$22,830 to township Republican and Democratic Parties in 1989 and 1990.

Gallagher and his ticket received the lion's share of the engineers' contributions - \$18,500. That was 21 percent of all the money raised by the township Democrats. Five engineers gave to both parties.

These engineers say they bank on an important political reality: Most firms that get large municipal contracts have made heavy political contributions. Not \$50 here or \$75 there. But



Daniel S. Winokur's \$3,600 and Nicholas J. Moran's \$3,300 in one township's political contests.

Management staff from one Bucks County firm, Carroll Engineering Inc., contributed nearly \$100,000 to political races, mainly in Bucks and Montgomery Counties, over three years. That was still only a fraction of the more than \$10 million in contracts the firm received from county and local governments during that period.

Not all engineering firms disclose their employees' political donations, even though they are required to report contributions greater than \$1,000 to the state Bureau of Elections.

"I think it's virtually impossible to become a municipal engineer today without having some involvement in whoever the winning party is," said Major, a municipal engineer for 40 years. "Politics doesn't run on anything but money."

Consider:

\* Nicholas J. Moran, president of *J.G. Park Associates Inc.*, said he reimbursed four employees for \$1,700 in political contributions. Pennsylvania campaign laws prohibit employers from reimbursing their employees for political contributions.

"I can't expect any of my people here to pull money out of their pocket for a political contribution. Why should they?" Moran said. "It's all part of your cost of doing business."

Moran, whose firm is engineer to Bristol Township, said he was not aware of the state law. "I never really looked into it too much. Many other people are probably in the same category."

\* Herbert T. Scheuren Jr. was not a licensed engineer when he was named Bensalem Township's engineer in 1987. But the affable 30-year-old was a big campaign contributor. He used a company petty cash fund to contribute to and entertain elected officials; his company also donated \$5,000 to the Bucks County GOP. The law permits individuals to make contributions, but prohibits companies from doing so.

\* Falls Township engineer Daniel S. Winokur contributed \$3,600 to the Democratic slate in one municipal election. When asked why he donated, Winokur said that the candidates "were kind and decent people." When asked who the six candidates were, Winokur could name only one. Winokur was not registered to vote when he made the contributions.

\* Carroll Engineering Inc., the largest municipal engineering firm in Bucks County, requires its upper management employees to donate to municipal races. This is legal. "As (employees) grow in the organization," said Carroll president Harry J. Barford Jr., "we'll tell them, 'Look, this is part of doing business.'"

Engineers contribute much more heavily to local races than to state and federal campaigns. The reason is simple: Local government is where the bulk of contracts lie.

The political action committee for the Pennsylvania Society of Professional Engineers contributed only \$744 statewide to legislators in 1990. That contrasts with the nine engineers, or their employees, who gave a total of more than \$20,000 just in Bristol Township's political race in 1989-90.

Political contributions should not have the "appearance of influencing the award of contracts involving a public authority," says the policy of the National Society of Professional Engineers.

A nominal political contribution is all right, said Herbert G. Koogler, past president of the society. "Once a contribution reaches \$500," he said, "then a question develops with regard to its ethical propriety."

With millions of dollars in engineering fees in the balance, some engineers say money often overpowers ethics.

"How many of the largest (engineering) companies do you think would be at the size where they're at, or still maintain the business level of what they have, if it would not be for their active participation in the political arena?" asked Moran, of *J.G. Park Associates*.

"If you want to go right by the book and be very righteous and all that, and don't want to partake

and all the rest of the stuff, you know, you can be that way, but you're not going to have an office.

"But look," continued Moran, "if you're not going to be part of the team, then you're not going to share in the wealth or spoils. . . . There's nothing hidden about it."

Competition for municipal engineering jobs is fierce in all counties, but it has intensified in Bucks, which over the last decade added 62,000 residents and grew more than any county in the state.

Over the last 40 years, the county's population has grown from 200,000 to nearly 600,000. Houses, roads and strip shopping centers have replaced pasture land, forcing local governments to enact regulations that would protect the environment during massive growth.

Most engineers in Bucks County say they find themselves having to give sizable contributions to be considered for municipal contracts.

Chuck Pennoni, president of the American Society of Civil Engineers, contributed \$8,000 to political candidates last year, and his Philadelphia-based firm, which represents 20 municipalities in the area, was one of the smaller contributors to several key local races in Bucks County.

"You have to keep in mind the process," Pennoni said. "Campaigns are funded by political contributions and people are going to solicit, and they're going to solicit from people they know and people they work with, and people are generally going to support them."

Pennoni said he agreed with the society's ethical standards and added, "It is not illegal or unethical for engineers to make political contributions. . . . But you cannot give any political contributions in exchange for work."

The Pennoni firm did not file employee contributions with the state, as the law requires. Pennoni's employees donated more than \$8,200 to Bucks County's Republican and Democratic Parties from 1988 to 1990.

Pennoni said he was not aware that the law required his firm to file the names of employees who contributed more than \$1,000. "I was amazed at how few people are listed (with the state)," Pennoni said.

The state law is intended to identify contributions of more than \$1,000 made by employees of companies that receive no-bid government contracts, including municipal engineers. Although some firms do not file their contributions with the state, the parties and candidates disclose the contributions in their campaign reports.

Eric Flicker, president of the Pennsylvania Society of Professional Engineers, said that over the years, "there has been a significant amount of concern" about the size of political contributions made by engineers. There are "likely cases," he said, in which a large contribution is made in hopes of winning a job. "I don't condone that."

State and local laws, Koogler said, should have stricter campaign regulations, calling for an engineer's license to be revoked or suspended if unreported political contributions are discovered.

Pennsylvania law has no such requirement. In fact, the state's Bureau of Occupational and Professional Affairs, which licenses all engineers, has revoked no licenses over the last three years.

Out of the 115 investigations done by the bureau since 1989, only one resulted in a suspension.

Herbert T. Scheuren Jr. did not disclose his big political contributions between 1987 and 1990, as state law requires. Records filed by the Republican Party in Bucks County show that Scheuren and his business associates contributed \$17,300 to the GOP during that time.

In 1989, his firm was paid \$611,000 as Bensalem Township's engineer.

When Scheuren was named township engineer in 1987, he was a 26-year-old Pennsylvania State University environmental engineering graduate. He was a fresh face in the aging ranks of Bucks County municipal engineers, many of whom had been toiling over blueprints since before Scheuren was born.

Scheuren lacked a few things, however, including a professional engineering license. State law requires that a municipality the size of Bensalem have a licensed engineer. Scheuren fulfilled that requirement by taking a partner who was a licensed chemical engineer.

What Scheuren did have was political connections. His father, Herbert Sr., was an elementary school principal and a close friend of township Supervisor Jack Maher. Maher put in a good word for Scheuren with his fellow supervisors and with the township manager. Scheuren was the only candidate the township interviewed for the job.

And Scheuren also showed that, although young, he understood that politics involved money.

In addition to the \$17,300 Scheuren and his business associates contributed to the county GOP, records show that he and a partner gave \$2,400 to Bensalem candidates in 1988 and 1989. Scheuren bought supervisors 25-pound turkeys at Thanksgiving and dinners and drinks at Fisher's Tudor House. For a wedding gift, Scheuren gave then-Township Manager Carmen Raddi a \$500 gift certificate from Best stores.

Raddi said that Scheuren's congeniality and his political contributions kept Scheuren in his post, even though questions about his business dealings and abilities were raised. "He was untouchable," said Raddi.

Until the election in the fall of 1989 changed the politics of Bensalem.

Scheuren, who was being investigated by the state Ethics Commission, became a liability. The investigation was into Scheuren's purchase of a home for a low price from a developer whose residential project Scheuren had earlier approved. The Ethics Commission would not comment on the matter.

Scheuren was fired when the new administration took office. This year, he was convicted in Bucks County Court of false swearing and tampering with records in a scheme to alter plans to help a developer.

But his contributions to the county GOP did not go unrewarded. Soon after he was fired by Bensalem, Scheuren received a \$103,428 government contract from the Republican-controlled county to design two parking lots, three walking paths, two playgrounds and a restroom in Peace Valley Park near Doylestown.

In the late 1980s, Daniel S. Winokur was trying to break into the government contract arena. And like Scheuren, Winokur used cocktail parties, money and politics.

From 1988 to 1990, Bucks County records show that Winokur contributed \$12,504 - more than any other engineer - to the Bucks County Democratic Party. In those three years, Winokur did not report to the state that he made the contributions.

State law requires owners and employees of businesses that receive no-bid government work, and their immediate families, to report contributions of \$1,000 or more. Winokur, in a recent interview, said he was not aware of the law.

Winokur was appointed Falls Township engineer in 1988. In 1989, Winokur's fees in Falls were \$844,000, the highest that year of any municipal engineer in Bucks County.

Winokur said he did not think his contributions got him the Falls job, but added that without them he would not have been considered.

"If I wouldn't have given to that political campaign or to that cocktail party where I ended up going around and I met (then-Falls Supervisor) Richard Goulding, I would never have Falls Township," said Winokur.

dog-eat-dog today."

#### POLITICAL GIFTS IN BRISTOL TWP.

Following are contributions made by engineering firms, through their employees, to political parties in Bristol Township in 1989-90. The contributions went to the races for township executive and council.

#### DEMOCRATS

The principals of engineering firms and their employees contributed \$18,500, or 21 percent of the \$88,256 raised by Democrats.

##### FIRM GIFT

Unitech Engineering \$6,200  
D.S. Winokur Associates 3,600  
J.G. Park Associates 3,300  
Christina Kurtz 3,100  
William G. Major Associates 1,100  
Mid. Atl. States Engineering 700  
Herbert T. Scheuren Jr. 500

#### REPUBLICANS

The principals of engineering firms and their employees donated \$4,330, or 7 percent of the \$64,878 raised by Republicans.

##### FIRM GIFT

William G. Major Associates \$1,500  
Unitech Engineering 1,040  
Carroll Engineering Inc. 700  
Pennoni Associates Inc. 500  
J.G. Park Associates 250  
Mid. Atl. States Engineering 240  
Herbert T. Scheuren Jr. 100

All content © 1991 PHILADELPHIA INQUIRER  
and may not be republished without permission.

All archives are stored on a SAVE (tm) newspaper library system from MediaStream Inc.,  
a Knight Ridder, Inc. company.

Search	Passport Signup	Billing Options
--------	-----------------	-----------------

John and Gizella Pozsgai  
Monthly Bank Statements

Statement Date	Debits	Credits	Beginning Balance	Ending Balance
09-87				
CoreStates	4385.45	5791.89	4932.23	3525.79
Totals	4385.45	5791.89	4932.23	3525.79
10-87				
CoreStates	5930.88	9001.39	3525.79	6596.30
Totals	5930.88	9001.39	3525.79	6596.30
11-87				
CoreStates	7683.94	10488.67	6596.30	9401.03
Totals	7683.94	10488.67	6596.30	9401.03
12-87				
CoreStates	7113.71	4729.51	9401.03	7016.83
Totals	7113.71	4729.51	9401.03	7016.83
01-88				
CoreStates	9706.98	8203.08	7016.83	5512.93
Money Market	0.00	28.58	5997.76	6026.34
Totals	9706.98	8231.66	12114.59	11539.27
02-88				
CoreStates	5178.49	6107.53	5512.93	6441.97
Money Market	0.00	23.60	6026.34	6049.94
Totals	5178.49	6131.13	11539.27	12491.91
03-88				
CoreStates	6286.31	4435.10	6441.97	4590.76
Money Market	0.00	25.39	6049.94	6075.33
Totals	6286.31	4460.49	12491.91	10666.09

88	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	9317.34	13277.58	4590.76	8551.00
Money Market	0.00	0.00	0.00	0.00
Totals	9317.34	13277.58	4590.76	8551.00

05-88	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	10134.11	5435.00	8551.00	3851.89
Money Market	0.00	26.47	6103.38	6129.85
Totals	10134.11	5461.47	14654.38	9981.74

06-88	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	6035.62	6273.92	3851.89	4090.19
Money Market	0.00	24.01	6129.85	6153.86
Totals	6035.62	6297.93	9981.74	10244.05

88	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	9156.81	9794.82	4090.19	4728.20
Money Market	0.00	27.55	6153.86	6181.41
Totals	9156.81	9822.37	10244.05	10909.61

08-88	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	5584.15	4331.99	4728.20	3476.04
Money Market	0.00	25.08	6181.41	6206.49
Totals	5584.15	4357.07	10909.61	9682.53

09-88	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	5592.50	6135.36	3476.04	4018.90
Money Market	0.00	29.52	6206.49	6236.01
Totals	5592.50	6164.88	9682.53	10254.91

10-88	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	11704.68	11672.60	4018.90	3986.82
Money Market	0.00	0.00	6236.01	6236.01
Totals	11704.68	11672.60	10254.91	10222.83

	Debits	Credits	Beginning Balance	Ending Balance
11-88				
CoreStates	5276.85	5210.67	3986.82	3920.64
Money Market	0.00	0.00	6236.01	6236.01
Totals	5276.85	5210.67	10222.83	10156.65

	Debits	Credits	Beginning Balance	Ending Balance
12-88				
CoreStates	6940.88	7900.27	3920.64	4880.03
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	90.86	200.00	0.00	109.14
Totals	7031.74	8100.27	10156.65	11225.18

	Debits	Credits	Beginning Balance	Ending Balance
01-89				
CoreStates	8115.75	3428.28	4880.03	192.56
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	1595.76	2881.26	109.14	1394.64
Totals	9711.51	6309.54	11225.18	7823.21

	Debits	Credits	Beginning Balance	Ending Balance
02-89				
CoreStates	3654.38	4598.71	192.56	1136.89
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	852.44	700.00	1394.64	1242.20
Totals	4506.82	5298.71	7823.21	8615.10

	Debits	Credits	Beginning Balance	Ending Balance
03-89				
CoreStates	2687.33	2242.52	1136.89	692.08
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	1425.90	970.04	1242.20	786.34
Totals	4113.23	3212.56	8615.10	7714.43

	Debits	Credits	Beginning Balance	Ending Balance
04-89				
CoreStates	3008.03	3387.86	692.08	1071.91
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	532.72	290.00	786.34	543.62
Totals	3540.75	3677.86	7714.43	7851.54

	Debits	Credits	Beginning Balance	Ending Balance
05-89				

CoreStates	5610.28	6325.59	1071.91	1787.22
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	771.64	1500.00	543.62	1271.98
Totals	6381.92	7825.59	7851.54	9295.21
06-89	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	4361.58	4759.86	1787.22	2185.50
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	1546.51	960.00	1271.98	685.47
Totals	5908.09	5719.86	9295.21	9106.98
07-89	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	6436.62	8298.95	2185.50	4047.83
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	289.42	800.00	685.47	1196.05
Totals	6726.04	9098.95	9106.98	11479.89
08-89	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	5630.63	3477.57	4047.83	1894.77
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	3196.48	3539.50	1196.05	1539.07
Totals	8827.11	7017.07	11479.89	9669.85
09-89	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	3682.03	2822.77	1894.77	1035.51
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	1277.21	720.00	1539.07	981.86
Totals	4959.24	3542.77	9669.85	8253.38
10-89	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	3682.03	2822.77	1035.51	176.25
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	2625.57	2765.64	981.86	1121.93
Totals	6307.60	5588.41	8253.38	7534.19
11-89	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	3738.49	4463.89	176.25	901.65
Money Market	0.00	0.00	6236.01	6236.01



Bucks County	454.39	1950.00	1121.93	2617.54
Totals	4192.88	6413.89	7534.19	9755.20
12-89	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	3613.78	4898.39	901.65	2186.26
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	1628.98	0.00	2617.54	988.56
Totals	5242.76	4898.39	9755.20	9410.83
01-90	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	6705.81	5463.97	2186.26	944.42
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	4352.98	7648.00	988.56	4283.58
Totals	11058.79	13111.97	9410.83	11464.01
02-90	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	2725.04	5811.26	944.42	4030.64
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	5342.20	4614.00	4283.58	3555.38
Totals	8067.24	10425.26	11464.01	13822.03
03-90	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	6531.31	2606.94	4030.64	106.27
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	5192.20	2671.93	3555.38	1035.11
Totals	11723.51	5278.87	13822.03	7377.39
04-90	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	5110.32	6839.89	106.27	1835.84
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	1320.25	1215.89	1035.11	930.75
Totals	6430.57	8055.78	7377.39	9002.60
05-90	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	6205.62	4889.35	1835.84	519.57
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	2198.79	3527.64	930.75	2259.60

Totals	8404.41	8416.99	9002.60	9015.18
=====				
06-90	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	5488.45	8630.87	519.57	3661.99
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	2868.74	1847.48	2259.60	1238.34
=====				
Totals	8357.19	10478.35	9015.18	11136.34
=====				
07-90	Debits	Credits	Beginning Balance	Ending Balance
CoreStates	7309.86	6112.73	3661.99	2464.86
Money Market	0.00	0.00	6236.01	6236.01
Bucks County	3925.18	3671.00	1238.34	984.16
=====				
Totals	11235.04	9783.73	11136.34	9685.03
=====				

(3)

88-6545

v.

JOHN POZSGAI  
GIZELLA POZSGAI  
MERCER WRECKING & RECYCLING  
CORPORATION, and  
J. VINCH & SONS, INC.

AND NOW, this 24<sup>th</sup> day of August, 1988, upon consideration of the Government's Motion for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, it is hereby

ORDERED

1. Defendants John Pozsgai, Gizella Pozsgai, Mercer Wrecking & Recycling Corporation and J. Vinch & Sons, Inc. are immediately ordered to cease and desist from discharging fill material onto the site located at Tax Parcel 13-28-83, West Bridge Street, Falls Township, Bucks County, Pennsylvania.

2. Defendants are ordered to cease and desist their further violation of the Clean Water Act, 33 U.S.C. § 1311(a).

A TRUE COPY CERTIFIED TO FROM THE RECORD

DATED:


ATTEST:

DEPUTY CLERK, UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA



3. That a hearing shall be scheduled in this matter  
for *9:30 A.M.* on *SEPTEMBER 8*, 1988, in courtroom  
601 Market Street, Philadelphia, PA.

SO ORDERED:

  
J.













EPA's Synopsis of Pozsgai Criminal Case

Background Facts. Approximately 80% of Mr. Pozsgai's 14 acre property originally was comprised of forested wetlands which provided a variety of functions including flood and storm water storage and water quality maintenance. These wetlands are adjacent to a tributary that flows into the Pennsylvania Canal, which is a navigable water and which flows into the Delaware River. Mr. Pozsgai purchased the property at a reduced price because of his knowledge of the presence of regulated wetlands, and was specifically warned by the Army Corps of Engineers (Corps) not to deposit fill material at the site. Unfortunately, Mr. Pozsgai was undeterred by Corps warnings, by the Corps' Cease and Desist Order, or by notices of violation issued by both the Corps and the U.S. Environmental Protection Agency (EPA). He deposited over four hundred truck-loads of rocks and concrete, filling in at least four acres of the wetland, which resulted in flooding of neighbors' property.

Civil Action. In response to Mr. Pozsgai's continuing, knowing noncompliance with the law, the Corps took the matter to the United States Attorney's Office in Philadelphia, which filed a civil action against Mr. Pozsgai. In August 1988, the U.S. obtained a temporary restraining order in which the court ordered Mr. Pozsgai to immediately stop filling activities and to refrain from further Clean Water Act violations.

Contempt: Criminal Investigation Opened. Because – even after receiving a restraining order from the court – Mr. Pozsgai continued his illegal activity by dumping many truckloads of fill material and bulldozing at the site, a contempt of court proceeding was held in September 1988. Not knowing that the U.S. Attorney's Office had called in EPA's Criminal Investigation Division (CID) and that CID had covertly videotaped his violations since the restraining order had been issued, Mr. Pozsgai lied to the court by denying that he had caused additional filling of the wetlands after he received the court's restraining order. As a result of his flagrant violations, Mr. Pozsgai was found in contempt of court.

Criminal Prosecution. On September 29, 1988, Mr. Pozsgai was indicted by a federal grand jury for 40 violations of the Clean Water Act, each count being a separate date of violation during the period between July 1987 and September 1988. On December 30, 1988, after a four-day trial, the defendant was found guilty by the jury on all 40 counts.

Sentence. On July 13, 1989, the defendant was sentenced to 27 months (two years and three months) imprisonment without parole for those violations occurring *after* the effective date of the U.S. Sentencing Guidelines (11/1/87), three years imprisonment (the statutory maximum) for those violations occurring *before* the Guidelines (for which parole was possible), five years probation, and a \$200,000 fine (the CWA statutory minimum). He was also ordered, as a condition of probation, to restore the wetlands in accordance with the specifications in a plan submitted by the Corps.

Defendant's First Appeal. Mr. Pozsgai appealed his conviction and sentence to the United States Court of Appeals for the Third Circuit. On January 12, 1990, the Third Circuit rejected all of his

EPA's Synopsis of Pozsgai Criminal Case

arguments without issuing a written opinion, ruling in the United States' favor by upholding the conviction and the sentence. Mr. Pozsgai then petitioned the Supreme Court for a Writ of Certiorari. On July 20, 1990, the Solicitor General's office filed a brief in opposition to the petition, and the Supreme Court subsequently denied Mr. Pozsgai's petition for review. Accordingly, CID closed its case on March 5, 1991.

Defendant's Second Appeal. Thereafter, Mr. Pozsgai filed a motion with the trial court to reduce his sentence, and the judge denied his motion. Mr. Pozsgai appealed that denial to the Third Circuit, and in October 1991, the appellate court ordered the trial judge to hold a hearing on whether Mr. Pozsgai had the ability to pay the CWA minimum fine. In December 1991, the judge reduced Pozsgai's fine from \$200,000 to \$5,000 because he found that Mr. Pozsgai lacked the assets to pay the statutory minimum fine.

Comment on Sentence of Imprisonment. Criminal sentences are imposed by federal judges, not by EPA nor the Department of Justice. U.S. Sentencing Guidelines, sanctioned by Congress, became effective in November 1987. Mr. Pozsgai's sentence of 27 months imprisonment, imposed under the Guidelines, is not out of keeping with sentences imposed in other wetlands cases. For example, there are defendants who have received sentences of 21 months, 24 months, and 30 months of imprisonment. The Guidelines constrain the discretion of judges, and have generally had the effect of increasing the terms of imprisonment commonly imposed in environmental criminal cases, including those involving the filling of wetlands; however, it is worth noting that in the Pozsgai case, the judge's discretion was not constrained as to violations occurring before the effective date of the Guidelines, and for those violations, the judge sentenced Mr. Pozsgai to a term of three (3) years, the statutory maximum.

PAGE A1  
Thu 12/29/88

BUCKS COUNTY COURIER TIM

# Witnesses claim Pozsgai chased them from land

By Andrea Cohen  
Caldes Philadelphia Bureau

PHILADELPHIA — Two witnesses testified Wednesday that Morrisville businessmen John Pozsgai chased them off his land, threatened them and cursed at them when they tried to investigate flooding problems.

Franab Goswami, who owns apartments adjacent to Pozsgai's land, and Howard B. France, a consulting engineer hired by Goswami, told a federal jury that when they were analyzing Goswami's flooding problems, Pozsgai told them to get off his property.

Pozsgai is being tried in U.S. District Court on a 41-count criminal indictment that alleges that he violated the Clean Water Act by dumping on a 14-acre tract of land in Falls that authorities say is environmentally sensitive wetlands.

Pozsgai and his attorney, Henry Loeb, are trying to show the land is not wetlands.

Answering questions from Assistant U.S. Attorney Seth Weber, Goswami said he bought the apartment in October 1986 and

started getting tenants' complaints in July 1987 about rodents, especially rats, he said. He then hired an exterminator.

He also said he was getting pools of water around outside areas and hired France.

Pozsgai bought the adjacent land in the spring of 1987.

"I thought the water was coming from the Pozsgai property because of the bulldozer activity, and the ground next to my property was higher," Goswami said.

"The elevation was higher because of the dumping," Goswami said.

"I met Mr. Pozsgai, and I told him I wanted to take a look at how to improve the drainage on my property. He asked me to leave the property immediately and started threatening me."

France also testified about the confrontation with Pozsgai.

"Mr. Goswami introduced me to Mr. Pozsgai and described my purpose of being there, to see what may have caused the flooding," he said.

"We were ordered off the property in no uncertain terms and we left."

He said he saw a "considerable amount of fill on the property" and could not complete his investigation because he was not allowed on Pozsgai's property.

France told the court that after that incident, Pozsgai called him and used "every foul word there is that I know."

France told the jury he wrote Goswami a letter stating what Pozsgai had said.

"He said Mr. Goswami was dumping at night and thought he was reporting to or working with the Army Corps of Engineers," France testified.

He then recounted what Pozsgai told him.

"Pozsgai said, 'I'll kill the S.O.B. (Goswami).'" France said. "He said he was going to do what he wanted and he had permission from township officials."

Pozsgai told me (that) if Mr. Goswami thought he had problems now, well until I'm done."

Other prosecution witnesses testified Wednesday that dumping took place on the land.

Prosecution testimony is scheduled to resume this morning.



U.S. Department of Justice

United States Attorney

*Eastern District of Pennsylvania*

MMB  
(215) 597-1716

3310 United States Courthouse  
Independence Mall West  
601 Market Street  
Philadelphia, Pennsylvania 19106  
(215) 597-2556

October 15, 1991

BY FAX

Margaret C. Love, Esquire  
Pardon Attorney  
Department of Justice  
Washington, DC 20530

Re: John Pozsgai's Petition for Presidential Pardon

Dear Margaret:

I am writing to recommend that President Bush not grant John Pozsgai's petition for clemency.

My office charged Pozsgai with forty counts of violating the criminal provisions of the Clean Water Act on September 29, 1989. Each count related to a separate day between July 13, 1987, and September 3, 1988, during which Pozsgai dumped fill onto a fourteen acre wetland tract across from his garage in Morrisville, Pennsylvania.

We charged Pozsgai criminally because of the high degree of willfulness with which he ignored the environmental laws. Pozsgai first inquired about buying the wetlands tract in the Fall of 1986. He planned to use part of the land to expand his garage, and to resell what remained. The owner's agent, however, warned Pozsgai that the tract was wetlands, and advised Pozsgai to hire an engineering firm to help him secure any necessary permits before he bought the property.

On the realtor's advice, Pozsgai hired an engineer to study the tract. The engineer confirmed that the entire tract was wetlands, and reported his findings to Pozsgai. The engineer also warned Pozsgai that the Army Corps of Engineers (the Corps) had to approve any development, and that the Corps had been "most

reluctant" to issue permits in the past for sites like the one he planned to buy.

Pozsgai nonetheless started to fill in the wetlands with concrete and building debris as early as April, 1987, before he bought the property or secured any permits. The Corps then warned Pozsgai in April, 1987, that he had to apply for a permit. The Corps also told Pozsgai how to apply. Pozsgai promised that he would stop filling in the tract until he did.

Pozsgai bought the property three months later on July 19, 1987, for \$142,500. He first negotiated a \$32,500 decrease in the price, however, on the ground that the property was wetlands.

Pozsgai continued to fill in the wetlands without a permit after he bought the land. He dumped at least 443 truckloads of rock and concrete on the tract between the Summer of 1987 and the Fall of 1988. This volume filled in four acres of the tract.

During this same period, the Corps warned Pozsgai several times by telephone, three times in writing, and twice in person.

The EPA also warned Pozsgai. It informed him by letter that he was violating the Clean Water Act (CWA) and warned him that the EPA could "pursue a criminal prosecution which could result in his "imprisonment ... and fines of up to \$50,000 per day of violation."

Pozsgai ignored the EPA, just as he had the Corps.

Pozsgai's neighbors felt the effect. Their basements, driveways, and walkways began to flood in July, 1987. When a neighbor took an engineer to inspect the cause, Pozsgai swore at them and ordered them off his property.

On August 24, 1988, my Civil Division petitioned our federal district court for a Temporary Restraining Order. Chief Judge Fullam granted the motion, and ordered Pozsgai to cease and desist immediately from dumping fill onto the wetlands. A special agent of the EPA served the order personally on Pozsgai the same day.

But even the Court could not stop Pozsgai. The EPA video taped a man leveling fill on the wetlands with Pozsgai's bulldozer on August 25, 1988 -- the day after EPA agents had served the Court's TRO on Pozsgai. The video tape also showed trucks dumping twenty-six loads of fill at the site on August 26, 1988.

At a contempt proceeding held on September 9, 1988, Pozsgai blatantly lied to the court. Not realizing that the EPA had video footage, Pozsgai told Chief Judge Fullam that he had not permitted anyone to fill in the wetlands after he received the court's restraining order. Chief Judge Fullam warned Pozsgai that there was "a high probability that [the court] will by the end of this proceeding refer to the United States Attorney's Office for possible criminal perjury prosecution any testimony which is inconsistent with incontrovertible physical evidence." The hearing was continued to September 16, 1988, at which time the court found Pozsgai in contempt. Chief Judge Fullam noted that it was "beyond any doubt whatsoever that . . . the dumping and . . . the leveling off with the use of the bulldozer [after August 24, 1988] was well known to Mr. Pozsgai and must have occurred with his approval."

Pozsgai's criminal trial began on December 27, 1988, and lasted four days. The jury found Pozsgai guilty on all counts after deliberating less than two hours.

Judge Katz sentenced Pozsgai on July 13, 1989, noting that it was "hard to visualize a more stubborn violator of the laws that were designed to protect the environment." The judge imposed concurrent terms of three years imprisonment for each of Counts 1 through 14; five years probation on Count Fifteen with the sentence of imprisonment suspended; and concurrent terms of twenty-seven months imprisonment for each of Counts Sixteen to Forty, which were governed by the Sentencing Guidelines. The court further imposed a fine of \$5,000 for each count -- the lowest fine authorized by statute if a fine were imposed -- and ordered Pozsgai to "pay the fine . . . as the Probation Office determines he is able."

The Third Circuit denied Pozsgai's appeal without a hearing; the Supreme Court denied his petition for writ of certiorari. Judge Katz denied a motion by Pozsgai to reduce his sentence under Rule 35(b). The Third Circuit is currently considering his appeal of this ruling.

Pozsgai reported to the Allenwood Federal Prison Camp, a Security Level 1 facility, on November 23, 1990, to begin serving his term of imprisonment. On June 12, 1991, after serving less than seven months of his sentence, Pozsgai was transferred to the Greater Philadelphia Center for Community Corrections (GPCCC), a half way house in Northern Philadelphia. Pozsgai is assigned to an off site work detail at GPCCC and has weekend leave privileges.

To date, Pozsgai has paid nothing toward his fine.

I recommend that President Bush not pardon Pozsgai for six reasons: (1) Pozsgai committed perjury in federal court; (2)

the Chief Judge of this district found Pozsgai in contempt of court; (3) Pozsgai knew that the tract in question was a regulated wetland before he bought it; (4) Pozsgai was repeatedly warned, subjected to court sanctions, and was criminally prosecuted only after he flouted civil remedies, including an injunction; (5) Pozsgai has already been released from prison to a half way house; and (6) this was a serious environmental violation (see below). These six factors lead me to conclude that law enforcement has a strong interest in the denial of Pozsgai's application,

No one can countenance perjury or contempt of court. A pardon of Pozsgai would undermine the authority of the courts and the solemnity of the oath administered by them.

As the facts outlined above show, Pozsgai made a conscious choice to put his economic interests above the law. The Army Corps warned him, the EPA warned him, my Civil Division warned him, and the Court warned him. Yet he continued to fill in the tract.

And let there be no factual ambiguity about the environmental aspect. The tract is a wetlands, and would be considered wetlands even under the 1991 proposed delineation manual. Chris Hall of my office has spoken with four government scientists who are familiar both with the proposed manual and the tract. They are unanimous in their opinion that the tract -- which still has standing water on it -- would be classified a wetlands under any criteria. Indeed, this is probably the reason why the town of Morrisville, which is over 200 years old, grew up around the tract instead of on it.

These scientists have also informed my office that Pozsgai's conduct seriously damaged the local environment. Flood control and water purification were the most valuable environmental assets of the tract. As was noted above, the neighboring property began to flood in the Fall of 1987 because of Pozsgai's conduct. The tract also supported a variety of plant and wildlife species. We know, for example, that it supported plants that only grow in water saturated soils. Unfortunately, no one can say for sure what types of wildlife it supported. Pozsgai drove it off. Tracts like it, however, typically support frogs, salamanders, raccoons, mink, possums, and heron. Finally, Pozsgai is simply wrong when he asserts that the water on the tract runs clearer today than it did in 1986. The stream on the tract in 1986 did not have a permanent channel. It meandered through the thick undergrowth and was fed by what appeared to be perennial springs. Pozsgai dug a ditch through old fill on the property to channel the stream to one side. The sediment from the old fill now pollutes the water as it flows through the channel.



Pozsgai protests that his sentence was disproportionate to the crime, and that it was the stiffest imposed at the time of his sentencing. We dispute the validity of this claim. First, the harshness of a sentence is a relative judgment that depends on the defendant's conduct, his or her ability to pay any fine or restitution, the imposition of any jail term, and the fine or restitution actually paid, or the jail term actually served. In United States v. Samar Chatterjee, CR-87-656 (ND Ill.), the court ordered the defendant to pay \$220,000 in restitution in 1987 and to serve a 4 year term of imprisonment for submitting false data to the EPA. While the defendant was convicted on mail fraud charges, the crime certainly affected the environment and the sentence certainly undermines Pozsgai's bald assertion that his sentence was the stiffest at the time it was imposed.

Moreover, as Mr. Hartman of the Environment and Natural Resources Division noted in his letter to you, Pozsgai's sentence reflected Congress's decision to double the fines under the Clean Water Act in 1987, and to increase the maximum jail term from two years to three. Several individuals have since been sentenced to pay fines and to serve jail terms comparable to Pozsgai's. See United States v. John Borowski, CR89-256-WD (D. Mass. 1989) (\$400,000 fine and 26 months imprisonment for discharging pollutants); United States v. John Wells (D. Mass. 1989) (\$60,000 fine and 15 months imprisonment for pre-treatment violations); United States v. Edwin Walter and York Metal Finishing Company (E.D. Pa. 1991) (plea agreement to pay \$100,000 fine and \$125,000 restitution for pre-treatment violations); and United States v. Paul Tudor Jones II S-90-0216 (D. Md. 1990) (\$1,000,000 fine and \$1,000,000 restitution order for filling wetlands without a permit). Pozsgai's sentence was not unreasonable in the context of the new penalties prescribed by Congress.

I would seriously question Pozsgai's petition even if he had not lied to the court or directly disobeyed its order to stop filling in the tract, and even if his sentence were one of the stiffest imposed. He has already been released from prison to a half way house, and visits his family on weekends. Judge Katz, moreover, ordered that he pay the fine only to the extent that he is able. While I recognize that the fine is steep, it is also the lowest authorized by Congress if a fine is imposed. It remains to be seen, moreover, what Pozsgai is able to pay. He stated on a bank loan application in 1987 that he had over \$600,000 in assets and no liabilities. His property may be valuable and the imposed fine will be a lien if the property is sold.

In summary, Pozsgai was warned numerous times, even before he bought the property. He disregarded several government warnings and even disobeyed a court order to stop. He was convicted by a jury of peers. The Third Circuit denied his appeal; and the Supreme Court declined to hear his petition.

Pozsgai was wrong. It is time for him to accept that, whereas a pardon would only make him believe that he was right and the government wrong. His case received a great deal of publicity, as would a pardon. A pardon would send wrong message to Mr. Pozsgai, the public, and to anyone else tempted to violate the environmental laws for personal economic gain. It is my hope that his punishment will discourage others from willfully violating our environmental laws here in the Eastern District of Pennsylvania.

For all these reasons, I urge the President not to grant Pozsgai's petition for clemency.

Sincerely yours,

---

MICHAEL M. BAYLSON  
United States Attorney

pardon.ltr

**In the Supreme Court of the United States**

OCTOBER TERM, 1990

---

No. 89-1735

JOHN POZSGAI, PETITIONER

v.

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT*

---

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

---

**OPINION BELOW**

The judgment order of the court of appeals (Pet. App. 1a-3a) is unpublished, but the decision is noted at 897 F.2d 524 (Table).

**JURISDICTION**

The judgment of the court of appeals was entered on January 12, 1990. A petition for rehearing was denied on February 8, 1990. Pet. App. 15a-16a. The petition for a writ of certiorari was filed on May 9, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

After a jury trial in the United States District Court for the Eastern District of Pennsylvania, petitioner was con-

(1)

victed on 40 counts of discharging pollutants onto a wetlands site without a permit, in violation of 33 U.S.C. 1311(a) and 1319(c)(2)(A). He was sentenced to a total of three years' imprisonment, a five-year term of probation, a one-year term of supervised release, and a \$200,000 fine. The court of appeals affirmed.

1. Under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, "any discharge of dredged or fill materials into 'navigable waters'—defined as the 'waters of the United States'—is forbidden unless authorized by a permit issued by the [Army] Corps of Engineers pursuant to § 404, 33 U.S.C. § 1344." *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 123 (1985). The term "waters of the United States" is defined in regulations promulgated under the Act to include

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce \* \* \*;

\* \* \* \* \*

(5) Tributaries of waters identified in paragraphs (a)(1) through (4) of this section;

\* \* \* \* \*

(7) Wetlands adjacent to waters \* \* \* identified in paragraphs (a)(1) through (6) of this section.

33 C.F.R. 328.3(a). In *United States v. Riverside Bayview Homes, Inc.*, *supra*, this Court upheld an earlier version of the regulations at issue in this case. The Court held it is "reasonable for the Corps to interpret the term 'waters' to encompass wetlands adjacent to waters as more conventionally defined." 474 U.S. at 133.<sup>1</sup>

<sup>1</sup> The regulations define "wetlands" as

those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wet-

Section 309 of the Clean Water Act, 33 U.S.C. 1319, establishes criminal sanctions for violations of the Act, and Section 309(c)(2), 33 U.S.C. 1319(c)(2), provides that any person found guilty of a knowing violation of the statute "shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both."

2. The evidence at trial showed that petitioner owned and operated a truck repair business in Morrisville, Pennsylvania. In the fall of 1986, petitioner decided to buy an adjoining 14-acre tract in order to expand his business. That tract was bordered by Bridge Street on the north, U.S. Route 1—a four-lane highway—on the south, a salvage yard on the west, and a tire dealership and apartment complex on the east. See Pet. 3; Pet. App. 42a (Gov't Exh. 1). A stream ran through the tract, flowing down through the property from the northeast and exiting through a culvert at the southern border. The culvert passed underneath Route 1. The Pennsylvania Canal, which ran roughly parallel to Route 1, was located nearby to the south. See Pet. 3; Pet. App. 42a (Gov't Exh. 1); Gov't C.A. Br. 6; 1 Dec. 27, 1988, Tr. 86; 1 Dec. 28, 1988, Tr. 29-30, 41; 2 Dec. 28, 1988, Tr. 77, 91; Dec. 29, 1988, Tr. 30-31, 34-35, 51-52, 145; Gov't Exhs. 9, 20; Def't Exh. 14.

While petitioner was negotiating to purchase the tract, he learned from environmental and engineering consultants that the tract met the criteria established by the Corps of Engineers for protected "wetlands" and thus that "any future development that might be considered on this site would have to be approved and reviewed by the Army Corps of Engineers." 1 Dec. 27, 1988, Tr. 73; see *id.* at

---

lands generally include swamps, marshes, bogs, and similar areas.

33 C.F.R. 328.3(b).

91-92; Gov't Exhs: 2, 3. Shortly after he began the process of purchasing the tract, however, petitioner began depositing fill material onto the tract without obtaining approval from the Corps of Engineers. In April 1987, a Corps of Engineers inspector visited petitioner at the site. The inspector's on-site investigation confirmed that the tract contained wetlands protected under federal law. As a result, the inspector warned petitioner that federal law prohibited him from continuing to deposit fill onto the land without first obtaining the necessary permits and authorization. Gov't C.A. Br. 6-7; 2 Dec. 27, 1988, Tr. 4-18.

Despite repeated warnings, petitioner continued to have truckloads of fill material — mainly construction and excavation debris — dumped onto the site. In September 1987, the Corps of Engineers notified petitioner by letter that his unauthorized filling was in violation of the Clean Water Act and directed him "to cease and desist from conducting, contracting or permitting any further filling of the wetlands or areas subject to federal jurisdiction." 2 Dec. 27, 1988, Tr. 23; Gov't Exh. 4. Petitioner ignored the notice and continued to deposit fill onto the site. After continued monitoring of petitioner's activities, the United States Environmental Protection Agency notified petitioner in early December 1987 that his "filling without a permit is a violation of the Clean Water Act" that could subject him to penal sanctions. 2 Dec. 28, 1988, Tr. 22; Gov't Exh. 18. After receiving that notice, petitioner continued the process of filling the site.

As a result, the Corps of Engineers issued petitioner a second notice of violation on December 17. That notice reiterated the earlier warnings and informed petitioner that

[r]ecent inspections by [Corps of Engineers] personnel \* \* \* have revealed that approximately five acres

of additional unauthorized fill material has been placed in Federally regulated wetlands on [the tract]. Work of this nature, when conducted without a Department of the Army permit is a violation of Section 301 of the Clean Water Act.

2 Dec. 28, 1988, Tr. 16-17; Gov't Exh. 6. The notice again advised petitioner to stop his unlawful filling and instructed him to apply for a permit if he wished to resume his activities.

The filling process continued in spite of the warnings. On August 24, 1988, the United States Attorney filed a civil action against petitioner and obtained a temporary restraining order directing petitioner immediately to stop discharging fill material onto the wetlands site. Dec. 29, 1988, Tr. 79-81; Gov't Exh. 44. Over the next several weeks, however, truckloads of fill material continued to be dumped onto the site. Petitioner's discrete acts of unlawful filling of the site over a 14-month period constituted the 41 offenses charged in the indictment. Gov't CA. Br. 8-9.

3. At sentencing, the probation officer recommended a sentence of 21 to 27 months' imprisonment under the Sentencing Guidelines for the 25 counts that were subject to the Guidelines. The probation officer determined that petitioner's offense had a "total offense level" of 16: a base level of six, a six-level increase under Sentencing Guidelines § 2Q1.3(b)(1)(A) for continuous and ongoing discharging activities, and a four-level increase under Sentencing Guidelines § 2Q1.3(b)(4) for discharging without a permit. C.A. App. A35-A37. The probation officer also informed the district court that because 33 U.S.C. 1319(c)(2)(A) "calls for a mandatory minimum fine of \$5,000 \* \* \* per day of violation," petitioner faced "the minimum mandatory fine [of] \$200,000" for the 40 counts of conviction. C.A. App. A38. The prosecutor agreed with the probation officer's recommendations under the

Guidelines and asked the court to impose a sentence of 27 months' imprisonment, and "the mandatory minimum fine in this case of \$200,000.00." July 13, 1989, Tr. 63; see *id.* at 27.

Petitioner challenged the probation officer's calculation of the offense level. First, petitioner argued that a four-level increase under Sentencing Guidelines § 2Q1.3(b)(4) was unwarranted because the offense of conviction itself involved discharging without a permit, the punishment for which was already reflected in the base offense level of six. Second, petitioner contended that a six-level increase under Sentencing Guidelines § 2Q1.3(b)(1)(A) was inappropriate because the criminal conduct at issue—failure to obtain a permit for discharging fill—was not the sort of "ongoing, continuous" activity covered by that Guideline. July 13, 1989, Tr. 7-11.

The district court rejected petitioner's arguments and agreed with the probation officer's recommendations under the Sentencing Guidelines. July 13, 1989, Tr. 20-21, 25-26. Stating that "[i]t's hard to visualize a more stubborn violator of the laws that were designed to protect the environment," *id.* at 66, the court sentenced petitioner to a three-year term of imprisonment on Counts 1-14 (the pre-Guidelines counts), a concurrent term of 27 months' imprisonment on Counts 16-41 (the counts governed by the Guidelines), a five-year term of probation on Count 15, and a one-year term of supervised release on the Guidelines counts. The court also ordered petitioner to pay a fine of \$5,000 on each count, for a total of \$200,000, and as a condition of probation, the court ordered petitioner to comply with a restoration plan for the wetlands site. *Id.* at 67.<sup>2</sup>

---

<sup>2</sup> Before the jury retired for deliberations, the government discovered that Count 33 and Count 34 were duplicative and therefore withdrew the latter. Dec. 30, 1988, Tr. 89.



4. On appeal, petitioner contended that the government had not presented sufficient evidence to show that his wetlands site was a "water[ ] of the United States," 33 U.S.C. 1362(7). In particular, he claimed that the government had failed to prove that the stream on his property was a tributary of the Pennsylvania Canal and that the Canal had the required nexus with interstate commerce. Pet. C.A. Br. 8-13; Pet. C.A. Reply Br. 1-7. Petitioner also contended that the government had failed to prove that he had discharged any "pollutant" on the site, as that term is used in 33 U.S.C. 1311(a) and 1362(6). Pet. C.A. Br. 24-27; Pet. C.A. Reply Br. 7-13.

In addition to contesting his conviction, petitioner challenged his sentence on several grounds. First, he argued that the district court erroneously applied Sentencing Guidelines § 2Q1.3(b)(1)(A) and (b)(4) to increase his offense level to 16; alternatively, he contended that if that application of the Guidelines was correct, those Guidelines were illegal. Pet. C.A. Br. 27-38; Pet. C.A. Reply Br. 16-20. Second, petitioner contended that the district court abused its discretion in imposing a term of three years' imprisonment and a substantial fine on the pre-Guidelines counts. Pet. C.A. Br. 38-41; Pet. C.A. Reply Br. 21. Third, petitioner argued that the court's sentence was so grossly disproportionate to his offense that it violated the Eighth Amendment. Pet. C.A. Br. 41-44; Pet. C.A. Reply Br. 21-25.<sup>3</sup>

---

<sup>3</sup> Petitioner also claimed that he was authorized to fill his wetlands site by virtue of a "nationwide permit" issued by the Corps of Engineers under 33 U.S.C. 1344(e), Pet. C.A. Br. 13-23; Pet. C.A. Reply Br. 13-15, and that his trial counsel had rendered ineffective assistance, Pet. C.A. Br. 23-24. The court of appeals rejected those claims, Pet. App. 2a-3a, and petitioner has not sought further review of those aspects of the court of appeals' judgment.

The court of appeals summarily rejected each of petitioner's claims in an unpublished judgment order. Pet. App. 1a-3a.

### ARGUMENT

1. Petitioner's principal contention (Pet. 10-21) is that the government did not present sufficient evidence to support his convictions for discharging pollutants onto a federally protected wetlands site without a permit, in violation of 33 U.S.C. 1311(a) and 1319(c)(2)(A).

a. First, petitioner claims (Pet. 10-17) that the government failed to prove that his wetlands site was a "water[ ] of the United States," 33 U.S.C. 1362(7). Therefore, he contends, he was not required to obtain a permit to discharge the fill materials he placed on the property.

The indictment alleged that petitioner's property was a federally protected wetlands under the Clean Water Act and its implementing regulations because the site was adjacent to a tributary of the Pennsylvania Canal. That Canal, the indictment alleged, was a "water of the United States" under the applicable regulations, which define "waters of the United States" as waters "which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce." C.A. App. A26. See 33 C.F.R. 328.3(a)(1), (5), and (7).

It is true that the government did not offer direct evidence that the stream on petitioner's property flowed into the Pennsylvania Canal, or that the Canal had been used in interstate commerce.<sup>4</sup> There was, however, evidence from which the jury could have inferred both facts. With respect to the stream's status as a "tributary" under

---

<sup>4</sup> The prosecutor advised the jury in his opening statement that he would be offering direct evidence to establish both of those facts, but apparently because of an oversight that evidence was never introduced.

33 C.F.R. 328.3(a)(5), testimony and documentary evidence showed that the stream flowed through petitioner's tract toward the Pennsylvania Canal, which was located near the tract's southern border on the other side of Route 1—a fact pointed out by one of the government's expert witnesses. See 1 Dec. 28, 1988, Tr. 41; Pet. App. 42a (Gov't Exh. 1); Gov't Exh. 9. The stream entered petitioner's site from the northeast and exited through a culvert at the southern border that ran underneath Route 1.<sup>5</sup> From that evidence, the jury could reasonably infer that the stream flowed through the culvert and into the Canal just south of Route 1.<sup>6</sup>

With respect to the status of the Pennsylvania Canal as a waterway that was "used in the past, or may be susceptible to use in interstate or foreign commerce," 33 C.F.R. 328.3(a)(1), the photographic evidence introduced at trial showed that the Canal was a substantial waterway that obviously could have handled shipping traffic at one time. See Pet. App. 42a (Gov't Exh. 1); Pet. App. 41a; Gov't Exhs. 7, 9.<sup>7</sup> Consequently, the jury could reasonably infer that the Canal was "susceptible to use in interstate \* \* \* commerce."

---

<sup>5</sup> See Pet. 3; Pet. App. 42a (Gov't Exh. 1); Gov't C.A. Br. 6; 1 Dec. 27, 1988, Tr. 86; 1 Dec. 28, 1988, Tr. 29-30, 41; 2 Dec. 28, 1988, Tr. 91; Dec. 29, 1988, Tr. 30-31, 34-35, 51-52, 95, 145.

<sup>6</sup> The government's brief in the court of appeals asserted that the aerial photographs introduced at trial showed the stream flowing into the Canal. That representation, we have now determined, was inaccurate. We have examined the photographs and determined that they do not show the stream flowing into the Canal. However, the photographs would not be expected to show the intersection of the stream and Canal, since the evidence showed that the stream went underground through a 72" culvert shortly before it left petitioner's property. 2 Dec. 28, 1988, Tr. 91; Dec. 29, 1988, Tr. 95; Gov't Exh. 20.

<sup>7</sup> Although it was not necessary for the jury to find that the Canal had actually been used in interstate commerce, the evidence would

As a matter of historical fact, the Pennsylvania Canal was used in interstate commerce for nearly a century. The Canal, which runs for approximately 60 miles along the Delaware River, the border between Pennsylvania and New Jersey, was a shipping route between the Pennsylvania Lehigh Valley and markets in eastern Pennsylvania and southern New Jersey. The Canal opened in 1832 and was closed to active traffic in 1931. See, e.g., R. McCullough & W. Leuba, *The Pennsylvania Main Line Canal* 80-82, 166-167 (1962); see generally C.P. Yoder, *Delaware Canal Journal* (1972). The Canal was designated as a National Historic Landmark in 1976. United States Army Corps of Engineers, *Preliminary Case Report for Neshaminy Water Resources Authority, Point Pleasant Diversion Project, Point Pleasant, Bucks County, Pennsylvania* § 2.1, at 7 (Mar. 19, 1982).

The Canal's status as an interstate waterway is the kind of fact that is capable of judicial notice under Federal Rule of Evidence 201, since it is "not subject to reasonable dispute in that it is \* \* \* capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The court of appeals could properly take judicial notice of the Canal's use in interstate commerce, even though the district court did not do so. See *Government of the Canal Zone v. Burjan*, 596 F.2d 690, 693-694 (5th Cir. 1979); *United States v. Blunt*, 558 F.2d 1245, 1247 (6th Cir. 1977). For that reason as well, petitioner's jurisdictional claim fails.

---

have supported such a conclusion. The photographic evidence showed that the Canal ran toward the New Jersey border, since it was established that petitioner's tract was located in Morrisville, Pennsylvania, directly across from Trenton, New Jersey. See, e.g., Pet. 3; Pet. App. 42a (Gov't Exh. 1).

Apart from the evidence regarding the status of the stream as a tributary of the Canal and the use of the Canal in interstate commerce, there was direct evidence from several expert witnesses establishing that petitioner's wetlands property was federally protected and subject to Army Corps of Engineers jurisdiction under the Clean Water Act. See 1 Dec. 27, 1988, Tr. 47; 1 Dec. 28, 1988, Tr. 17-18, 44-46; see also Gov't Exhs. 4, 6, 18; 2 Dec. 28, 1988, Tr. 21-22. That evidence provided an independent basis from which the jury could have inferred that the requirements of federal jurisdiction were met. To be sure, the witnesses merely stated their conclusions that petitioner's site was subject to Army Corps of Engineers regulation; they did not explain the steps by which they had reached that conclusion. Yet, petitioner did not cross-examine the expert witnesses on that point, nor did he object to that aspect of their testimony for lack of foundation. In fact, he did not contest the presence of federal jurisdiction over the site except to argue that it did not contain "wetlands" as that term was used in the pertinent regulations. Accordingly, the jury could properly rely on the expert witnesses' conclusions that the jurisdictional requirements of the statute and the regulations were satisfied in this case.<sup>8</sup>

---

<sup>8</sup> In context, the witnesses' testimony that petitioner's wetlands site was federally protected and within the jurisdiction of the Army Corps of Engineers necessarily meant that the wetlands were adjacent to a water of the United States or a tributary of such a water. 33 C.F.R. 328.3(a)(1), (5), and (7). There are only two other ways that wetlands can be within federal jurisdiction: either by being "interstate wetlands," 33 C.F.R. 328.3(a)(2), or by having a use or potential use that affects interstate commerce, 33 C.F.R. 328.3(a)(3). The photographic evidence conclusively established that petitioner's site was not an "interstate" wetlands, since it was located entirely within the Commonwealth of Pennsylvania, and the evidence regarding federal jurisdiction could not have rested on any effect on interstate com-

In sum, the record is admittedly quite thin with regard to the two elements needed to establish federal jurisdiction over the wetlands site—the physical connection between the stream and the Pennsylvania Canal, and the historical status of the Canal as a waterway used or susceptible to use in interstate commerce. Nevertheless, in our view, the record contains sufficient evidence on those issues, particularly in light of the fact that petitioner has not at any point suggested that the presence of those jurisdictional facts could have been contested.

b. Petitioner also claims (Pet. 18-21) that the government did not prove that he had discharged “pollutants” within the meaning of 33 U.S.C. 1344(a) and 1362(6), because the evidence did not show that he discharged any material into “water.” The Clean Water Act defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source \* \* \*.” Section 502(12), 33 U.S.C. 1362(12). The Act defines “pollutant” to include “rock, sand, [and] cellar dirt.” Section 502(6), 33 U.S.C. 1362(6).

As shown above, petitioner’s wetlands site constituted “navigable waters” within the meaning of the Clean Water Act, and petitioner does not dispute that he was responsible for discharging material onto the site from a “point source,” *i.e.*, dump trucks. See, *e.g.*, *Avoyelles Sportsmen’s League, Inc. v. Marsh*, 715 F.2d 897, 922 (5th Cir. 1983). Contrary to petitioner’s submission, the fill materials he used on his wetlands site—construction and excavation debris—plainly qualify as “pollutants” under the terms of the statute. See *United States v. Riverside*

---

merce, because the witnesses who identified petitioner’s property as federally protected wetlands were testifying about its physical and geographical properties, not about the use to which it was being or could be put.

*Bayview Homes, Inc.*, 474 U.S. at 123.<sup>9</sup> Moreover, the record shows that petitioner repeatedly discharged those materials onto his wetlands site, namely, an "area[ ] \* \* \* inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do[es] support, a prevalence of vegetation typically adapted for life in saturated soil conditions." 33 C.F.R. 328.3(b). See Gov't C.A. Br. 6-16. There is thus ample evidence that petitioner discharged "pollutant[s]" into "water," as those terms are used in the Clean Water Act.

2. Petitioner also contends (Pet. 21-29) that the Sentencing Commission exceeded its authority in promulgating Sentencing Guidelines § 2Q1.3, as applied to the offense of discharging pollutants onto a wetlands site without a permit. In petitioner's view, that Guideline automatically causes "double counting" (Pet. 23) of the same criminal conduct — discharging fill without a permit — that results in sentences far exceeding those previously imposed for environmental offenses.

The Sentencing Commission recognized that in light of their variety, regulatory offenses called for a particular approach under the Guidelines. As the Commission explained:

(1) The [typical] guideline provides a low base offense level (6) aimed at \* \* \* [a] recordkeeping or

---

<sup>9</sup> See also *In re Alameda County Assessor's Parcel Nos. 537-801-2-4 and 537-850-9*, 672 F. Supp. 1278, 1284-1285 (N.D. Cal. 1987); *United States v. Larkins*, 657 F. Supp. 76, 78-79 n.2 (W.D. Ky. 1987), *aff'd*, 852 F.2d 189 (6th Cir. 1988), *cert. denied*, 109 S. Ct. 1131 (1989); *United States v. Tull*, 615 F. Supp. 610 (E.D. Va. 1983), *aff'd*, 769 F.2d 182 (4th Cir. 1985), *rev'd on other grounds*, 481 U.S. 412 (1987); *United States v. Lambert*, 589 F. Supp. 366, 371 (M.D. Fla. 1984); *United States v. Robinson*, 570 F. Supp. 1157, 1162-1163 (M.D. Fla. 1983); *United States v. Bradshaw*, 541 F. Supp. 880, 882-883 (D. Md. 1981); *United States v. Weisman*, 489 F. Supp. 1331, 1336-1337 (M.D. Fla.), *aff'd*, 632 F.2d 891 (5th Cir. 1980) (Table).

reporting offense. It gives the court the legal authority to impose a punishment ranging from probation up to six months of imprisonment.

Sentencing Guidelines ch. 1, Pt. A, para. 4(f), at 1.10. Such "recordkeeping or reporting offense[s]" merited a low base offense level because they typically involved "more technical, administratively-related offenses such as failure to keep accurate records or to provide requested information." *Ibid.*<sup>10</sup> Beyond those sorts of technical offenses, the Sentencing Commission prescribed (*ibid.*)

[s]pecific offense characteristics designed to reflect substantive offenses that do occur (in respect to some regulatory offenses), or that are likely to occur, [in order to] increase the offense level.

And the Commission explained (*ibid.*) that

[a] specific offense characteristic also provides that a recordkeeping or reporting offense that conceals a substantive offense will be treated like the substantive offense.

Under the Sentencing Guidelines, the relatively low base offense level therefore prescribes punishment only for technical regulatory violations that do not otherwise involve substantive conduct subject to regulation. The Guidelines take the defendant's substantive conduct into account through specific offense characteristics. In this case, contrary to petitioner's submission, petitioner was

---

<sup>10</sup> The Commission also recognized that

in the simplest of cases, the offender may have failed to fill out a form intentionally, but without knowledge or intent that substantive harm would likely follow. He might fail, for example, to keep an accurate record of toxic substance transport, but that failure may not lead, nor be likely to lead, to the release or improper treatment of any toxic substance. \* \* \*

Sentencing Guidelines ch. 1, Pt. A, para. 4(f), at 1.10.



not convicted of slipshod recordkeeping or simply failing to obtain a necessary form. Rather, his offenses involved a continuous course of conduct of discharging pollutants onto a federally protected wetlands site without obtaining authorization from the Corps of Engineers. The Guidelines properly treated petitioner's conduct for what it was, *i.e.*, "ongoing, continuous, [and] repetitive discharge \* \* \* of a pollutant into the environment," Sentencing Guidelines § 2Q1.3(b)(1)(A), and "discharge [of a pollutant] without a permit," Sentencing Guidelines § 2Q1.3(b)(4).

The Sentencing Commission acted well within its statutory mandate in promulgating the Guidelines that apply to environmental offenses, such as discharging pollutants onto wetlands. Congress specifically instructed the Commission to

insure that the guidelines reflect the fact that, in many cases, current sentences do not accurately reflect the seriousness of the offense. This will require that, as a starting point in its development of the initial sets of guidelines for particular categories of cases, the Commission ascertain the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of such terms actually served. \* \* \*

28 U.S.C. 994(m). Congress further directed that the Commission "shall not be bound by such average sentences, and shall independently develop a sentencing range that is consistent with the purposes of sentencing described in section 3553(a)(2) of title 18, United States Code." 28 U.S.C. 994(m).

Consequently, the Commission sought and received information from the Environmental Protection Agency

regarding past criminal prosecutions and sentencing for environmental offenses.<sup>11</sup> The EPA, for example, told the Commission that more stringent sentences were needed for environmental offenses and that Congress was considering making certain environmental crimes felonies, as opposed to misdemeanors. In February 1987, Congress raised the criminal penalties for intentional violations of provisions of the Clean Water Act, including discharging pollutants onto wetlands. See Water Quality Act of 1987, Pub. L. No. 100-4, Tit. III, § 312, 101 Stat. 42-43 (codified at 33 U.S.C. 1319(c)(2)). Instead of being punishable as misdemeanors, those offenses were made felonies punishable by a maximum term of three years' imprisonment.

The Commission's guidelines for environmental offenses, which became effective on November 1, 1987, properly reflected past sentencing practices and Congress's recent legislation. As the Commission explained:

The Commission has not simply copied estimates of existing practice as revealed by the data (even though establishing offense values on this basis would help eliminate disparity, for the data represent averages). Rather, it has departed from the data at different points for various important reasons. Congressional statutes, for example, may suggest or require departure, as in the case of the new drug law that imposes increased and mandatory minimum sentences. In addition, the data may reveal inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Sentencing Guidelines ch. 1, Pt. A, para. 3, at 1.4. Accordingly, the Commission did not act improperly in

---

<sup>11</sup> Petitioner is mistaken in suggesting (Pet. 25) that the Sentencing Commission promulgated guidelines for environmental offenses without first considering past practices.

promulgating the Sentencing Guidelines that apply to environmental offenses, such as Sentencing Guidelines § 2Q1.3(b)(1)(A) and (b)(4).

4. Finally, petitioner contends (Pet. 29-30) that the district court's imposition of a total fine of \$200,000 violated the Excessive Fines Clause of the Eighth Amendment. As petitioner correctly observes, "[t]his Court has never issued a decision on the Excessive Fines Clause." Pet. 29. This case is not an appropriate vehicle for addressing the scope of that constitutional provision for two reasons. First, the fine imposed on each count was at the bottom of the range prescribed by Congress. Under Section 309(c)(2) of the Clean Water Act, 33 U.S.C. 1319(c)(2), any person found guilty of an offense "shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both." Petitioner stood convicted of 40 separate violations, and thus faced a fine of up to \$2,000,000. Cf. *United States v. Elkins*, 885 F.2d 775, 789 (11th Cir. 1989), cert. denied, 110 S. Ct. 1300 (1990). It is unlikely that Congress's judgment as to the appropriate range for fines is so badly flawed that a fine at the bottom of the prescribed range, which is only 10 percent of the statutory maximum, could be found to be constitutionally excessive.

Second, although petitioner has not raised the point here or in the courts below, the probation officer incorrectly asserted that a mandatory minimum fine was applicable. That assertion, together with the prosecutor's comments at sentencing, see July 13, 1989, Tr. 63, may have led the district court to believe that it was required to impose at least a \$200,000 fine. See *id.* at 26-27 ("If I understand it correctly, then, so far as the applicable guidelines, it's \* \* \* a fine of \$200,000 to \$2 million \* \* \*"). If the court believed it was required to impose such a fine, it was mistaken.

The applicable penalty provision, 33 U.S.C. 1319(c)(2)(A), does not mandate the imposition of a fine on any single count if the court imposes a term of imprisonment on that count; the statute requires the court to impose a fine of at least \$5,000 only if the court elects to impose some fine, either in place of, or in addition to, imprisonment. The Sentencing Guidelines required the imposition of some fine, subject to the court's consideration of petitioner's financial condition. Sentencing Guidelines § 5E4.2(a), (c)(1)(A), (c)(3), and (f) (1987 and 1988). Again, however, neither the statute nor the Sentencing Guidelines required a cumulative fine of at least \$5,000 on each count. Assuming the district court found that petitioner was financially capable of paying some fine, it could have satisfied the requirements of both the statute and the Sentencing Guidelines by imposing a \$5,000 fine on one count and not imposing any fine on any of the other counts. Instead, the district court imposed a \$5,000 fine on each of the 40 counts of conviction, even though the probation officer informed the court that such a fine will "completely devastate [petitioner's] financial future, given his age and earning ability." C.A. App. A40.

Because the district court may have sentenced petitioner on the basis of the misapprehension that the court did not have the authority to impose a lesser fine, the \$200,000 fine may not represent the district court's judgment as to the appropriate fine that should be imposed in this case. Under these circumstances, petitioner may challenge the fine through a collateral attack on the judgment in the district court. If the district court concludes that it imposed the original fine because of a misapprehension about its authority under the statute and the Sentencing Guidelines, the court may decide to impose a lesser fine, or no fine at all, in which case petitioner's argument under the Excessive Fines Clause will be moot. For that reason, the issue

of the amount of the fine, in light of the proper interpretation of the statute and the Sentencing Guidelines, should be raised in, and addressed by, the district court in the first instance.

#### CONCLUSION

The petition for a writ of certiorari should be denied.  
Respectfully submitted.

KENNETH W. STARR  
*Solicitor General*  
RICHARD B. STEWART  
*Assistant Attorney General*  
J. CAROL WILLIAMS  
RAYMOND W. MUSHAL  
JACQUES B. GELIN  
*Attorneys*

JULY 1990

## **FY 1999: EPA Enforcement and Compliance Assurance Program Highlights**

### **Major Civil and Criminal Enforcement Cases for FY 1999**

#### Diesel Engine Manufacturers

In the largest settlement in Clean Air Act enforcement history, seven manufacturers of heavy duty diesel engines will spend more than one billion dollars to settle charges that they illegally poured millions of tons of pollution into the air. The settlement is expected to prevent 75 million tons of nitrogen oxide (NOx) air pollution over the next 27 years; 75 million is more than the total U.S. NOx emissions for three years. In addition, due to the settlement, the total NOx emissions from diesel engines will be reduced by one-third as of the year 2003. This is equivalent to the NOx emissions from an additional 65 million cars being on the road. If the companies' use of defeat devices had not been detected and eliminated, more than 20 million tons of excess NOx would have been emitted by the year 2005. The Government alleged that the companies, Caterpillar Inc., Cummins Engine Company, Detroit Diesel Corporation, Mack Trucks, Inc., Navistar International Transportation Corporation, Renault Vehicules Industriels, s.a. and Volvo Truck Corporation, sold an estimated 1.3 million engines equipped with "defeat devices" -- software that alters an engine's pollution control equipment under highway driving conditions that allow engines to meet EPA emission standards during testing but disable the emission control system during normal highway driving. As part of the settlement, the companies will pay an \$83.4 million civil penalty, the largest in environmental enforcement history, spend collectively more than \$850 million to introduce cleaner new engines, rebuild older engines to cleaner levels, recall pickup trucks that have defeat devices installed and conduct new emissions testing. In addition, the companies will undertake a number of projects costing \$109.5 million to lower NOx emissions, including research and development projects to design low-emitting engines that use new technologies and cleaner fuels.

#### FMC Corporation, Inc. (Idaho)

The FMC Corporation, Inc. will spend a total of approximately \$170 million -- including the largest civil penalty ever obtained under the Resource Conservation and Recovery Act (RCRA) of \$11,864,800 -- to settle charges that it repeatedly violated the hazardous waste law at its phosphorus production facility in Pocatello, Idaho. FMC also has committed to over a dozen Supplemental Environmental Projects ("SEPs") with a capital cost of \$63 million, which will significantly improve air quality in the Pocatello region by reducing approximately 436 tons of particulate matter per year in emissions of dust and soot at the facility. As a final SEP, FMC will conduct a \$1.65 million public health assessment and education program to investigate the effects of contaminants generated by FMC on human health and the environment, particularly within nearby tribal lands. The charges against FMC involved mismanagement of ignitable and reactive phosphorus wastes in ponds, which threatened human health and the environment. The sediments in these ponds burn vigorously and persistently when exposed to the air, and a number of fires have been documented at these ponds in the past. The wastes in these ponds also generate

phosphine and hydrogen cyanide, highly toxic gases that can cause serious health and environmental problems. FMC at times has reported elevated levels of phosphine around the ponds, and it is believed that migratory bird deaths in the area also may be attributable to phosphine poisoning. FMC will close surface ponds previously used to store and manage hazardous ignitable and reactive phosphorus wastes. In addition, FMC will construct a \$40 million waste treatment plant to deactivate the phosphorus bearing wastes in order to avoid the inherent threats posed by the handling of such hazardous materials.. Costs associated with all the injunctive relief required under the settlement are expected to exceed \$90 million.

#### New York City

A consent decree was entered in the United States District Court for the Eastern District on New York, requiring filtration at New York City's Croton Water Supply to reduce the risk of cryptosporidium and other contaminants for its nearly one million residents, including the elderly and young. The Croton watershed, located just north of New York City, supplies 10 percent of the city's drinking water, and in drought conditions supplies up to 30 percent. The federal Safe Drinking Water Act requires that all surface water systems, such as Croton, filter water by June 1993, unless stringent public health criteria are met to make filtration unnecessary. Filtering drinking water substantially reduces the risk of waterborne disease in surface water systems, which are more susceptible to potential contamination from human and animal wastes, and from microbial contaminants. In this decree, the City agreed to filter the Croton Water Supply, completing the filtration plant by March 1, 2007. The injunctive relief will require the City to spend over \$600 million in capital costs and \$20-25 million per year in operating expenses. The decree also provides for \$5 million in supplemental environmental projects (SEPs) and \$1 million in cash penalties. New York City will monitor the quality and safety of its Croton Drinking Water System until the filtration system is in full operation. The watershed protection measures the City will implement include, purchasing land and replacing faulty septic tanks with sewers, and preventing storm water runoff from contaminating the watershed.

#### ASARCO, INC. (Texas, Tennessee, Montana)

ASARCO, Inc. will spend an estimated \$15 million on several environmental actions under a landmark consent decree lodged in April 1999. The agreement also requires the mining and smelting company to pay a \$5.5 million penalty to settle claims that it violated federal hazardous waste and clean water laws in Texas, Tennessee and Montana. This nationwide, two-part settlement represents the first time the federal government entered into a consolidated agreement resolving violations of different environmental laws at more than one of a company's facilities. Under Phase I of the settlement reached in 1998, ASARCO agreed to spend more than \$50 million to clean up contamination and correct alleged violations at facilities in Montana and Arizona. Phase II of the settlement agreement obligates ASARCO to revamp Encycle/Texas, Inc., a wholly-owned recycling facility in Corpus Christi, TX, which EPA and the Texas Natural Resources Conservation Commission allege violated the Resource Conservation and Recovery Act by failing to properly manage hazardous waste and otherwise engaging in unlawful recycling

practices. ASARCO's East Helena, MT, lead smelter and El Paso, TX, copper smelter allegedly accepted shipments of unmanifested hazardous waste from Encycle/Texas in violation of RCRA

ARCO (Montana)

The Atlantic Richfield Company (ARCO) will spend \$260 million -- including a \$1.8 million penalty -- to settle allegations of liability for cleanup costs and natural resource damages caused by mine waste contamination in the Clark Fork River Basin. The settlement was contained in two settlements reached in conjunction with the State of Montana and the Confederated Salish and Kootenai Tribes of the Flathead Nation. In the first settlement, Montana receives \$215 million from ARCO, including \$80 million for the cleanup of the Silver Bow Creek under the supervision of the State and EPA, with contingencies for additional funding if necessary. In the second settlement, the company will pay \$20 million in natural resource damages to the U.S. Department of Interior's Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes. This money will be used to restore wetlands, bull trout habitat, and other natural resources. ARCO also will pay \$3.9 million in past cleanup costs to the United States, and a \$1.8 million penalty for violating a unilateral administrative order in 1997. ARCO has committed to perform additional restoration to create, restore, or enhance 400 acres of wetlands, primarily in the Anaconda area, which is estimated to cost \$3.4 million. ARCO has also committed to reserve \$15 million to reimburse the United States for a portion of past costs at other operable units of the Clark Fork River Basin.

United States v. Christian A. Hansen (LCP Chemicals) (Georgia)

A former corporate officer and a former manager of LCP Chemicals (LCP) of Brunswick, Georgia, a bankrupt subsidiary of the Hanlin Group, Inc., of Delaware, were sentenced on June 3, 1999, in U.S. District Court for the Southern District of Georgia. Christian A. Hansen of Highlands, N.J., former Chairman of the Board of Hanlin, was sentenced to serve nine years in prison and pay a \$20,000 fine. Alfred R. Taylor of Brunswick, Georgia, former Plant Manager at LCP Chemicals, was sentenced to six and one-half years in prison. Both defendants were convicted on one count of conspiring to operate the plant in violation of environmental laws, and one count of knowingly endangering employees under the Resource Conservation and Recovery Act (RCRA). In addition, each defendant was individually convicted on a variety of other environmental offenses, including crimes under the Clean Water Act (CWA).

LCP manufactured chlor-alkalai bleach, caustic soda, hydrogen gas and hydrochloric acid. During the manufacturing process, workers at the Brunswick plant were provided with inadequate safety equipment and were repeatedly placed in imminent danger of death or serious bodily harm by exposure to possible chemical burns or poisoning from inhalation of mercury vapors and other contacts with mercury-contaminated and corrosive wastes.

The investigation also revealed extensive contamination at the facility and in an adjacent waterway, Purvis Creek. Most of the contamination consisted of mercury, PCBs, and



chlorine, creating one of the largest Superfund sites in the country. In addition, significant harm was done to the local population of wood storks, which are an endangered species. Approximately 240,000 pounds of mercury used at the plant have not been recovered, and a toxic jell of mercury and caustic chemicals has been identified in the ground approximately 40 feet beneath the property. Contact with sufficient quantities of mercury can lead to neurological disorders and chlorine is a highly caustic material which can cause chemical burns in people and harm to aquatic life. Pollution caused by the plant required adjacent waterways to be closed to commercial fishing and crabbing due to high levels of mercury in the tissues of local fish and crabs.

At the time of sentencing, clean up at the LCP site had cost approximately \$55 million and additional clean up of sediments, if feasible, could cost an additional \$100 million.

United States v. Gary Benkovitz (Florida).

Gary Benkovitz, President of Bay Drum and Steel Inc., was sentenced to 13 years in prison for crimes involving water pollution and illegal hazardous waste disposal. This is the longest sentence ever handed down in the United States for a federal conviction for environmental crimes. The sentence was imposed on August 16, 1999, in the United States District Court for the Middle District of Florida, for his conviction in two separate, but related, cases. The first conviction was on charges of conspiracy to violate the Clean Water Act and the Resource Conservation and Recovery Act (which regulates hazardous waste). The second case involved violations, under the same statutes, which took place while Benkovitz was awaiting sentencing for the first case. Benkovitz was also sentenced to three years probation and Bay Drum, which is now defunct, was sentenced to five years probation. Benkovitz and Bay Drum were in the business of acquiring, cleaning, reconditioning and reselling 15 and 55-gallon drums. Between 1990 and 1999, the defendants dumped an estimated 4 million gallons of contaminated wastewater into Tampa sewers and also sent at least 170,000 pounds of hazardous sludge to Tampa's city incinerator which was not designed to dispose of hazardous materials. The contaminants in the wastewater and sludge included lead and the pesticides chlordane and heptachlor, all of which can cause significant harm to humans, fish and wildlife. It is estimated that it will cost at least \$130,000 to clean the three sites where Bay Drum conducted business. Benkovitz was ordered to pay at least \$14,000 in restitution; however, the court reserved final judgement on restitution pending an analysis of the defendant's ability to pay.

United States v. Burlington Northern and Santa Fe Railroad Company (Missouri).

Burlington Northern and Santa Fe Railroad Company (BNSF) entered into a plea agreement with the United States to resolve criminal violations involving the unpermitted discharge of pollutants into waters of the United States and the release of hazardous substances into the environment. The agreement was filed on December 4, 1998, in the United States District Court for Eastern District of Missouri. The agreement calls for the company to pay a \$7 million fine, pay restitution of \$3 million to the State of Missouri, and spend another \$9 million in remedial

costs for violating the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund). Since 1968, BNSF has operated a railroad car cleaning operation at a railroad siding near the community of Cherryville, Missouri. Cars containing residue of lead concentrate from nearby lead mines would be cleaned at the site, which resulted in lead sulfide being discharged into a creek and a significant accumulation of lead sulfide at the site. EPA estimates that the site contained approximately 40,000 tons of lead contaminated material. BNSF violated the Clean Water Act by engaging in the unpermitted discharge of lead sulfide into Cherry Valley Creek from the railroad siding during a two year period from April 1992 to April 1994. In addition, BNSF employees violated CERCLA by failing to notify emergency response authorities that it had released a hazardous substance into the environment. Lead is a highly toxic chemical element which is a known cause of significant neurological and bone diseases.

United States v. Royal Caribbean Cruises, Ltd. (Florida, California, New York, Alaska, Virgin Islands, and Puerto Rico)

A plea agreement between Royal Caribbean Cruises, Ltd., one of the world's largest cruise lines, and the U.S. Department of Justice was announced on July 21, 1999. Royal Caribbean subsequently pleaded guilty to 21 violations of federal law and agreed to pay a total of \$18 million in fines for dumping waste oil and hazardous chemicals into the ocean in violation of the Clean Water Act and Oil Pollution Act and for making false statements to the Coast Guard. The pleas were filed in U.S. District Courts in Miami, where Royal Caribbean has its headquarters, and in New York City, Los Angeles, Anchorage, St. Thomas, and San Juan. In addition to the dumping and false statement charges, the agreement also required Royal Caribbean to admit to illegally storing hazardous wastes at a Port of Miami pier in violation of the Resource Conservation and Recovery Act. These 21 charges follow a guilty plea by Royal Caribbean in June 1998 for similar crimes in Miami and San Juan. Those charges resulted in a \$9 million fine. In addition, to the total fines of \$27 million in the two cases, the plea agreement calls for Royal Caribbean to operate for five years under an environmental compliance plan.

EPA along with the Coast Guard, the FBI and the Department of Transportation Inspector General's Office initiated a criminal investigation of Royal Caribbean Cruise Lines, Ltd., (Royal Caribbean) after receiving information that the company was engaged in illegal activities by discharging oily bilge water and gray water contaminated with hazardous waste from its cruise vessels into various coastal waters, including southeast Alaska intercoastal shipping routes. Further investigation established that Royal Caribbean had, on numerous occasions in 1994 and 1995, discharged harmful quantities of oil into U.S. waters off the coast of Alaska in violation of the Oil Pollution Act of 1990. The investigation additionally established that, on at least one occasion, the M/V Sun Viking discharged wastewater contaminated with hazardous wastes from shipboard dry-cleaning operations and photographic chemicals into waters of the United States near Juneau, Alaska, in violation of the Clean Water Act. The investigation also found that Royal Caribbean made materially false statements in Oil Record Books, which were presented to the U.S. Coast Guard, in an attempt to conceal their illegal acts.

United States v. James Lee Miller (Missouri)

James Lee Miller, of Bogalusa, LA, was sentenced on December 16, 1998, to serve 27 months in prison by the U.S. District Court in St. Louis for violating the Clean Water Act. Miller was convicted of illegally discharging between 700 and 1,000 gallons of styrene monomer into a drainage ditch at the Bloomsdale rest stop on I-55 approximately 60 miles south of St. Louis on March 16, 1998. The chemical was illegally released from the tanker trailer of a semi-trailer truck driven by the defendant and flowed from the drainage ditch into Forche A Du Clos Creek and Establishment Creek, both of which eventually empty into the Mississippi River. As a result of Miller's illegal styrene discharge, more than 100 people had to be evacuated from their homes near Bloomsdale, MO. In addition, the discharge caused the temporary closure of the Bloomsdale Elementary School, and killed approximately 10,000 fish in both creeks. Depending upon the degree of exposure, people who breathe styrene monomer vapors can develop symptoms that range from irritation of the eyes and lining of the respiratory system to significant respiratory and neurological illnesses. Human ingestion of styrene monomer can produce cancer, liver disease, and blood disorders. Exposure to water borne styrene monomer can be fatal to fish and other aquatic life.

United States v. Colonial Pipeline Company (South Carolina).

Colonial Pipeline Company (CPC), of Atlanta, GA, pled guilty to violating the Clean Water Act on February 25, 1999, in the United States District Court for the District of South Carolina in Anderson, SC and was ordered to pay a \$7 million fine. The charges arose from an incident on June 26, 1996, when a CPC pipeline ruptured at a point where it crosses the Reedy River near Simpsonville, South Carolina. In its plea, CPC acknowledged that it had negligently operated its pipeline, and that its failure to exercise reasonable care resulted in the release of approximately 960,000 gallons of diesel fuel which polluted a 23 mile segment of the Reedy River. The spill killed wildlife, including 35,000 fish, and was the sixth largest oil pipeline spill in the history of the United States. In addition to the fine, the court imposed a five year term of probation on CPC, during which the company will have to develop and implement an environmental compliance program to prevent and detect any further violations of the Clean Water Act on a 5,318 mile pipeline that it operates from Houston, Texas to Linden, New Jersey. The court also required the company to make presentations to national pipeline associations regarding the obligations of pipeline operators under the Clean Water Act.

**Other Significant FY Enforcement Cases****A. Civil Enforcement****CERCLA (Superfund)**

Avtex Fibers (Virginia)

FMC Corporation will clean up the Avtex Fibers Superfund site in Front Royal, Va., a project estimated at \$63 million under the consent decree. FMC will remediate the 440-acre site consistent with redevelopment plans by the Town of Front Royal and Warren County. EPA will turn over to FMC the responsibility for the cleanup of the Avtex site. The Avtex facility manufactured synthetic fibers for 49 years, and FMC operated the plant from 1963 until 1976. The facility, built during World War II, supplied material to the U.S. Armed Forces and was the largest rayon manufacturer in the United States. The last owner, Avtex Fibers-Front Royal, closed the facility in 1989 after being cited for more than 2,000 violations of Virginia environmental laws, associated primarily with wastewater discharges into the Shenandoah River. In 1986, EPA listed the site on the Superfund National Priorities List of the country's most severely polluted sites, and the agency has been conducting cleanup work since then. FMC also will reimburse the EPA \$9.1 million for its past costs associated with the property, which is located in the foothills of the Blue Ridge

**Clean Air**BP Oil (Ohio)

BP Oil will monitor, report and correct process operations that result in the flaring, or combustion, of gases containing high levels of air pollutants under a first-of-its-kind settlement filed in federal district court in Toledo, Ohio. Under the agreement, the company will be the first in the United States under a court order to monitor the occurrence of flaring, report to EPA each time an incident occurs, and take corrective actions to reduce the likelihood of such incidents. The settlement also requires the company to pay \$1.75 million for its alleged illegal discharges of pollutants and reporting violations. The agreement resolves claims that BP violated the Clean Air Act (CAA) by emitting excess quantities of sulfur dioxide by unlawfully flaring gases containing high concentrations of hydrogen sulfide. The agreement also resolves claims that BP violated the Emergency Planning and Community Right to Know Act and the Comprehensive Environmental Response, Compensation, and Liability Act by failing to immediately notify emergency response authorities when air pollutants were emitted. BP must also pay a civil penalty of \$1.4 million and spend \$350,000 on two supplemental environmental projects.

Crozier Chester Medical Center and Statoil Energy Power Inc. (Pennsylvania)

Crozier Chester Medical Center and Statoil Energy Power Inc. settled an EPA lawsuit in February over air pollution violations at Crozier's medical waste incinerator in Upland, PA. The settlement resolves the joint federal-state lawsuit alleging that Crozier Chester and incinerator operator Statoil (formerly known as Eastern Power Corp.) violated the federal Clean Air Act and Pennsylvania Air Pollution Control Act. Under the consent decree, Statoil will pay a \$250,000 penalty and Crozier Chester will conduct a \$250,000 asthma detection and treatment program in

the Chester-Upland public schools. Air pollutants can trigger asthma attacks. Crozer Chester has also agreed to fund and conduct an asthma screening and management program for all first, sixth and eleventh grade students in the Chester-Upland public schools. Students diagnosed as suffering from asthma, or who are at risk for the respiratory illness, will be referred to programs providing medical care, medication and asthma management services. A registered nurse and an asthma care manager will be hired for the two-year program.

#### **Clean Water**

##### City of Atlanta

EPA and the State of Georgia reached a settlement in July 1999 with the City of Atlanta to resolve water pollution violations throughout the city's sanitary sewer system. The agreement, which is the second of a two-part settlement, requires the city to pay a civil penalty of \$700,000 – \$450,000 of which goes to the state of Georgia – and take corrective action to bring its sewer system into compliance with the Clean Water Act and the Georgia Water Quality Control Act. The agreement lays out steps that Atlanta must follow to stop discharges of untreated or partially treated sewage into waterways and onto land. Bacteria and nutrients from fecal contamination, typically found in very high concentrations in sewer overflows, impair waterways and can cause serious health problems. The settlement prohibits the city from installing new sewer lines in neighborhoods where the system lacks capacity to handle new flows, unless the city either increases system capacity or reduces flows from other sources. The settlement also requires the city to install flow-monitoring devices throughout its sewer system in order to determine the amount of flow handled by the system. The first settlement, reached in September 1998, calls for the city to implement a \$27.5 million supplemental environmental project which creates a greenway corridor and a one-time stream cleanup along selected waterways.

#### **Safe Drinking Water –Federal Facilities**

##### Redstone Arsenal (Alabama)

In 1999, EPA settled its first-ever penalty case under the Safe Drinking Water Act (SDWA) against a Federal facility at the Army's Redstone Arsenal in Huntsville, Alabama, with the Army agreeing to pay a cash penalty of \$80,000 and spend \$807,000 on supplemental environmental projects (SEPs). The facility failed to meet numerous SDWA requirements, including violating the maximum contaminant level for total coliform (bacteria), which ensure the safety of the drinking water for the 22,000 people at Redstone Arsenal. The Redstone settlement represents the largest drinking water penalty in EPA Region IV history.

#### **TSCA**

##### Microban (North Carolina)

An EPA Administrative Law Judge found Microban Products Co., of Huntersville, N.C., liable for making unlawful public health claims in the sale and distribution of its antimicrobial pesticide Microban Plastic Additive "B" to Hasbro Inc., for use in toys. The Judge ruled that Microban violated FIFRA, which prohibits pesticidal claims that differ from those permitted under a pesticide's registration approval. In August 1983, EPA approved Microban's registration of the Microban Plastic Additive "B" upon the company's claim that the pesticide is a preservative agent for use in the manufacture of polymer plastic and latex products, which is a non-public health use. However, the company unlawfully claimed that its product was effective against bacteria such as E.coli, staph. and salmonella., which is a public health use. The ruling ensures that unsubstantiated claims by companies, such as those made by Microban, do not put the public health at risk.

#### **Multi-Media**

##### Ashland Oil (Kentucky, Minnesota, Ohio)

Ashland Inc. agreed to a \$32.5 million settlement to resolve charges of multiple environmental law violations at its petroleum refineries in Kentucky, Minnesota and Ohio. Under the settlement, Ashland will undertake corrective actions that include improvements to the wastewater drainage system at its Ohio facility to prevent the release of volatile organics into the atmosphere; upgrades to the wastewater treatment system at the Kentucky plant to reduce the release of harmful chemicals into the Big Sandy River; and the installation of a series of wells to prevent the release of petroleum contaminants into the Mississippi River in Minnesota. Ashland will pay \$5.8 million in civil penalties and perform a number of supplemental environmental projects worth over \$14.8 million, such as donating and restoring 274 acres of ecologically significant dune prairie grassland to the state of Minnesota for permanent preservation as a scientific and natural area. Further, the company will assist the state of Kentucky with air monitoring as part of the Tri-State Initiative in the area of Kentucky, Ohio and West Virginia.

The agreement resolved charges that Ashland violated the Clean Air Act (CAA), the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), the Emergency Planning and Community Right to Know Act (EPCRA), and the Toxic Substances Control Act (TSCA) at its refineries in Catlettsburg, Ky., St. Paul Park, Minn., and Canton, Ohio. The claims against Ashland included the release of excess sulfur dioxide and other pollutants at its Catlettsburg and Canton facilities in violation of the CAA, unreported accidental releases of toxic chemicals at the Catlettsburg facility in violation of EPCRA, unauthorized wastewater discharges at each of the three refineries in violation of the CWA, and improper management of hazardous waste in violation of RCRA.

#### **Self-Disclosure Policy -Related Consent Decrees**

##### American Airlines

EPA and AMR Corporation (American Airlines) entered into a settlement that is expected to eliminate nearly 700 tons of pollutants from the air annually. In a settlement under EPA's "Audit Policy," American Airlines reported the use of a high-sulfur fuel in motor vehicles at 10 major airports around the country, including JFK in New York and O'Hare in Chicago. The violations occurred during October 1993 to July 1998. Section 211 of the Clean Air Act prohibits the knowing use in any motor vehicle of diesel fuel that contains a concentration of sulfur in excess of 0.05 percent (by weight). In addition, the diesel fuel regulations in 40 C.F.R. Part 80 prohibit dispensing, selling, supplying, offering for sale or supply, transporting, or introducing into commerce diesel fuel for use in motor vehicles unless the diesel fuel has a sulfur percentage, by weight, of no greater than 0.05 percent. Under the terms of the settlement with the Texas-based airline, EPA cut total penalties by more than 90 percent for violations that the airline voluntarily disclosed and promptly corrected. The company also agreed to additional pollution reduction measures at Boston's Logan airport.

#### Telecommunications Industry

In January 1998, in follow-up to the largest settlement reached under EPA's Audit Policy with GTE Corporation, resolving 600 violations at 314 sites, EPA began contacting members of the telecommunications industry to heighten awareness of potential environmental requirements and the cost effective approach of using the audit policy. Response to our initial outreach efforts and subsequent self-disclosures indicated that GTE's compliance problems were indicative of an industry-wide problem. In FY 1999, the Agency reached final settlements with 10 companies that voluntarily disclosed and promptly corrected 1,300 environmental violations that occurred at more than 400 of their facilities. The settlements were reached under EPA's Audit Policy, which reduces or eliminates penalties for companies that voluntarily audit, promptly disclose and correct violations. The Agency waived over \$4.2 million in gravity based penalties and collected \$128,772 representing economic benefit gained from delayed compliance. Final settlements were reached with Cincinnati Bell Telephone Co., Cincinnati Bell Long Distance, Convergys Customer Management Group, Dallas MTA L.P., Houston MTA L.P., PrimeCo Personal Communications, San Antonio MTA L.P., Celco Partnership and its affiliates doing business as Bell Atlantic Mobile or Cellular One, Southwestern Bell Telephone Company, and United States Cellular Corp.. Remedial actions for violations of the Emergency Planning and Community Right-to-Know Act (EPCRA) and/or the Clean Water Act's (CWA) Spill Prevention Control and Countermeasure (SPCC) requirements include properly notifying local emergency planning committees of the presence of hazardous chemicals and preparing spill prevention plans to reduce the risk of environmental accidents, as well as protect the safety of the personnel who respond if an accident occurs. Facilities that have hazardous chemicals and meet reporting thresholds must submit reports to the appropriate agencies by March 1 each year.

#### Pork Producers Compliance Incentives Program

In FY 1999, in conjunction with the emphasis of President Clinton's Clean Water Action Plan to eliminate water pollution caused by contaminated runoff, the U.S. Environmental Protection

Agency and the National Pork Producers Council (NPPC) developed a voluntary compliance program to reduce environmental and public health threats to the nation's waterways from runoff of animal wastes from pork-producing operations. Under this initiative, participating pork producers will have their operations voluntarily assessed for Clean Water Act violations by certified independent inspectors. Producers who promptly disclose and correct any discovered violations from these audits will receive a much smaller civil penalty than they might otherwise be liable for under the law. The compliance audit program provides an incentive for pork producers to take the initiative to find and correct Clean Water Act violations and prevent discharges to waterways without compromising the ability of EPA or states to enforce the law.

## **B. Criminal Enforcement**

### **Clean Water**

#### United States v. Rockview Farms, Inc. (California)

Rockview Farms, Inc., a California corporation which owns and operates the Ponderosa Dairy in Amargosa, NV, was sentenced in U.S. District Court for the Eastern District of California in Fresno for violating the Clean Water Act and for making a false statement. Rockview was fined \$250,000, and was ordered to upgrade the dairy to prevent future discharges. The Court also ordered Rockview to reimburse the investigating agencies \$6,900 for response and investigation costs, and ordered the defendant to purchase \$10,000 worth of investigatory equipment for the North and South Central Valley Dairy Waste Enforcement Task Force. Rockview illegally discharged 1.7 million gallons of dairy waste water contaminated with urine and feces in February 1998 when a wastewater lagoon valve was left open for two days. The waste water flowed approximately eight miles across the desert and then into the Amargosa River in Inyo County, California. Exposure to fecal coliform and other pathogens in animal wastes can cause intestinal and other infections in humans and can also be harmful to aquatic life.

#### United States v. Northeast Utilities (Connecticut)

Northeast Utilities, the largest nuclear energy company in New England, pleaded guilty to six counts of willfully violating the Clean Water Act (CWA) and 19 counts of knowingly falsifying training records which were required under the Atomic Energy Act for utility employees to be licensed as nuclear power plant operators. The CWA violations included submitting inaccurate wastewater test samples by improperly taking samples from a discharge pipe when it was submerged during high tide; dumping hydrazine, a toxic chemical, into Long Island Sound without a state permit and without notifying the state; and, taking samples at the Devon facility that did not reflect the true toxicity of the wastewater because it was diluted with river water before testing. As a result of their conviction, Northeast Utilities and its subsidiary, Northeast Nuclear, agreed to pay \$7 million dollars in fines to the Federal government.

#### Puerto Rico Electric Power Authority, Palo Seco Facility (Puerto Rico)



In September 1995, Puerto Rico Electric Power Authority (PREPA) experienced a massive spill of 270,000 gallons of sulfuric acid water. PREPA, which uses the acid in its wastewater treatment processes, had been storing approximately 10,000 gallons of concentrated sulfuric acid in an above ground tank when the tank valve failed. The spilled acid was temporarily contained by a concrete retention base around the tank. PREPA initially placed the spilled acid into tanker trucks, but with a hurricane watch in effect, PREPA then removed the acid to a wastewater storage tank. The tank had been out of service for repairs, but after inadequate repairs the tank was placed back into service to hold approximately 270,000 gallons of wastewater with a pH of 1.8. PREPA added the spilled acid to the tank and then added caustic soda to the tank in an attempt to neutralize the acid, but the strategy did not succeed. This second tank had not been designed to hold acid and began to develop pinhole leaks almost immediately. It ultimately failed catastrophically with the contents discharging into an adjacent mangrove swamp, causing extensive damage to the wetland.

PREPA was sentenced in June 1999 after pleading guilty to a one count information charging a negligent violation of the Clean Water Act Section 301 for the unpermitted discharge of the acid wastewater to a mangrove swamp in Bayamon, Puerto Rico. PREPA agreed to pay a \$140,000 fine, be placed on probation for two years, and implement a compliance program to prevent future violations. In addition, the court set as a condition of probation that PREPA comply with a civil consent decree it had entered into with EPA.

#### **FIFRA**

##### United States v. Robert E. Kelly, Jr. (Tennessee)

Robert E. Kelly, Jr., owner of Kelly's Spraying Service in Memphis, Tennessee, was sentenced to serve twenty months in prison and to pay \$250,000 in restitution by the U.S. District Court for the Western District of Tennessee in Memphis. Kelly was convicted of charges that he purchased at least 280 gallons of the pesticide methyl parathion in Mississippi under the false pretense that it would be used for agricultural purposes. He was also convicted of illegally applying the pesticide in homes in the Memphis area. Methyl parathion, also known as "cotton poison," is a highly toxic substance that is only approved for outdoor use in uninhabited agricultural fields where sunlight rapidly reduces its toxicity. When applied indoors, methyl parathion can remain toxic for up to two years, and can cause headache, nausea, convulsions, coma, and death. Evidence introduced at the trial indicated that Kelly did not warn his customers of the dangerous nature of the pesticides he was applying, even when they asked about the dangers. Hundreds of Kelly's customers were exposed to high levels of methyl parathion, and some of them became ill after it was applied in their homes.

#### **Oil Pollution Act**

##### United States v. Doyon Drilling, Inc. (United States Court for the District of Alaska)

Doyon Drilling, Inc. (DDI), an Alaskan Corporation that provides drilling services throughout the North Slope, Ben Shafsky, DDI's Assistant Operations Manager, and Allan Sinclair, a former drilling rig supervisor, were sentenced by the U.S. District Court for the District of Alaska in Anchorage. DDI was ordered to pay a fine of \$3 million and serve five years of probation for violating the Oil Pollution Act. DDI may offset two million dollars of the fine over a five-year period if they spend an equivalent amount on the implementation of an environmental compliance program. In April 1998, DDI pled guilty to 15 misdemeanor violations of the OPA which occurred between 1993 and 1995 when DDI employees injected paint thinner, paint, oil, and solvents down the outer rim of oil producing wells on Endicott Island. Shafsky and Sinclair, both pled guilty to misprision of a felony for concealing the illegal disposal of hazardous waste and failing to notify federal officials about the crime. Shafsky was ordered to pay a \$25,000 fine and serve five years probation. Sinclair, was sentenced to four months of confinement, a \$25,000 fine, and five-year probation.

#### **TSCA**

##### United States v. Gaines, et. al. (Wisconsin)

Three men were sentenced in Wisconsin for conspiring to use homeless men to improperly remove asbestos. Chance Gaines of Arab, AL, and James Bragg and Buddy V. Frazier of Chattanooga, TN, were sentenced to prison in U.S. District Court for the Western District of Wisconsin in Madison. Gaines was sentenced to 33 months, Frazier to 30 months, and Bragg to 24 months for conspiring to use untrained homeless men to illegally remove asbestos, in violation of the Clean Air Act. In addition, the defendants also conspired to use false Social Security account numbers to obtain 'asbestos worker certifications' from the Wisconsin Department of Health and Family Services for the untrained men. In 1996, under Frazier's direction, Gaines transported workers recruited from Georgia and Tennessee to Mansfield, WI, where they stripped asbestos insulation without following federal regulations which are required to prevent exposure to airborne asbestos fibers. Bragg transported the workers from Tennessee to the work site. Inhalation of asbestos fibers can cause a lung disease known as "asbestosis," and mesothelioma, which is a cancer of the chest and abdominal cavity.

#### **Clean Air Act**

##### United States v. Kali Patel (California)

In 1999, Kali Patel, George Shahin and Moussa Toubeh were convicted for various crimes committed in the course of purchasing illegally imported CFCs (R-12). In early 1997, an investigation was initiated to obtain evidence of the suspected sale of illegal CFCs by Patel. During the course of the investigation it was learned that Patel was interested in purchasing rather than selling CFCs. Later, Patel stated he was unable to purchase a large amount (1200 30-lb cylinders) but introduced a person, later identified as George Shahin, who wanted to make a large purchase. Shahin ultimately agreed to purchase 1200 cylinders of illegally imported R-12. The

investigation disclosed that Patel had invested in the illegal sale by helping Shahin finance the transaction. Additionally, Shahin had also accepted money for the purchase from Moussa Toubbeh. Patel pled guilty to conspiracy to smuggle CFCs and obstruction of justice. Shahin Pled guilty to two criminal counts under the Clean Air Act (CAA), conspiracy and obstruction of justice. Moussa Pled guilty to conspiracy and obstruction of justice. Shahin forfeited \$131,132 in cash that he used for the illegal purchase and a forklift used to unload the shipment. Patel was fined \$50,000 dollars, received six months home confinement and placed on 36 months probation. Moussa paid U.S. Customs a fine of over \$7,000 to retrieve his vehicle when it was seized as property used to facilitate the illegal acts and was placed on 24 months probation. Shahin was placed on 36 months probation.

United States v. Saybolt North America (Massachusetts)

Saybolt Labs (Saybolt) pleaded guilty to several charges, including conspiracy and wire fraud, stemming from illegal activities during the company's laboratory testing of petrochemical commodities, including gasoline. Saybolt performed testing and inspection services for oil and gas refiners and importers and, while doing so, engaged in a pattern of falsifying the results of qualitative laboratory testing.

Under the Clean Air Act, importers and refiners are required to sell reformulated gas (RFG) in certain areas. RFG is required to contain more oxygen than other blends of gasoline in order to reduce smog. RFG which does not contain required levels of oxygen can contribute to smog in cities that have air quality problems, and smog is a known cause of respiratory illnesses in people. In order to attract and keep customers, Saybolt routinely inflated the oxygen content of its customers' RFG in reports that were submitted to EPA. Saybolt also falsified lab results which were used for determining whether various petroleum products were "on-specification" regardless of whether the products met specifications or not.

During EPA's investigation of Saybolt's laboratory fraud, a bribe scheme was uncovered resulting in Saybolt, and its parent company, Saybolt North America, Inc., pleading guilty to crimes under the Foreign Corrupt Practices Act (FCPA). These violations involved the defendant's attempt to pay a bribe to a Panamanian government official in order to obtain favorable treatment for Saybolt's operations in Panama.

As a result of the plea agreement, Saybolt was sentenced to pay a total of \$4.9 million in fines. For the laboratory conspiracy and wire fraud, Saybolt was fined \$3.4 million, sentenced to 60 months probation, required to install an environmental compliance program, and ordered to publically admit its wrongdoing. Saybolt and Saybolt North America, Inc. were fined \$1.5 million dollars and placed on 60 months probation for their FCPA violations. David Mead, who was the President of Saybolt, was convicted of FCPA violations and sentenced to 4 months in prison, 4 months home confinement, 36 months supervised release, and a \$20,000 fine. Frerick Pluimers, a Dutch national citizen and who was the Chairman of Saybolt's Board of Directors, is a fugitive. INTERPOL has issued its highest alert for the arrest of Pluimer for his participation

in the FCPA violations at Saybolt.

## **RCRA**

### Thoro Products, Inc. (Colorado)

In February 1999, Richard Newman, owner of Thoro Products, Inc.(Thoro), was convicted by jury trial in State court and sentenced to 14 years incarceration for hazardous waste disposal crimes -- the longest jail sentence ever handed down for an environmental crime in the history of environmental prosecutions in the United States. The case was prosecuted by the Colorado Attorney General in close cooperation and with support from EPA. The corporation was fined \$950,000, placed on 10 years probation, and is required to assist with the cleanup of underground contamination caused by its operations.

Thoro stored and distributed chemical products for Dow Chemical Company at the Thoro facility in Arvada, Colorado. During this time, solvents and other chemical products were spilled onto the ground and other spills were caused by leaking hoses and pumps. As a result of these illegal activities by Thoro employees, groundwater was contaminated in a mile long and a half-mile wide plume down gradient from the Thoro facility. The violations were discovered after a drinking water well was contaminated. Additionally, landowners adjacent to the Thoro facility suffered \$3 million in damages to their property.

This case represented a strong cooperative effort by EPA's Office of Criminal Enforcement, Forensics and Training staff and the State of Colorado: EPA's Criminal Investigations Division assisted the State with the investigation; the National Environmental Investigations Center (NEIC) provided technical support; and OCEFT Legal Counsel assisted the Colorado Attorney General in prosecuting the case.

## **OECA Headquarters Compliance Assistance Activities**

### EPA/Bureau of Indian Affairs (BIA) Compliance Assistance Project

OECA and the Bureau of Indian Affairs (BIA) have been working together to improve BIA's compliance record. The two agencies initiated a joint effort to increase compliance at BIA facilities. In FY 1998, the agencies signed a Memorandum of Understanding to implement a Compliance Assistance Project (CAP) to ensure environmental protection of BIA and Indian trust resources and personnel by bringing BIA facilities into compliance and identifying lessons learned that can be applied at other facilities.

The project got under way in FY 1999. OECA's Federal Facilities Enforcement Office

(FFEO) will provide contract support to perform environmental baseline assessments at five or six representative BIA facilities on reservation or trust lands. The assessments will cover a cross section of different types of BIA facilities in different parts of the country, including paint shops, vehicle maintenance shops, storage tank areas, schools, etc. and assess operations based on requirements in RCRA, TSCA, CERCLA, FIFRA, CAA, and CWA, as well as related DOT and OSHA regs. Any violations uncovered will be corrected. One audit was completed on the Yakima reservation in Washington and another will take place on the Cherokee Nation Reservation.

#### Tribal Solid Waste Interagency Workgroup

The multi agency Tribal Solid Waste Interagency Workgroup (Workgroup), consisting of EPA and seven other federal Agencies and Departments, provided approximately \$1.6 million to eleven Native American tribes for the FY 1999 Tribal Open Dump Cleanup Project (Project). The Workgroup was established in April 1998 to design a federal plan for helping tribes bring their waste disposal sites into compliance with the municipal solid waste landfill criteria. FY 1999 to the following tribes: Swinomish Indian Tribal Council, Tohono O'odham Nation, Blackfeet Nation, White Earth reservation, Navaho Nation, Metlakatla Indian Community, Taos Pueblo, Hoopa Valley tribe, Mississippi Band of Choctaw, and Native Village of Elim. The tribes will use the Project funds to assist with the closure or cleanup of high priority open dump sites. The Project will continue in FY 2000.

The Project is part of the Workgroup's effort to coordinate federal assistance for tribal solid waste management programs. In addition to assisting tribes with the closure or upgrade of high priority non-compliant waste disposal sites, the Project is intended to demonstrate the federal government's ability to provide comprehensive solid waste funding and technical assistance to tribes. The Cleanup Project's specific goals include assisting tribes with completing and implementing comprehensive integrated waste management plans, developing realistic solid waste management alternatives, closing or upgrading existing high priority open dumps, and developing postclosure programs.

Project funds are available to all federally recognized tribes and Alaska native villages, and to multi-tribe organizations whose membership consists of federally recognized tribes or villages. Using the information gathered through the project, the Workgroup plans to devise a strategy to support further assistance to tribes in their efforts to address solid waste management needs.

#### National Compliance Assistance Centers

EPA opened four new on-line Compliance Assistance Centers in 1999 focused on the following sectors: chemical, local government, transportation, paints & coatings. These new Centers join the five that were already on-line and which target automotive service and repair shops, agricultural facilities, metal finishers, printed wiring board manufacturers, and the printing industry. EPA's nine Compliance Assistance Centers are Internet-based and deliver easy-to-understand

compliance information targeted specifically at certain industry sectors. The Centers help users understand which federal regulations apply to their operations, share pollution prevention tips and techniques, access relevant compliance tools, and learn about the latest regulatory developments.

Recent evidence indicates that the centers are having a positive impact on improving compliance. New survey statistics from OECA's automotive and repair shop web-based Compliance Assistance Center (*GreenLink*) show that compliance improves when facilities are given assistance. In 1997, audits revealed that less than 25% of the industry were in substantial compliance (defined here at 81-100% compliance) with all their regulatory requirements. In 1999, after the establishment of *GreenLink*, the number of facilities in substantial compliance has jumped to 51%. *GreenLink* has also become an important compliance tool that many auto shops now rely on : the number of users has increased from 1,000 shops in 1997 to 21,000 shops in 1999.

Currently, EPA's Compliance Assistance Centers are being visited over 700 times a day by businesses that need help. Use of the Centers is increasing steadily and surveys have shown that customer satisfaction is strong. To access all Centers, go to: [www.epa.gov/oeca/mfcac.html](http://www.epa.gov/oeca/mfcac.html).

#### Sector Notebooks

In 1999, EPA added three new sector notebooks to its portfolio: oil & gas extraction industry, aerospace industry, and local government operations. This brings the total number of industries profiled in Sector Notebooks to 30.

Sector Notebooks give users general information about broad spectrum environmental issues associated with major industries. Each notebook contains important sector information that help facilities recognize and resolve compliance problems: business profile and trend information, manufacturing process descriptions, applicable federal regulations, compliance history, profiles of chemical releases, pollution prevention opportunities, contacts for help and assistance materials.

To date, over 450,000 Notebooks have been distributed - and they remain one of OECA's most popular products. To view EPA's Sector Notebooks, visit [www.epa.gov/oeca/sector](http://www.epa.gov/oeca/sector)

#### "Root Causes" of Non-Compliance Report

EPA and the Chemical Manufacturers Association released the "EPA/CMA Root Cause Analysis Pilot Project Report" in July. The report examines the underlying causes of environmental violations in 47 federal civil enforcement cases between 1990 and 1995. Ninety-four percent of the respondents identified multiple causes for a single non-compliance event. Among the leading causes for non-compliance were individual responsibility and lack of awareness of regulatory requirements. The report highlights the role environmental management systems (EMSs) can play in promoting compliance. EMSs are unique to a company's operation and serve to control and minimize the environmental effects of its activities. Among the

respondents, 41 percent stated that CMA's Responsible Care or another EMSs would have contributed to the prevention of the non-compliance. Responsible Care calls upon CMA members to continuously improve their overall health, safety and environmental performance in a manner that is responsive to the public. The report indicates that adjustments by both government and industry could help improve compliance performance. It suggests, for example, that EPA provide technical assistance and compliance assistance tools that better conform to industry needs. On the industry side, the report states that more emphasis should be placed by manufacturers on developing and maintaining comprehensive, well-integrated and clearly articulated EMSs.

### **Examples of Regional Compliance Assistance Activities**

#### Region One Compliance Assistance Given to Printers

In Region One, printing continued to be a compliance assistance priority. Their *Fit To Print* guide was sent to over 1400 printers throughout the Region. Of those who responded to an evaluation of the guide, 70% said that they had undertaken "improved environmental practices" such as equipment changes/modifications, material substitution, recycling, training, institution of environmental management policies or procedures, and improved disposal methods as a result of compliance assistance efforts. These facilities also said that they took action to apply for appropriate permits or identification numbers, or file reports as necessary to comply with Federal, state or local environmental regulations.

#### Region Two Outreach Efforts to Dry Cleaners to reduce Perchloroethylene

EPA's Region II office, in coordination with New York State agencies, has focused compliance assistance efforts on dry cleaners in New York and New Jersey. Their outreach efforts included on-site visits and the distribution of easy-to-understand guides to Clean Air Act requirements. In addition, the Region developed a web site for compliance assistance information and held 8 seminars on equipment maintenance and new technologies for approximately 500 owners/ operators. This effort has resulted in a reduction of 11.9 tons of PCE from urban air.

#### Region Five EPCRA Compliance Assistance for the Metal Plating and Coating Sectors

EPA's Region V worked with its States to bring 252 metal plating and coating facilities into compliance with the Emergency Planning and Community Right-to-Know Act (EPCRA). EPA and its state partners gave over 35,000 facilities EPCRA fact sheets, special color-coded Emergency and Hazardous Chemical Inventory forms, and a copy of the Extremely Hazardous Substance List to help them determine whether they needed to comply.

EPA Region V contains over 4,800 facilities in both the metal plating and/or coating sectors. This represents about 60% of all metal finishers nationally.

#### Region Six Consolidation of Compliance Information for Stormwater Permit Holders

A compliance assistance program focused on stormwater permit holders continued in FY 1999 in Region VI. The Region has employed a number of integrated assistance strategies to deliver compliance help to 1,300 state, municipal, private and federal stormwater permit holders:

- creating a website which contains comprehensive storm water guidance, permit information, regulations, databases and contacts
- presenting at conference and trade association meetings
- mailing 6,000 assistance letters to the construction industry

#### Region Six Promotion of Compliance Awareness through Environmental Management Reviews

EPA's Region VI has led the way in using Environmental Management Reviews (EMRs) to promote compliance at federal facilities. EMRs are a tool for helping federal facilities meet or exceed their regulatory compliance requirements. In 1999, Region VI conducted \_\_ on-site environmental management reviews at federal facilities. Specifically the Region examined the facility's structure, environmental commitment, internal and external communications, formality of environmental programs, staff training and development, program evaluation and reporting, and environmental planning and risk management.

### **E. Environmental Justice**

#### Regulatory Development

**Economic Incentive Programs ("EIP"):** The Office of Environmental Justice ("OEJ") has worked extensively with the Office of Air and Radiation to develop sound public participation, monitoring, and "hot spot" prevention components to the Draft EIP. The EIP is the Agency's proposed policy on emissions shifts and trades. While emission shifts and similar market based techniques hold promise for reducing air pollution efficiently, concerns have been raised with respect to their impact on low-income and/or minority communities. In addition, OEJ organized meetings among community groups and Agency experts to help facilitate better communication and understanding of concerns and needs. The result of the meetings was modification of the proposed policy and a closer working relationship among stakeholders.

**Tier 2 Emissions Rule:** The Tier 2 Rule establishes new emission standards for automobiles by reducing sulfur content in gasoline. This reduction will greatly improve tail pipe emissions but may increase emissions at refiners. OEJ worked with the Office of Air and Radiation to help ensure that the local impacts of the rule were understood and environmental justice concerns addressed. Outside, third party neutrals were also hired to consult with stakeholders (industry, environmental groups, environmental justice organizations, states, etc...) to ensure that all parties' interests and concerns were understood and taken into consideration. OEJ will continue to work



with stakeholders and the Office of Air and Radiation, now that the rule is issued, to develop permitting procedures that will promote meaningful community involvement and efficiency in the permitting process.

#### Consensus Building

OEJ and the Office of the Administrator have initiated a rapid response dispute resolution pilot project to evaluate the use of dispute resolution in environmental justice disputes. This pilot project will focus exclusively on environmental justice disputes and will be used to learn more about the use of alternative dispute resolution's effectiveness conflicts involving environmental justice concerns.

#### Effective Outreach to Stakeholders

During FY99 a team concept was successfully initiated in the Office of Environmental Justice. The teams have been organized as follows: Federal Government Team; State, Tribal and Local Government Team; Business and Industry Team; Community/Grassroots Team; and Grants Management Team. Each of the five teams engaged in outreach efforts with stakeholder groups to share ideas and better understand needs. For example, the Community/Grassroots Team met to discuss the concern that locally impacted residents have not been able to participate fully in the decisionmaking process surrounding the siting of pollution-generating facilities. Members of the team held several face-to-face meetings with environmental justice network organizations including: Southwest Network for Environmental and Economic Justice, Southern Organizing Committee, Greater Boston Environmental Justice Network and the Indigenous Environmental Network. As a result of the information related at these meetings, the Office of Environmental Justice can better help community and grassroots organizations participate in the decisionmaking process, and allow the neighborhood groups to better participate in the shaping of their communities' futures.

#### Environmental Justice Small Grants Program Publication Issued

In fiscal year 1999, EPA issued the first national publication highlighting successes from the Environmental Justice Small Grants Program entitled, ***“Environmental Justice Small Grants - Emerging Tools for Local Problem-Solving.”*** Since 1994, EPA has awarded more than 530 small grants to assist eligible community groups seeking solutions to local problems. The 46 projects highlighted in this report cover grants awarded from 1994 through 1997 and represent 6 focus areas including: Water Quality; Air Quality, Lead & Carbon Monoxide Poisoning; Pollution Prevention; Vacant Land Reuse; and, Environmental Stewardship. Our purpose in publishing this document was to: (1) inform communities and show them how to implement similar projects and programs; (2) reduce duplication of effort; (3) strengthen the networking of organizations; (4) improve the quality of future projects; and, (5) provide lessons learned from completed projects. To date, more than 3,000 copies have been distributed in printed and electronic formats. In subsequent years, a similar publication will be prepared and will include

470

successful projects awarded in FY '98/99.

## Weather

Today: Partly sunny, mild.  
High 74, low 64.  
Monday: Sunny, cool.  
Lowest: High 72, low 64.  
Details: Page F10

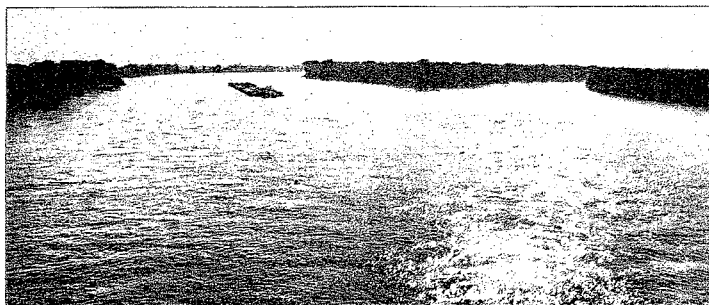
# The Washington Post

SUNDAY, SEPTEMBER 10, 2000

1390 Year 101 102 103

Today: 70¢/copy, 10¢/copy  
The Post Magazine, 10¢/copy  
10¢/copy, 10¢/copy, 10¢/copy  
\$1.50

## ENGINEERS OF POWER: Inside the Army Corps



Running a river: A barge travels south of Cairo, Ill., near where the Corps wants to drain 36,000 acres of wetlands.

## An Agency of Unchecked Clout

Water Projects Roll Past Economic, Environmental Concerns

First of five articles

By MICHAEL GRUNWALD  
Washington Post Staff Writer

**T**HE developer of a huge project to control flooding in Missouri's soggy southeastern boot heel expects to drain 36,000 acres of wetlands along the Mississippi River. That's almost enough wetlands to cover the District of Columbia—and nearly twice as many as all of America's developers were permitted to touch last year.

The developer plans to plug a quarter-mile gap in an earthen levee to lock the river into its channel, then build two giant pumps to get rid of rain. But while the \$65 million venture is being promoted as an economic lifeline for water-weary East Prairie, the developer's fine print suggests this farm town will flood almost as often after it's built.

The consensus in the Clinton administration is that this megaproject must be stopped. "An environmental debacle," says a White House aide. "Absolutely ridiculous," scoffs Bill Hartwig, a regional Fish and Wildlife Service director. "A crazy idea," agrees James Lee Witt, head of the Federal Emergency Management Agency. "Probably the dumbest



Natural riches: A great blue heron is part of the floodway's rich biological diversity.

project around," says a top Environmental Protection Agency official.

The Army Corps of Engineers is part of the Clinton administration, too. It is a public works agency in the Pentagon chain of command, reporting to an assistant Army secretary. It is also an environmental agency, legally responsible for protecting the nation's dwindling wetlands—ecologically sensitive areas ranging from seasonally flooded farmland to year-round swamps. But the Corps has a different take on the St. John's Bayou-New Madrid Floodway Project.

It's the developer. And in many ways, this parish of a project is put for the Corps, one of the oldest, largest and most unusual agencies in the federal government. It is an executive branch bureaucracy that takes marching orders from Congress, a military-run organization with an overwhelmingly civilian work force, an environmental regulator despised by environmentalists. The Corps has \$62 billion worth of civil works projects underway—three times the federal spending on cancer research over the last decade. It has about 35,000 employees—more than the Energy, Labor and Education departments put together.

See CORPS, A27, Col. 1

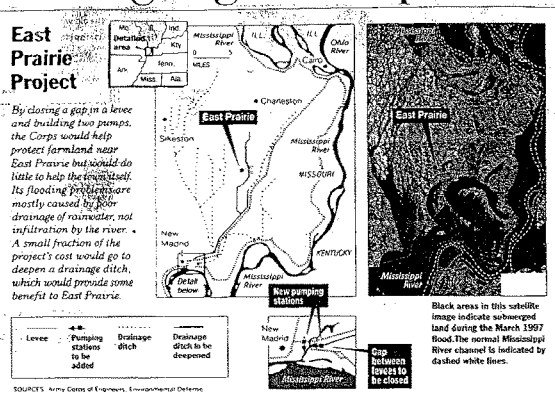
THE WASHINGTON POST      ON PAGE 5      SUNDAY, SEPTEMBER 10, 2000      A27

# ENGINEERS OF POWER | Inside the Army Corps



**Seeking closure:** The Corps wants to erase a 1,500-foot gap in the levee at the New Madrid floodway, eliminating Missouri's last swath of backwater floodplain with direct river access.

## Project Highlights Corps' Clout



CORPS. From A1

This series will explore how an agency born as a regiment in George Washington's army has built clout in the city that bears his name, and how it uses that clout to reconfigure the American landscape. A Washington Post review of Corps activities across the nation, supported by more than 1,000 interviews and tens of thousands of pages of documents, found that the agency is converting its strong congressional relationships into billions of dollars' worth of taxpayer-funded water projects, many with significant environmental costs and minimal economic benefits.

Members of Congress authorize the projects to steer federal money to their districts, and the Corps often justifies them with questionable technical studies. This pro-construction mentality has been fueled by Corps commanders, who have launched an agency-wide campaign to "seek growth opportunities," internal memos show. The result is a fragmented national network of channelized rivers and deepened ports, cobbled together by log-rolling and deal-cutting by individual lawmakers, instead of comprehensive planning by federal officials.

The East Prairie plan has the hallmarks of many of the Corps projects reviewed by The Post. It has fierce support from local residents as well as a fervent congressional advocate, Rep. Jo Ann Emerson (R-Mo.). The Corps justified it with a distorted cost-benefit analysis—the assumptions included a 2.5 percent interest rate that dates back to the Eisenhower administration—and deflected strong objections from environmental agencies. The bulk of the project's benefits will flow to a few well-connected local farmers, but the federal rules that would have forced them to help pay for it were waived in Washington. And despite the administration's outrage, the project may soon become a reality.

Corps commanders refused scores of interview requests, under orders from Gen. Joe Ballard, the agency's recently retired chief engineer. But in written responses to questions from The Post, and in their public statements, they have called the Corps a model of public service, firmly committed to promoting economic development, newly dedicated to conserving ecosystems and federal lands as well. They describe the Corps as an apolitical military organization, simply following orders produced by the democratic process.

Earlier this year—after a whistle-blower charged that Corps officials had manipulated an economic study to justify billion-dollar lock expansions on the Mississippi River, and commanders had drawn up a "Project Growth Initiative" to boost the agency's budget and expand its missions—Ballard angrily told a Senate subcommittee that the Corps is not a "rogue agency."

"I am confident that the Army Corps of Engineers is pursuing its mission with the utmost professionalism and integrity, and will continue to serve this nation well," he said.

Almost all modern presidents have clashed with the Corps—and the Corps has usually won. Presidents Roosevelt, Truman, Johnson and Nixon all considered reforms that went nowhere. In 1977, President Carter tried to kill a "hit list" of 19 water projects, an effort that not only failed, but permanently damaged his relationship with Congress. In 1981, President Reagan did force Congress to make local communities pay more for Corps projects, but only in exchange for a costly new round of projects. This spring, President Clinton's Army secretary, Louis Calder, tried to reaffirm executive branch control of the Corps, only to withdraw his proposed reforms a week later after a Capitol Hill backlash.

Now another intense battle is raging over the Corps—over who should control the agency, whether it should grow or shrink, and how much it should shift its focus from construction projects that degrade the environment to restoration projects that clean up old damage. It may not be the sexiest of Beltway battles, but it will have a dramatic effect on America.

Corps levees and floodwalls protect millions of homes, farms and businesses. Coastal ports and barge channels carry 2 billion tons of freight annually. Its dams generate one-fourth of America's hydroelectric power. Its water recreation sites attract more visitors than the National Park Service's.

land holdings would cover Vermont and New Hampshire.

But the Corps may have its greatest impact on nature. It quietly presides over many of the nation's hottest environmental issues, from oil drilling on Alaska's North Slope to dam removal on the Snake River to water wars on the Missouri River to restoration of Florida's Everglades. It is in the thick of furors over endangered species, endangered rivers, ocean dumping, beach erosion, agricultural pollution, floodplain sprawl. It cleans up industrial and nuclear waste. In its regulatory role, it approves thousands of private projects that destroy modest amounts of wetlands, in its construction role, it is pushing several public projects that could destroy huge amounts of wetlands. So the future direction of the Corps will help determine the future health of America's environment.

To conservationists, that is not a comforting thought. They know the Corps as a dredge-and-destroy agency that builds massive dams, dikes and levees, domesticating wild rivers into straight and narrow barge canals. Its leaders have pledged to reinvent the Corps as a "greener" organization, but they still battle traditional environmental agencies on almost every major issue. To many environmentalists, the Corps is still Public Enemy Number One, and almost all of its major projects are still greeted with environmental lawsuits.

"The Corps still doesn't get it," said Hartwig, whose Fish and Wildlife regional office is fighting the project in East Prairie. "They still think they can defeat Mother Nature with brilliant engineering. They talk about the environment, but they don't really believe in it."

Joseph Westphal, the Clinton appointee who oversees the Corps, argues that it is unfair to dwell on the past, on ancient boondoggles built under orders from Congress in eras oblivious to ecological concerns. The real story, he says, is that the Corps has begun to appreciate the value of flora and fauna, and that its spending on environmental programs has quadrupled since 1992. The modern Corps is planting trees, creating wetlands, even dismantling a few of its dams, dikes and levees. It is restoring some of the river bends and backwaters it once wiped out, chauffeuring salmon past the fish-pulverizing dams it once built, and preparing to lead a \$7.8 billion effort to undo the damage it once inflicted upon the Everglades.

"I can't say there's as much progress as I'd like, but there's definitely progress, real progress," said Westphal, the assistant Army secretary for civil works.

Westphal, an amiable political science professor who once ran the congressional Sun Belt Caucus, is supposed to supervise the civil works program, but he has rarely intervened in Corps decisions. Even though the overwhelming majority of the agency's employees

are civilians, military commanders run its 49 districts and divisions, where the real work gets done. And under Ballard, a three-star general who pounds out e-mails in capital letters, the Corps virtually declared independence from the Clinton administration.

So while the Corps is showing some signs of modernization, it is also marching ahead with a new round of old-style projects, from the world's largest water pump in the Mississippi Delta to the world's largest beach replenishment along the New Jersey coast, from a \$641 million lock replacement in a New Orleans canal to a \$377 million harbor deepening in Wilmington, N.C. Local interests propose the projects, and members of Congress ram them into law, but none of them could happen without the cooperation of the Corps.

The East Prairie project is particularly anachronistic, and not only because of its outsize impact on wetlands. Its main flood control protection is not for East Prairie, but for waterlogged farmland in a sparsely inhabited area called the New Madrid Floodway. It's called a floodway because in a serious Mississippi rise, the Corps is supposed to let the river overwhelm the entire 180-square-mile area to protect more populated river communities.

In other words, the Corps is now trying to provide flood protection for an area it may end up flooding on purpose.

"It's just insane," says Mark Boone, a fisheries biologist for the Missouri Department of Conservation. "It's like the rest of the world woke up, and the Corps is still asleep."

So on one hand, the federal government is paying people billions of dollars to move homes and businesses away from floodplains; on the other hand, the Corps is pushing an economic development project not only in a natural floodplain, but in an official floodway. Meanwhile, at a time when the nation is officially committed to restoring wetlands—which serve as kitchens and nurseries for countless species, filter water that ends up in faucets, and reduce flood damages by absorbing excess water—this project would destroy wetlands.

The project would also boost agricultural production in Missouri when the government is spending billions to take flood-prone farmland out of production—and billions more to prop up and bail out farmers suffering from low prices, which have been depressed by overproduction. And while an executive order by President Clinton promoted "non-structural" approaches to reducing flood damages, this levee-and-pump project is decidedly structural.

"On a lot of levels, the project makes no sense," said FEMA's Witt.

## The Perennial Campaign

In the beginning the Mississippi ran free, meandering around hairpin turns, changing channels like a bored teenager. It was a com-

See CORPS, A28, Col. 1

**ENGINEERS OF POWER** *Inside the Army Corps*

BY MICHAEL WELLS/ARND BRONKHORST

**Forest fears:** David Wissehr, left, a wildlife biologist with the Missouri Department of Conservation, and Mark Boone, a department fisheries biologist, say the project could cut off sustenance to bottomland hardwoods.

# Walling Off a River

CORPS. From A27

plex river of sloughs, sandbars and side channels, flooding across its valley every spring, nourishing thick canopies of oak, cottonwood and cypress. Its bard, Mark Twain, wrote that mankind simply "cannot tame that lawless stream, cannot curb it or confine it, cannot say to it Go here or Go there, and make it obey."

The Corps of Engineers has never accepted "cannot."

Today the river has been tamed into a reliable commercial waterway by the Corps, confined within earthen levees by the Corps, straightened and shortened and simplified by the Corps. Its valley has been cleared and converted from swampland to farmland, and cities have sprouted along its banks. It has been imprisoned into a single channel, where its barges float half the nation's inland freight.

It's also a sick river.

Corps levees look like ordinary hills along the riverbank, but they have severed the Mississippi from more than 90 percent of its floodplain, eliminating millions of acres of wetlands that had attracted fish, shorebirds and other wildlife. Dams and dikes that stabilized the main barge channel have degraded biologically diverse back channels. The river's water quality has deteriorated steadily, pouring pesticides into the Gulf of Mexico's oxygen-deprived "dead zone." And changes in sediment flows have depleted Louisiana's coastal marshes, which are vanishing so fast that some experts are calling for a restoration project twice the size of the Everglades mission.

The story of the Mississippi is in many ways the story of the Corps' civil works program, which has focused on the river ever since Congress inaugurated it with \$75,000 in 1824. The transformation of the Mississippi reflects the can-do genius of the Corps, an energetic military organization that fortified Bunker Hill, built the Washington Monument, surveyed the West, dug the Panama Canal and supervised the Manhattan Project. (Its motto, "Essayons," is French for "Let us try.") But it also illustrates the hubris of the Corps, an agency that has historically treated nature as an enemy to be conquered, equating engineering and control with progress.

Today, its leaders speak about "working in harmony with nature," but the Corps still proudly mobilizes for its "Annual Campaign Against the Mighty Mississippi." Burton Kemp, a former Corps geologist in Mississippi, says no one should be surprised when the agency takes a militaristic approach to the environment. "I'm afraid it's not the Corps of Scientists. It's not the Corps of Biologists," he sighed. "It's the Corps of Engineers."

The Annual Campaign began in earnest after the Civil War, when a headstrong Corps general named Andrew Humphreys, fresh from losing half his division in the Union's disastrous charge at Fredericksburg, launched his equally disastrous "levees-only" policy for controlling the Mississippi. As John Barry recounted in his history, "Rising Tide," the plan was revealed as a colossal blunder in the 1927 flood, when levee breaks left nearly 1 million people homeless and 16 million

acres underwater. Humphreys underestimated the power of the Mississippi, which drains two of every five drops of rain that fall on the continental United States. His levees cut off the river's outlets, so all that water squeezed between them had nowhere to go but up.

Nevertheless, Congress gave the Corps full power over the river in 1928, and the agency revised its strategy. It continued to strengthen and extend the Mississippi levees—they are now longer than the Great Wall of China—but it also built a system of reservoirs, outfalls and diversions to ease the pressure on them. The system included the New Madrid Floodway, an emergency relief valve, 180 extra square miles of room for the river to spread out over in case of high water.

The plan called for the river to enter the floodway up in Birds Point, where the Corps would dynamite a hole in the levee, and return to its channel down in New Madrid, where the Corps left a 1,500-foot gap in the levee. The Corps executed the plan in 1937, and it helped save upstream communities such as Cairo, Ill. In 1997, the Corps again had barges loaded with explosives and ready to blow, but the upstream flood subsided just in time.

Here in the waterlogged agricultural foothills of southeast Missouri, though, that gap is about as popular as the corn borer or boll weevil. The Corps has used the emergency plan to drown the area only once. But the Mississippi backs through the gap and into the floodway almost every spring, damaging crops, blocking roads, flushing thick streams of wriggling fish into the fields. The area is still known as Swampcast Missouri, and its residents see the gap as a physical symbol of unfairness, a separation between them and better-off, better-educated, better-protected communities.

The floodway project would finally close the gap.

"The Corps built flood control for everyone else: It's our turn now," says Martha Ellen Black, director of a family support center in East Prairie. "We don't deserve to live like people in a Third World country. We have a right to equal protection."

## Closing the Gap

East Prairie sent President Clinton a strange promotional video a few years ago, almost bragging that half its 4,000 residents have no high school diploma, that a third of them live in poverty. "Living the American Dream in East Prairie is a little harder," the narrator intoned. Today, town officials eagerly show off 1989 photographs of the public housing authority's offices underwater, of the nursing home surrounded by sandbags, of national champion oak trees drowning in an eight-foot deluge. Floods, they say, are the root of their problems.

And the Corps project is supposed to change everything.

Locals expect it to attract new businesses, ensure emergency access, promote tourism, bolster schools, revive civic pride, even stop mysterious waterborne fungal infections. And while East Prairie is not actually located in the floodway, supporters are quick to cite the project's benefits for the largest town that is, Pinhook, whose 52 residents all happen to

be black; they settled in the floodway because whites wouldn't sell them land anywhere else.

The entire area considers the project a matter of survival—and an entitlement, since every other community along the Mississippi seems to have a Corps project. So Rep. Emerson has carried on a crusade begun by her late husband and predecessor, Rep. Bill Emerson, relentlessly pressuring Corps officials, lunching with Westphal, steering funds the project's way. She has also led the fight on Capitol Hill against the administration's efforts to "green" the Corps.

"The elite environmentalist types want to disenfranchise these people, but I'm going to fight for them," said Emerson, a former restaurant industry lobbyist who is a member of the Appropriations Committee. "They're an endangered species, too, as much as any of these muskies or fish or whatever."

Congress first authorized the levee closure in 1954, but the Corps never got the go-ahead to move dirt. Then in 1986, Bill Emerson tucked an expanded project into the Water Resources Development Act. That was not hard for a member of the Transportation and Infrastructure Committee, which oversees the Corps. On Capitol Hill, it is still considered almost bad form to oppose a water project in another member's district, much less a mere authorization, which does not ensure funding. Corps authorizations have long been viewed as congressional prerogatives, nearly as automatic as the franking privilege or special license plates.

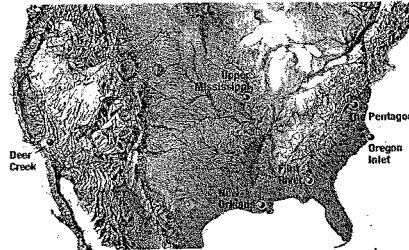
But 1986 was the year President Reagan challenged the prerogative, holding a pork-loaded water bill hostage until Congress agreed to boost local cost-sharing requirements. That put the floodway project on hold, because the "local sponsor," the area's levee board, could not pay its share. The break came in 1994, when Clinton declared ailing East Prairie a rural "enterprise community," and Bill Emerson drafted an amendment allowing federal enterprise funds to cover most of the project's local burden. His amendment became law after his death in 1996, and Vice President Gore's office approved the use of federal funds for the project.

So the Corps began a study.

The Corps is supposed to conduct objective studies of proposed water projects, but it also has an obvious interest in their outcome, since it only gets to build the projects it deems worthwhile. The agency's "Strategic Vision" specifically urges Corps commanders to "target new work," and several regional commanders have pledged to set specific goals for mission and budget growth. So there is a strong incentive for Corps study managers to reach pro-project conclusions. If they don't, key legislators get angry and the Corps doesn't grow.

In fact, one Corps memo last year announced that in order to "grow the civil works program," generals in headquarters and the Mississippi Valley Division had agreed to "get creative" with economic and environmental studies. "They will be looking for ways to get [studies] to 'yes' as fast as possible," it declared. "We have been encouraged to have our study managers not take 'no' for an answer. The push to grow the program is coming from the top down." And the administration has delegated all technical oversight





### The Corps' Controversial Projects

#### New Orleans Industrial Canal lock replacement

This \$541 million project would be one of the most expensive locks ever built. It was justified in March 1997 by projections that barge traffic would gradually increase, even though traffic had been dropping for a decade. And it has continued to decline so fast that the project can no longer be justified with Corps data. The Corps also cited safety concerns, but the National Transportation Safety Board says the new lock "would not necessarily reduce the hazards." Local activists believe the 10-year project will ruin two historic black neighborhoods. But former House Appropriations Committee chairman Robert Livingston (R-La.) is pushing the project as a lobbyist for the Port of New Orleans, and the Corps is forging ahead.

#### Oregon Inlet jetties

The Corps wants to build two jetties to protect fishing boats in North Carolina's Outer Banks. The fleet has 215 commercial vessels, so the \$103 million project, authorized in 1970, would cost about \$500,000 per boat. The Interior Department believes it would cause serious erosion problems on Pea Island National Wildlife Refuge and Cape Hatteras National Seashore, so it has refused to allow the Corps to build the jetties from its land. This summer, Sen. Jesse Helms (R-N.C.) tried to slip an amendment into a budget bill to transfer the land to the Corps, but Sen. Max Baucus (D-Mont.) blocked it.

#### Deer Creek Debris Basin

The Corps completed this Southern California flood control project in 1982, but it is embroiled in a new controversy. The project was supposed to cost \$28 million and protect San Bernardino County neighborhoods from the kind of flood that happens once every 200 years. It ended up costing \$140 million, and recent evaluations have found the basin will only withstand a 20-year flood. Robert Kirby, a former Corps employee who helped design the project, called the project unsafe in a recent affidavit: "I am very concerned that homes, business and schools could be damaged and people could suffer if the problems . . . are not rectified immediately."

#### Pentagon renovations

The Army Corps may be a Pentagon agency, but it was fired from the \$1.2 billion Pentagon renovation project this year. Technically, it quit, but only after the Defense Department's project manager, Walker Lee Evey, sharply cut back its role, complaining that it wasn't flexible enough for the job. Evey says he doesn't mind the Corps because it wasn't "responding to challenges," because it couldn't handle having a secondary role in the project, and because it represents "the old way of doing major construction projects."

#### Upper Mississippi lock expansions

Donald Sweeney, a Corps economist, led a five-year study of proposed \$1 billion lock expansions on the Mississippi and Illinois rivers. But when he concluded the costs would far outweigh the benefits, senior Corps commanders took him off the study. In February, The Post published Corps e-mails that showed how officials then launched a campaign "to develop evidence or data to support a defensible set of . . . projects," announcing that if the economics did not "capture the need for navigation improvements, then we have to find some other way to do it." The alleged misconduct is the subject of several investigations, and two independent economic analyses have upheld Sweeney's view that the project is unnecessary.

#### Apalachicola River navigation

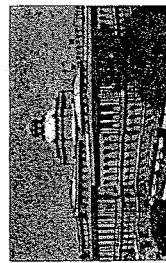
The Corps has channelized dozens of rivers for barges that never arrived, and the Apalachicola-Chattahoochee-Flint River system in Georgia and Florida is a conspicuous example. The Corps still spends nearly \$3 million a year dredging it, killing fish and damaging endangered mussel beds, but it only floats a few barges a week. In January, when The Post chronicled the plight of "low-volume waterways" such as the Red, White and Missouri rivers, Assistant Army Secretary Joseph Westphal vowed to reevaluate the entire navigation system. Now he has made the A-C-F his first target, declaring in letters to Rep. Robert L. Barr Jr. (R-Ga.) and Sen. Bob Graham (D-Fla.) that maintaining both rivers for barges is "not economically justified or environmentally defensible."



The 1,500-foot gap in the levee at the New Madrid Floodway starts at right.

## A Brief History of the Corps

**1775:** Gen. George Washington appoints a chief engineer to direct the fortification of Bunker Hill early in the Revolutionary War. The nation's engineers would participate in every American war that followed.



**Library of Congress**

THE PHOTOS, FROM LEFT, LIBRARY OF CONGRESS; CORPUS ARMY CORPS OF ENGINEERS; ASSOCIATED PRESS

**1802:** President Thomas Jefferson establishes the Corps to run the nation's only engineering school, at West Point. The Corps also builds forts and coastal batteries, and leads early surveying expeditions of the West.

**1824:** Congress establishes a civil works program for the Corps, beginning with snagging and clearing the Ohio and Mississippi rivers for year-round navigation.

**1861:** The Civil War begins, featuring an all-star team of Corps alumni on both

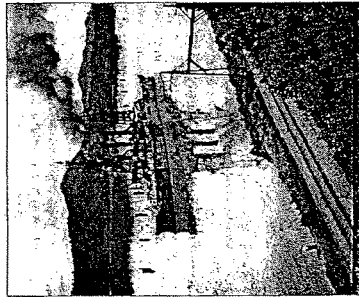


**Washington Monument in 1876**

sides: Lee, McClellan, Meade, Johnston, Beauregard, Pope, Fremont. The end of the war ushers in a new era of civil works: river navigation, flood control levees, harbor

improvements and surveys. The Corps also takes over public works for the war-torn District of Columbia, and completes the Washington Monument and Library of Congress.

**1914:** The Corps finishes digging the Panama Canal, a project abandoned by the French in 1889.



**Panama Canal in 1915**

### Within the agency:

**\$11 billion** annual budget  
**8** geographic divisions  
**41** subordinate districts  
**34,500** civilian employees  
**600** military employees

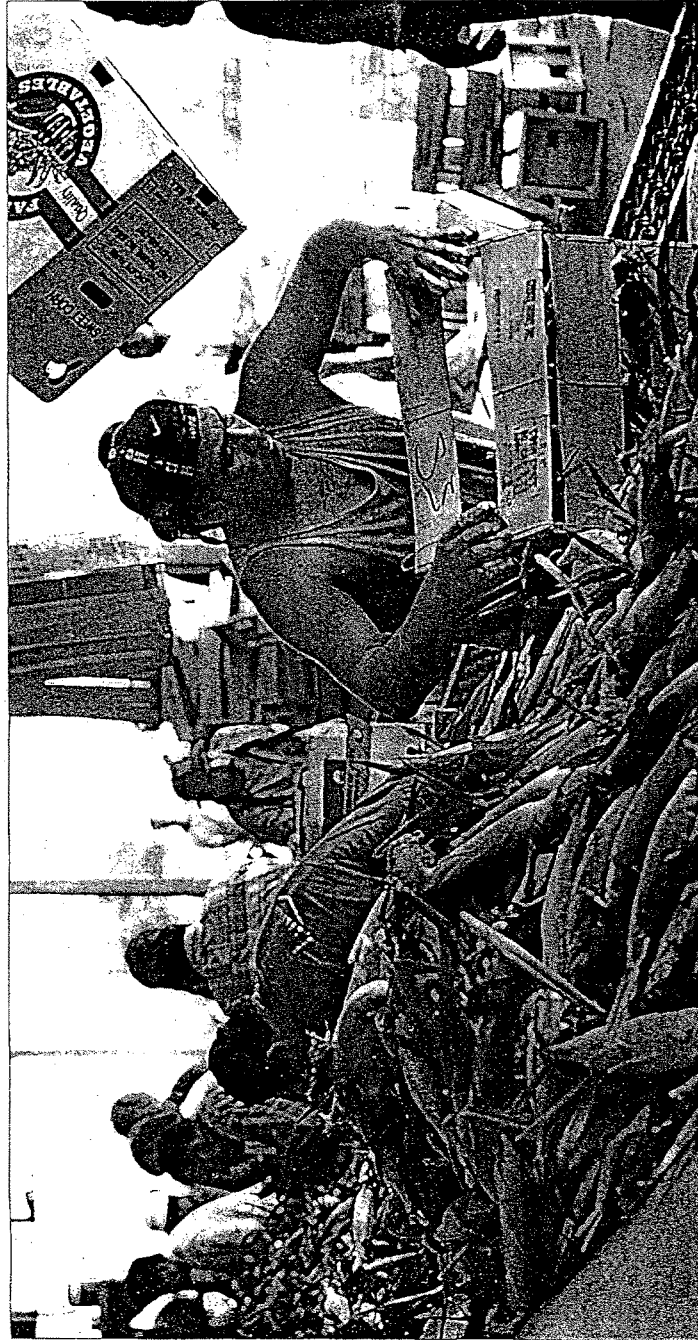
### The agency controls:

**11.7 million** acres of land  
**12,000** miles of waterways  
**4,400** recreation areas  
**8,500** miles of levees  
**300** deep draft ports  
**75** operational hydropower projects

SOURCE: Army Corps of Engineers

THE WASHINGTON POST  
D4 A 5 SUNDAY, SEPTEMBER 10, 2000 A29

# ENGINEERS OF POWER Inside the Army Corps



**Farm hopes:** Sweet corn is harvested at the Choate Farms in Dorena, Mo., which sits in the New Madrid floodway. A few area farmers would be the project's biggest beneficiaries.

BY MICHAEL R. HILLMAN—THE WASHINGTON POST



The Corps in World War II



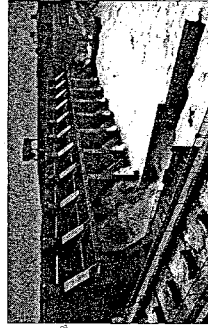
**1941:** The Corps helps lead America's mass mobilization for World War II, and supervises the Manhattan Project, which produced the atomic bomb. After the war, the Corps returns to civil works, building the St. Lawrence Seaway, Cape Canaveral and the canal system that drained the Everglades to supply South Florida's water, while designing and building Cold War missile sites and radar networks.

**1972:** Congress passes the Clean Water Act, requiring developers who want to dredge or fill America's wetlands to seek permits from the Corps. The

**1928:** Congress gives the Corps full power over the Mississippi River after the disastrous 27 flood. The New Deal launches another civil works frenzy, including giant dams on the Missouri, Illinois and Columbia rivers.

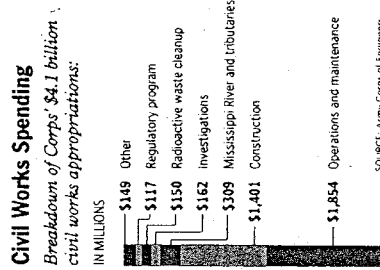
PHOTO TOP LEFT: ADAM COOPER; BOTTOM LEFT: PRESS

agency continues to build huge dams on the Snake and Red rivers and the Tennessee-Tombigbee Waterway, but it also begins a few environmental restoration programs.



Ice Harbor Dam on Snake River

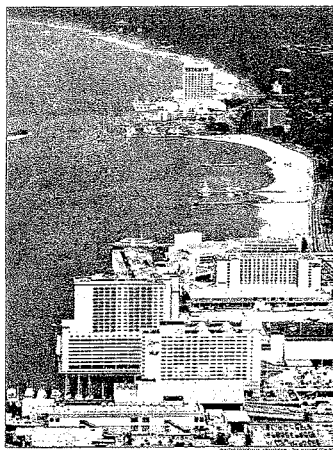
**2000:** The Pentagon investigates allegations that Corps officials rigged a \$58 million study of Mississippi River improvements. The Clinton administration tries to reassert executive branch control of the Corps but retreats after furious opposition from Congress. The Corps prepares to lead a \$7.8 billion project to undo some of the damage it did to the Everglades, the biggest environmental restoration plan in history.



# The Washington Post

MONDAY, SEPTEMBER 11, 2006

ENGINEERS OF POWER: Inside the Army Corps



Mississippi's jackpot: Corps-approved casinos dot the beach in Biloxi.

## Working to Please Hill Commanders

In Miss. and Elsewhere, Lawmakers Call Shots

Second of five articles

By MICHAEL CAUDRON  
Washington Post Staff Writer

**W**HAT does the Army Corps of Engineers do in Mississippi? Generally, whatever Senate Majority Leader Trent Lott and Senate Agriculture Committee Chairman Thad Cochran want it to do. Right now, the two Republicans have the Corps working up to build the world's largest water pump in the Mississippi Delta, a \$1.1 billion floodstopper that Interior Secretary Bruceabbitt has called "a landmark, godsend project." They also put the Corps to work designing the new Big Sandwater River, a \$22 million project that Environmental Protection Agency regional administrator John Haskins scanted "would have a severe impact on the Sandwater's ecology." Meanwhile, Lott and Cochran have directed the Corps to supply water to major industries in Lott's home town of Pascagoula and to raise the Mississippi River levees. They are pushing the Corps to dredge harbors in Pascagoula and Gulfport and a marina at a northern Mississippi lake resort. They moved the local Corps district to a sprawling campus that one agency memo called the "Tupelo Vicksburg." And when the Clinton administration ordered the Corps to stop issuing permits for new casinos on the



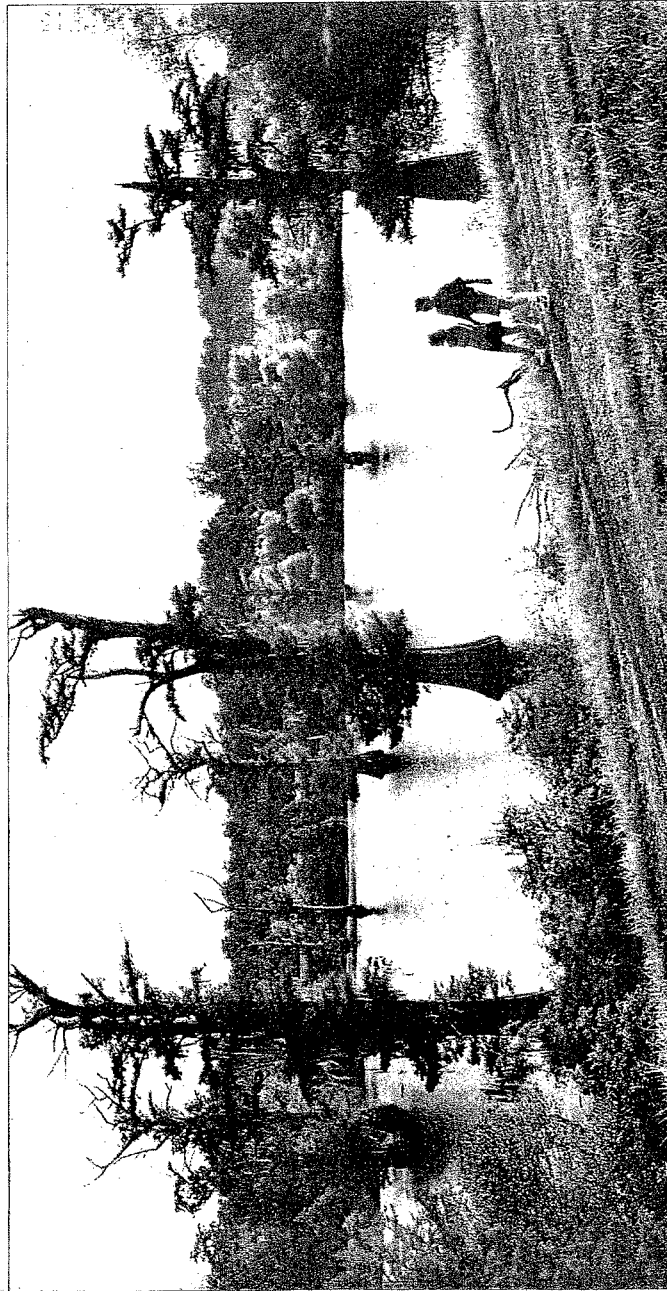
**Up-Hill fight:** Gulfport residents Rose Johnson and Richard Clark say Sen. Trent Lott's efforts to help a developer could increase floods in their low-income neighborhood.

fragile Gulf Coast, Lott persuaded the agency to defy the order. He even helped launch an investigation in the official who gave it. If the Corps has ever gone ahead with anything the two Republicans opposed in their home state, Cochran can't recall it. "We've been around almost 50 years," laughed Cochran, who debated in Congress with Lott in 1973. "I should hope we have some influence on the Corps."

Congress influences almost everything the Corps does outside Mississippi, too. Officially, the Corps is an executive branch agency.

See CORPS, A12, C4, 1

## ENGINEERS OF POWER | Inside the Army Corps



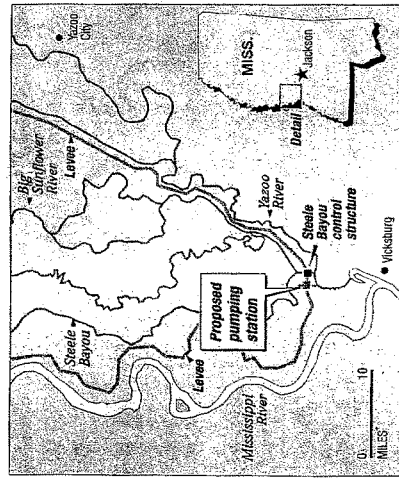
**Divided by water:** The Clinton administration has denounced the Corps' \$181 million Yazoo Pump, planned for this site north of Vicksburg, Miss. But lawmakers and locals are excited.

# Taking Their Orders From the Hill

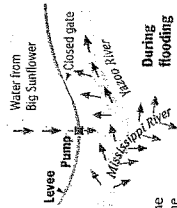
## Draining the Delta

*The Mississippi Delta is like a giant bathtub inside its levees, with a drain at the bottom. When the rivers of the region run high, the Corps plugs the drain by closing the Steele Bayou control structure between the levees, so that the Mississippi and Yazoo Rivers can't back up into the Delta. But that stops the rivers inside the Delta from draining out, so the bathtub begins to fill up. Now the Corps wants to get that water out of the Delta without unplugging the drain.*

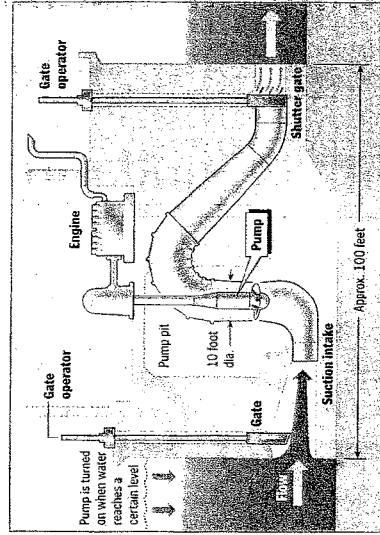
The Corps wants to spend \$62 million to dredge the Big Sunflower River, essentially turning the river into a glorified drainage ditch to speed water to the tub's bottom.



SOURCE: Army Corps of Engineers, Delta Land Trust



The Corps wants to spend \$181 million to build the world's largest hydraulic pump at the bottom of the tub, to pump the water gathering there past the control structure and out of the Delta.





## CORPS. From A1

cy, headed by a civilian assistant Army secretary in the Pentagon. But a review of its workload shows that in practice, it has become a servant of Congress, the keeper of the Sen. Strom Thurmond (R-S.C.) Lake and the Sen. Robert C. Byrd (D-W.Va.) Dam, operating until a move last month from headquarters in the shadow of the Capitol.

Water projects are a traditional coin of the realm on Capitol Hill, offering members of Congress jobs, contracts and other benefits for their constituents and campaign contributors—as well as ribbon-cutting opportunities for themselves. In fact, the Corps budget consists almost entirely of specific projects requested by individual lawmakers, then approved by the Corps; the agency has almost no discretionary funds of its own. And when the Corps has faced attacks—as it did after allegations of study-rigging and embezzlement building earlier this year—its allies in Congress have leapt to the agency's defense.

So the Corps energetically caters to its congressional patrons, without whom its 37,000 employees would have little to do. The Corps, after all, has a "Strategic Vision" that enshrines "Seek Growth Opportunities" as one of its three core principles. Its commanders recently conceived a "Program Growth Initiative" that included plans to lobby Congress for even more work. As one memo said last November: "We intend to form a stronger partnership with Congressmen and their staffs so that we become their agency of choice."

The agency's South Atlantic Division commanders even vowed to help the agency get chosen, pledging to "ensure that Congressmen and their staffs are aware that we can/will" write legislation for them to promote water projects—even though the Corps would then be charged with conducting an impartial evaluation of the worthiness of the projects.

Today, Congress is providing the Corps with plenty to do, much of it expensive and ecologically intrusive. There's the \$108 million jetty project on the Outer Banks sponsored by Sen. Jesse Helms (R-N.C.). The \$311 million deepening of the Delaware River pushed by Sen. Arlen Specter (R-Pa.) and Rep. Robert A. Borski (D-Pa.), ranking minority member of the Transportation and Infrastructure water resources subcommittee.

The \$800 million effort to stabilize upscale Long Island beaches supported by Rep. Rick Lazio (R-N.Y.) and former representative Tom Downey (D-N.Y.), a lobbyist who is one of Vice President Gore's best friends.

The vehicle that drives all these projects into law is the biennial Water Resources Development Act, known as WRDA (and pronounced whir-duh) in the drab Capitol Hill offices where it takes its multibillion-dollar shape. At a recent hearing, Senate Environment and Public Works Committee Chairman Robert C. Smith (R-N.H.) said he received 300 written requests for WRDA projects this year—and spoke to all 100 senators about the bill. "Including myself," mused Smith, who evidently reminded himself to tuck in \$43.7 million worth of projects for New Hampshire. This year, a Corps official working on detail to Sen. George V. Voi-

novich (R-Ohio) actually helped write the Senate version of WRDA.

As Sen. Frank R. Lautenberg (D-N.J.) said during a recent hearing, "This committee has an enormous attachment to the Army Corps of Engineers."

On the House side, Transportation and Infrastructure Committee Chairman Bud Shuster (R-Pa.) is so renowned for his generosity to constituents that this year's WRDA bill—which includes a \$7.8 billion restoration of the Everglades as well as the usual potpourri of local projects—has been dubbed the "Altoonagladea." Shuster's top aide on water issues is a former Corps official. Shuster is also well-known for distributing pork on a bipartisan basis. For example, the ranking Democrat on his committee, Rep. James L. Oberstar (Minn.), is pushing a \$1 million Corps dredging project designed to solve odor problems and improve boating access for lakefront residents in Little Falls, Minn. Last year's WRDA bill ended up with nearly 300 projects and 70 studies of additional projects.

Corps projects are a classic example of Washington's "iron triangle," the collusion of expansion-minded bureaucracies, pork-minded congressmen and money-minded special interests. Agribusinesses, farmers, ports, barge firms, shipping firms, devel-

opers and contractors are usually the main beneficiaries of Corps activities—so they aggressively promote those activities, and the politicians who support them.

These groups often hire lobbying firms such as Dawson & Associates, whose principals include a dozen former high-ranking Corps officials and two former chairmen of the House Appropriations water development subcommittee—as well as two former aides to the current chairman, Rep. Ron Packard (R-Calif.). The firm's Web site lists its successes working the Corps system, from a wetlands permit for a Fortune 500 agribusiness to a multimillion-dollar settlement for a contractor. Robert Dawson, the former assistant Army secretary for civil works who founded the firm, is working the Everglades project for the sugar industry and other business groups.

"We know how to accomplish objectives in Washington, whose involvement is needed, how to build the necessary alliances, and how to produce action," the firm Web site boasts.

The Clinton administration plays a role in shaping the Corps, too, but it's a surprisingly limited one. Corps military commanders are required by law to report to civilian political appointees, led by Assistant Army Secretary Joseph Westphal. But even Westphal ac-

knowledges that he has little control over the day-to-day workings of the Corps and that he ends up approving almost all of the agency's decisions about projects. In fact, the administration has formally delegated much of its oversight power back to the Corps, maintaining the power of "policy review" but surrendering all technical analysis.

The administration has revised or deleted Corps recommendations on a few hot-button issues—the \$7.8 billion Everglades restoration project, the Snake River dams in Washington, the future of the Missouri River, a flood-control project for Devils Lake in North Dakota—but only a few. And when Clinton's budget office whittled down the agency's requests for more money earlier this year, Westphal took the Corps' side, complaining in one letter to Budget Director Jacob "Jack" Lew that he was "extremely disappointed" with the administration's fiscal squeeze.

Westphal acknowledged that he spends most of his time accommodating members of Congress, writing more than 500 letters to the Hill last year, and meeting with legislators in more than 30 states, from Hawaii in February to Alaska in July to California in December. Westphal is himself a bipartisan creature of Capitol Hill—a former special assistant to Cochran, a former director of the

Sun Belt Caucus, a former political science professor whose dissertation explained how members of Congress organize their staffs.

Gen. Joe Ballard, the recently retired chief of engineers of the Corps, ordered agency officials under his command not to speak to The Washington Post for this series of articles. But in a written statement, the Corps said that while it operates in a political environment, it is not unduly influenced by political pressure. "The Corps endeavors to maintain effective, constructive relationships with all Members of Congress," the statement said.

In the days when America was less concerned with budget deficits and wetlands destruction, the old Democratic bulls of Congress almost instinctively put the Corps to work on colossal construction projects designed to control America's waters. For instance, in the early 1970s, House Appropriations Committee Chairman Jamie Whitten (D-Miss.) and Sen. John Stennis (D-Miss.) muscled through the \$2 billion Tennessee-Tombigbee Waterway, a navigation project constructed for projected barge traffic that never materialized. In the 1980s, Sen. J. Bennett Johnston (D-La.) rammed through the equally inefficient \$2 billion Red River, Wa-

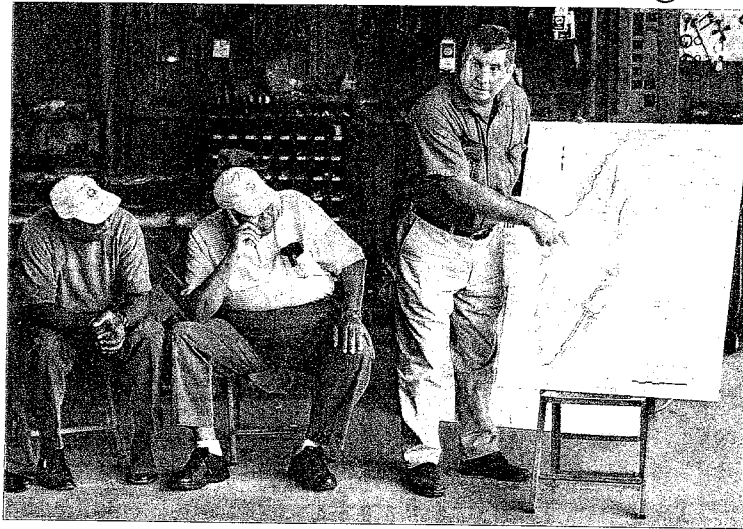
See CORPS, A14, Col. 1

A15 SUNDAY, SEPTEMBER 13, 2009

THE WASHINGTON POST

ENGINEERS OF POWER *Inside the Army Corps*

## At the Beck and Call of Congress



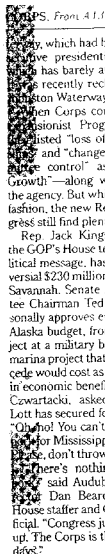
BY MICHAEL WILLIAMSON—THE WASHINGTON POST

**Pushing the pump:** Delta Council member Clifton Porter makes his case for the Yazoo Pump at a community meeting near Onward, Miss.



BY MICHAEL WILLIAMSON—THE WASHINGTON POST

**Capitol intrigue:** "The politics with the Corps in Mississippi, it's like a John Grisham novel," says state Sen. Debbie Dawkins (D-Gulfport).



SPS, From A.1.1

which had been opposed by five consecutive presidential administrations and has barely attracted any new traffic. It was recently rechristened the J. Bennett Johnston Waterway.

When Corps commanders devised their National Program Growth Initiative, it listed "loss of Congressional relationship" and "changes in Congressional Committee control" as key "Impediments to Growth"—along with the laws governing the agency. But while dams have gone out of fashion, the new Republican leaders of Congress still find plenty for the Corps to do.

Rep. Jack Kingston (Ga.), chairman of the GOP's House team for developing its political message, has pushed a highly controversial \$230 million deepening of the Port of Savannah. Senate Appropriations Committee Chairman Ted Stevens (R-Alaska) personally approves every item in the agency's Alaska budget, from a recent ski slope project at a military base to a new \$15 million marina project that even Corps analysts concede would cost as much as it would provide in economic benefits. Lott spokesman John Cowartacki, asked about Corps projects Lott has secured for his constituents, joked: "Oh, no! You can't tell people about all this for Mississippi! Not in an election year! These don't throw us into that briar patch!" There's nothing more powerful than said Audubon Society executive director Dan Beard, a former Democratic House staffer and Clinton administration official. "Congress just doesn't want to give it up. The Corps is their last vestige of the old days."

Some Republicans have tried to point out a contradiction between their party's fiscal conservative rhetoric and continuing enthusiasm for water pork. Sen. John McCain (R-Ariz.) has ripped his GOP colleagues for abandoning their principles, highlighting hundreds of "wasteful and unnecessary projects," attacking their "outrageous spending binge." Rep. Mark Sanford (R-S.C.) calls the Corps "the ultimate candy store for politicians." And Sen. Craig Thomas (R-Wyo.), one of the spending-slashers elected to the Senate in the GOP revolution of 1994, has led a lonely crusade against "mission creep" at the Corps.

But Thomas has learned that the Corps trumps ideology on Capitol Hill. The agency controls 12,000 miles of waterways, 8,500 miles of levees, 4,400 recreation sites, 300 deep-draft ports—every one in someone's district, someone's state. In an era of overflowing federal budgets, the Corps is still, as one former Corps official in Vicksburg calls it, "a congressional linchpin."

"I'm really disappointed by the conservatives in my own party," Thomas said. "They talk about controlling government, but then they say, 'Hey, I do like those Corps projects back at home.'"

## The Yazoo Pump

In Mississippi, the two signature Corps projects are in the Delta—the "most southern place on earth," the sweltering mix of race, class and power that forms a diamond between Memphis, Vicksburg and the Mississippi and Yazoo rivers. It was once a swampy jungle, a forest so thick its settlers complained about the dark. Now it's mostly row crops: cotton and soybeans and corn. It still gets terribly wet when it rains, though, and the Corps is preparing to dry it out a bit.

First, the Corps plans to dredge the Big Sunflower, a third river flowing down the center of the Delta. The project would basically turn it into a glorified drainage ditch, speeding rainwater to the bottom of the Delta. That's where the Corps plans to build the enormous Yazoo Pump, which will spew 6 million gallons a minute past an older Corps floodgate and out of the Delta.

It is a highly complex plumbing plan designed to protect some extremely marginal farmland. Taxpayers for Common Sense and the National Wildlife Federation rated it America's fourth-worst Corps project, "a classic example of the Corps creating work for itself." Some environmentalists even describe it as a quasi-racist scheme to maintain and expand the Delta's agrarian status quo of a few rich white planters among poor black field hands.

In the Delta, though, most people don't see it that way. Blacks and whites alike have tales of soybeans wiped out, sewage backups, snakes slithering into flooded homes, young people moving out of the area. They don't know if the projects will make the sparse Delta rich. But they're pretty sure it's going to stay poor as long as it keeps flooding.

"We're not a lot of people here, but we're just as important as anyone else," says Clinton Porter, who farms 1,400 acres and oversees flood control projects for the Delta Council, the region's well-wired chamber of commerce. "I'm sure those environmentalists think this should all be wilderness. But we're sure glad our elected officials don't think so."

He's talking about Cochran and Lott, the latest godfathers of Delta flood control.

The pump was first authorized in 1941, but it languished until a few years ago, when Cochran slipped through an amendment that made sure the local farmers who will benefit from the project will not have to help pay for it. And even though the Corps had last touched the Big Sunflower in 1968, when it dredged 31 miles of the river, Cochran and Lott persuaded the agency to call the current 104-mile dredging project "maintenance" of the earlier project, which meant, once again, that local cost-sharing rules were avoided.

"We both try to represent the interests of

our state as best we can," Cochran said. "Lives and property are at risk in that area. We need to provide the best possible flood protection, consistent with environmental protection."

The main problem is the environmental protection side of that equation, and in particular the impact on wetlands—federally protected areas including bogs, streams and seasonally flooded farmland that provide habitat for wildlife and water purification for people. The original plan for the pump would have drained at least 126,000 acres of bottomland hardwood forests and other wetlands—enough to cover three Districts of Columbia, or six times more than the Corps permitted all the nation's private developers to touch last year. The Big Sunflower project could spread DDT-contaminated spoil around the Delta, and would threaten a 1,000-year-old mussel colony believed to be the densest concentration of life on the planet.

"The Corps deliberately misrepresented the DDT levels in that river," charges Tulane University geologist Barry Kohl, who

has testified against the project in a pending lawsuit by environmentalists. "It's a very serious public health issue, but the Corps just does whatever the politicians want."

The EPA and the Fish and Wildlife Service initially challenged the Corps analysis of the Big Sunflower project, though under pressure from Lott, Cochran and then-Mississippi Gov. Kirk Fordice (R)—a former Corps dredging contractor—the wildlife service has softened its stance. The agencies have also blasted the pump plan, saying it would make much more economic and environmental sense to plant trees on soybean farms that flood every year or two. An EPA-funded study by Virginia Tech economists recently concluded that the pump's cost would be six times its maximum farm benefit—and that even if the project saved every structure in the area from destruction, the cost would still be about three times the total economic benefit.

Last month, the Corps floated a new compromise plan for a pump as well as 100 square miles of reforestation, but environmentalists and taxpayer activists still call it a boondoggle.

"They're just astonishing projects," says Louie Müller, a lobbyist for the Sierra Club in Mississippi. "You couldn't propose them with a straight face if it wasn't for the politics."

Lott and Cochran are not the only senators playing those politics. Sens. John W. Warner (R-Va.), Lautenberg and Bob Graham (D-Fla.), all members of the Environment and Public Works Committee, have helped land massive beach replenishment projects for their home coasts. Sen. Max Baucus (D-Mont.) is getting the Corps to build a \$20 million fish hatchery. This winter, after leaked e-mails suggested the Corps had manipulated an upper Mississippi River economic study to justify seven lock expansions, Sen. Christopher S. Bond (R-Mo.) unapologetically vowed to fund the billion-dollar project regardless of its economics. And Voinovich helped stash more than \$500 million worth of Ohio River projects into WRDA, including expansions of two locks that are used far less frequently than the Mississippi's.

Still, the Corps is particularly entrenched in Mississippi. Vicksburg is known as Corps Central, with 3,000 Corps employees working in the agency's Vicksburg District, Mississippi Valley Division and Waterways Experiment Station. Rep. Whitten used to pour extra money into the Corps budget for Vicksburg, then dare its commanders not to spend it.

Vicksburg has been a center for many of the controversies swirling around the Corps. The Pentagon is investigating whether the division's leaders rigged the Mississippi River study. A district official's memo last year announced that all study managers would be expected to "get creative" to justify projects. And while the Corps is required to create new wetlands to offset those it destroys, a Corps official recently admitted in court that the Vicksburg District had a backlog of 27,000 "mitigation" acres it had failed to complete.

Still, Czwardacki, Lott's spokesman, says the Corps is "absolutely vital" to Mississippi, promoting jobs and economic growth for a state that needs both.

"Look, the senator is not ashamed of the things he does to help Mississippi," Czwardacki said. "I don't think it should surprise anyone that Senator Lott supports the Army Corps."

### 'I Have Ways Of Getting Your Attention'

"I wasn't asking for any special favors," says T.J. "Butch" Ward, a real estate developer from Gretna, La. "All I wanted was a meeting."

He got one last May—in the majority leader's office. John Hankinson, the EPA's southeast regional director, had been summoned, along with his agency's top water administrator, Charles Fox. Westphal was there, too, along with the Corps commander from Mobile, Ronald Krizman. And so were three U.S. senators: John Breaux (D-La.), Mary Landrieu (D-La.) and Lott. The topic: Ward's application for a Corps wetlands-fill permit to build a sprawling development of golf courses, offices and shopping centers along a creek in Gulfport, Miss.

The Corps does more than develop projects in sensitive wetlands; it is also responsible under the Clean Water Act for protecting sensitive wetlands from development. But as the meeting illustrates, congressional politics influences the agency's regulatory side, too.

"I've never been to a meeting with three senators before," Hankinson said. "That was pretty unusual."

The EPA had serious problems with Ward's plan, which would have eliminated 500 acres of pine savannah wetlands, almost as many wetlands as every other Gulf Coast project ever permitted by the Corps. And Ward, a parish councilor and former state legislator, had already paid a \$115,000 fine for illegally draining wetlands on the property. But he was also an old friend and supporter of Breaux and of Landrieu's father, Moon, a former New Orleans mayor.

So Breaux set up the meeting. "It was just a courtesy for a Louisiana constituent, to make sure he got a fair shake," a spokeswoman said. Still, the senators made it clear they sympathized with Ward's complaints about the slow pace of the permit process. "They were sympathetic because I was right," said Ward, a Democrat who contributes to GOP political action committees as well as Breaux's campaigns. "When you're right, right is might."

At the meeting's end, according to several attendees, Lott said he wanted the dispute resolved within a year. The majority leader, a former cheerleader with a usually courtly manner, then turned stone-faced. "If it isn't resolved," he said slowly, "I have ways of getting your attention."

Lott's spokesman said he is interested in all proposals to bring jobs to Mississippi and merely wanted to make sure the Corps process kept moving. And it did. An unusual multiagency task force began holding monthly meetings about Ward's project, usually with a Lott staffer in attendance. In March, the Corps suddenly issued a public notice for Ward's project, fast-tracking the permit, surprising several environmental agencies. The final permit has not been issued yet, and Ward has agreed to scale back the project. But opponents say the original plan would be reality by now if the EPA hadn't resisted and if a low-income black neighborhood abutting the project hadn't rallied against it.

"The politics with the Corps in Mississippi, it's like a John Grisham novel," says state Sen. Debbie Dawkins (D-Gulfport). "Lott and Cochran say, 'Jump,' and the Corps says, 'How high?'"

Again, this is not unique to Mississippi. Agency documents suggest that Corps regulators have backed off West Virginia's coal industry under pressure from Byrd and have accelerated permits for Alaska's oil industry in deference to Stevens and his Alaska colleagues. They approved permits for a golf course supported by House Majority Whip Tom DeLay (R-Tex.) in a biologically diverse hardwood forest in Lake Jackson, Tex., and for the Bud Shuster Highway through a pristine central Pennsylvania mountain. "We don't like to offend the politicians who pay our bills," explained one Corps official, who

See CORPS, A15, Col. 1

# Big Projects Flow To Hill's Powers

It started as the South Central Pennsylvania Environmental Restoration Infrastructure and Resource Protection Development Pilot Program. Which was a fancy way of saying "a \$9 million water plant for Altoona." Which is a city in the district of Rep. Bud Shuster (R-Pa.).

That 1992 pilot program was the first time Congress authorized the Army Corps of Engineers to do local water and sewer treatment work, traditionally a municipal responsibility. But Shuster, the powerful chairman of the Transportation and Infrastructure Committee, was not the last to take home such a project. Instead, "environmental infrastructure" has quickly metastasized into a case study of how Congress promotes "mission creep" at the Corps.

Today, almost everybody who's anybody in the congressional world of water resources has Corps water or sewer projects authorized at home, with federal

taxpayers responsible for as much as 75 percent of the cost. Since 1992, Congress has authorized nearly \$1 billion in projects—nearly half of them last year—with the vast majority in the districts of Capitol Hill power players.

Rep. James L. Oberstar (D-Minn.), the ranking Democrat on Shuster's committee, took care of northeastern Minnesota. Rep. Nick J. Rahall II (D-W.Va.), the No. 2 Democrat on the committee, got a project, too. Rep. Sherwood L. Boehlert (R-N.Y.), chairman of the water resources subcommittee, went to bat for upstate New York. There was an authorization for 27 Kentucky counties that happened to correspond precisely with the district of Rep. Harold Rogers, a leading Republican on the Appropriations Committee. The South Central Pennsylvania program was even expanded to six counties that were not in south-central Pennsylvania but were represented by then-



THE PHOTO ASSOCIATED PRESS

**Rep. Bud Shuster (R-Pa.)**

Rep. Joseph McDade (R-Pa.), who was the Appropriations energy and water subcommittee chairman.

There are also blanket authorizations for projects anywhere in Alaska, Mississippi, Nevada, Montana and Ohio. Which are, not coincidentally, the home states of Sen. Ted Stevens (R-Alaska), the Appropriations Committee chair-

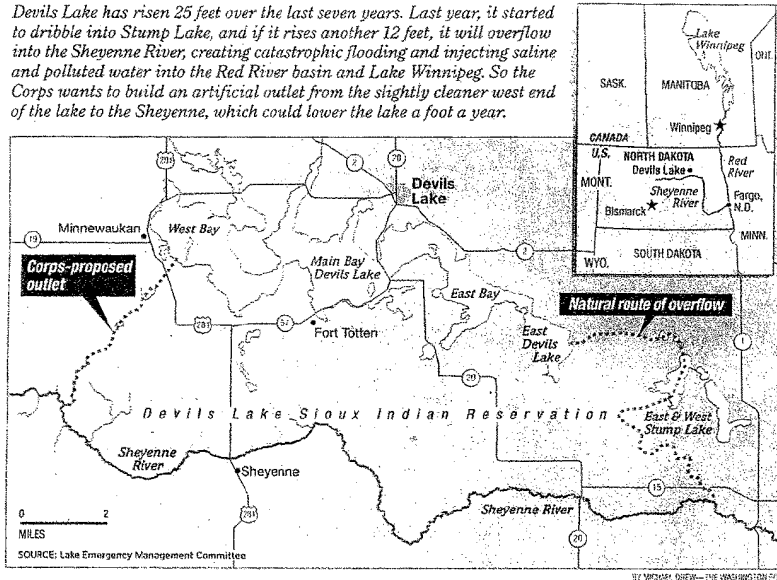
man; Senate Majority Leader Trent Lott (R-Miss.); Sen. Harry M. Reid (D-Nev.), the ranking minority member on the Appropriations energy and water subcommittee; Sen. Max Baucus (D-Mont.), the ranking minority member on the Environment and Public Works Committee; and Sen. George V. Voinovich (R-Ohio), chairman of that committee's transportation and infrastructure subcommittee.

In recent years, the Corps has taken on a slew of new missions, from beach replenishment to nuclear waste clean-up to school and jail construction. But the Clinton administration has tried to limit the congressional foray into water and sewer projects, and only a few of them have been funded. And at a recent hearing of his subcommittee, Voinovich said the time has come for the Corps to focus on its traditional missions. He admitted that he now even regrets Ohio's environmental infrastructure projects.

"I had some money put in the last [water bill] because, you know, everyone else was doing it," he sputtered. "My feeling is, and I've talked to senators, give it up. Give it up. Let's just concentrate on the stuff that ought to really be in this water thing."

—Michael Grunwald

*Devils Lake has risen 25 feet over the last seven years. Last year, it started to dribble into Stump Lake, and if it rises another 12 feet, it will overflow into the Sheyenne River, creating catastrophic flooding and injecting saline and polluted water into the Red River basin and Lake Winnipeg. So the Corps wants to build an artificial outlet from the slightly cleaner west end of the lake to the Sheyenne, which could lower the lake a foot a year.*



# A Rising Lake Puts Corps in Hot Water

## N.D. Struggle Typifies Pressures on Agency

DEVILS LAKE, N.D.—"I'm a Scandinavian," Sen. Kent Conrad (D-N.D.) said softly. "I tend to understate rather than overstate. So I'm understating when I tell you: I was outraged."

Conrad was recalling one of his angriest moments in politics: last June's Army Corps of Engineers decision against building an emergency outlet to reduce flooding at Devils Lake in northeastern North Dakota. The lake was on a slow-motion rampage, climbing 25 feet in six years. But the Corps had concluded that the outlet's \$110 million cost would far outweigh its potential benefits.

So Conrad decided to turn up the heat in extremely un-Scandinavian fashion. He used his Senate privileges to block all military promotions at the Corps. He chewed out leaders of the Corps and other agencies. Conrad, Sen. Byron L. Dorgan (D-N.D.) and Rep. Earl Pomeroy (D-N.D.) even demanded and received an audience with President Clinton—just a few months after they had all supported him during impeachment—and told him the outlet was absolutely critical.

In October, the administration announced that the Corps would work on that outlet after all—even though the project had repeatedly flunked its cost-benefit analyses, the Environmental Protection Agency and Fish and Wildlife Service had serious ecological concerns, and the outlet proposal had triggered a diplomatic melee with Canada.

"Look, this lake is putting its fist around the economic throat of this region," said Dorgan, who has used his seat on Appropriations to steer money to the project. "Yes, we met with the president. We met with everyone. We think this is a very important issue."

The Corps is often under intense pressure to approve projects that involve some environmental damage, and its military commanders often agree. But the war over Devils Lake is a reminder that the civilian leaders above the Corps are not immune from water politics, either. This time, the Corps resisted the pressure—and the administration gave in. In the process, the long-simmering rivalry between the agency's civilian and military bosses exploded.

"The politicians have the Corps buffaloed on this one," said Gary Pearson, a former Fish and Wildlife Service veterinarian who volunteers for the Audubon Society in North Dakota. "At this point, the science has all been thrown out the window."

Devils Lake is basically a plugged bathtub; it's one of America's two closed basins, along with the Great Salt Lake. So the only way for water to escape the basin is evaporation—unless the lake rises to 1,459 feet above sea level, when it would pour into the nearby Sheyenne River and create a historic flood. That's happened four times in the last 4,000 years.

Now North Dakotans are afraid it could happen again. The tops of telephone poles and dead oaks are jutting out of the lake like the arms of drowning men. The lake has drowned 120,000 acres of land and has climbed within 12 feet of its tipping point. The federal government has spent \$350 million moving homes out of its way and raising roads and levees.

Joe Belford, a county commissioner and convenience store owner in Devils



Surrounded Devils Lake waters eat away at farm near Churches Ferry, N.D. Area leaders fear economic damage if lake keeps rising.

Lake, helped found the Lake Emergency Management Committee in 1993. Back then, the problem was that the lake was almost dry, and its renowned walleye fishery was in danger. But then the water began to rise: the town of Devils Lake would be under water today if not for its levee. Belford's store is right near Minnie H Elementary School—named for a famous steamboat that used to dock there—but he says local residents never expected the lake to return in their lifetimes.

"That lake is a cancer," Belford said. "We never dreamed it would spread like this."

As an outlet to the Sheyenne would lower the lake less than a foot a year, and federal models calculated that it would reduce the chance of a natural overflow only from 2 percent to 1 percent. But the outlet's supporters say that minute difference makes the insurance policy worthwhile.

The outlet would pump water from the 3,800-square-mile Devils Lake basin into the tiny Sheyenne, so downstream residents are worried about erosion and flooding problems of their own. Because the lake's water is far more saline and polluted than the Sheyenne's, environmental groups are opposed to the outlet, too. And because the water would then flow up the Red River into Manitoba, Canadian officials have fought it as well.

Environmentalists say that instead of trying to reroute nature with an outlet, the government should keep buying out endangered homeowners and store more water in the upper basin by restoring some of the 200,000 acres of wetlands that farmers have drained.

But this time, the Corps tried to stand with nature. The agency's St. Paul District did want to build the outlet, but it was overruled by the Mississippi Valley Division, which ruled out an outlet unless the lake rose another six feet. Several sources believe the division was carrying water for outlet opponent Sen. Christopher S. Bond (R-Mo.), one of the Corps' strongest defenders in Congress. But

whatever its motives, the division held firm: "The current analysis shows that economic feasibility is lacking, and... a consensus on environmental acceptability would be extremely difficult to achieve."

Then area residents began sporting T-shirts: "Six More Feet My Ass." And the North Dakota delegation began applying pressure around Washington. Joseph Westphal, the Clinton appointee who oversees the Corps, had a dozen meetings on his 1999 schedule regarding Devils Lake, twice as many as he had for any other project. He eventually ordered Corps headquarters to take the study away from the Mississippi Valley Division. And when he tried to fast-track the project's environmental studies, his long-running cold war with Gen. Joe Ballard, the recently retired military commander of the Corps, turned hot.

"Your order not to provide me with the information I requested and expected has undermined my effort to resolve the issue and is unacceptable," Westphal e-mailed Ballard. "In case you have any doubt about the urgency of this matter, the president personally told me that he wants this issue resolved."

Ballard's response: "I never once ordered anyone not to give you anything and deeply resent your implications. You got us into this mess and you know it! I will not continue to be the scapegoat for your bumbling."

Today, the Corps is rescheduling the outlet. The agency is clearly nervous about building a \$110 million project that could become a white elephant the moment the runaway lake begins to recede. But while conservationists and conservatives have savaged the outlet as a destructive boondoggle, and GOP leaders have seized on the project as a case study in political meddling, the North Dakota delegation is more than willing to take the abuse.

"If we build this outlet, and then it turns out that the lake goes down anyway, great," Conrad said. "Nothing would make me happier."

—Michael Grunwald

## CORPS. From A14

asked not to be named.

The Clinton administration found that out in March 1998, when it tried to issue a two-year moratorium on Corps permits for casinos on Mississippi's Gulf Coast. The Corps had approved about 20 casino plans in this vibrant aquatic ecosystem, presiding over the birth of a southern Las Vegas of 20-story hotels, neon-lit restaurants, golf courses and parking lots in estuaries and other wetlands that provide habitat for 138 species of birds and 31 species of shellfish. The casinos had swiftly revived the economy. But Michael Davis—a biologist who is Westphal's deputy and the strongest internal advocate for "greening" the Corps—ordered the agency to stop issuing permits and start an environmental impact study of the entire coast.

A few months earlier, Lott had written a concerned constituent that he was "particularly sensitive to the treatment of our coastline" and that "no industry or business would be able to locate in the coastal area" without an environmental impact study. And after a series of protests by the EPA, the Fish and Wildlife Service and the National Marine Fisheries Service about the impact of earlier permits, the Corps itself had promised a review. But after the moratorium was unveiled, Lott complained that the administration was "shutting down economic opportunities" by requiring impact studies. And Cochran called the moratorium "outrageous."

On March 26, 1998—just three weeks after Davis issued the moratorium—the Corps nonetheless issued a permit for Casino World in the delicate St. Louis Bay, approving two 600-foot casino barges, a floating gazebo, a 450-room hotel and a 2,000-seat theater. As it turns out, Lott had written to Corps officials several times on behalf of project supporters: "As you can see, I remain very interested in this and would sincerely appreciate your providing me with an update on its status," he wrote in one letter. A week later, he flew to Las Vegas in Mirage Resorts Chairman Steve Wynn's corporate jet and helped raise more than \$100,000 for Republicans at an American Gaming Association fundraiser.

"The fix was in," said Earthjustice Legal Defense Fund managing attorney Nathalie Walker, who sued the Corps over Casino World and two other casino permits. "Lott got his way."

He didn't stop there. According to internal Army documents, Lott then helped trigger an Army inspector general investigation of Davis, whose brother-in-law at the time was an EPA official concerned about casino development. Lott apparently believed their joint interest in environmental protection constituted a conflict of interest. Davis was cleared of wrongdoing, but not before he was removed from all Gulf Coast development issues.

Today, there are more Gulf Coast casinos on the drawing board, including a plan to build six casinos, a monorail, an amusement park and a shopping mall on a barrier island. But last month, Walker won her lawsuit. A federal judge struck down the Casino World permit and two others, chiding the Corps for violating environmental laws and blasting the agency's "total lack of analysis." The Corps has finally begun an environmental impact study.

"The politicians and the Corps just want to see neon and cement and money," said Nonnie DeBardeleben, an area resident who has fought the casinos for years. "They don't understand why anyone would want to protect a beautiful place in the middle of nowhere."

### Rocky Road to Reform

This March, the Clinton administration announced a new era of executive branch control at the Corps.

Army Secretary Louis Caldera unveiled a series of basic management reforms that seemed relatively noncontroversial: The Corps should be accountable to the Clinton administration's appointees in the Pentagon. Military commanders should share information with their civilian bosses. They shouldn't lobby Congress without administration approval. And the assistant Army secretary for civil works should have the final word on Corps decisions.

"The Corps of Engineers has, at times, neglected to provide background materials and information papers on certain significant civil works matters to the office of the assistant secretary and other federal agencies," a recent Army Department summary of its management concerns noted. "On one occasion, the Corps asserted that its appropriations could not be used to provide information support to the Army Secretary."

Congress reacted to the reforms as if Caldera had sent a battalion to storm Capitol Hill. Warner, Stevens and Smith fired off a letter to Defense Secretary William S. Cohen, complaining that the reforms "may threaten the interests of Congress," warning that control of the Corps by political appointees could compromise the objectivity of the agency's technical analyses. Breaux and Bond also wrote a letter to Caldera defending the Corps and calling for significant budget increases for the agency. Lott and Cochran signed it. And Lott wrote his own letter to Cohen, a former GOP senator, airing his "serious reservations" about the reforms, warning that they could lead to "inappropriate influences."

Caldera yielded after one week, withdrawing the reforms "for a reasonable period of time in order to allow for a broader discussion with members of Congress." The reforms—which Caldera now calls "clarifications"—remain under wraps. At a time when Caldera is pushing to transform the whole Army—and a high-stakes political debate is raging over readiness—he decided he could not afford a war with congressional leaders over the Army Corps.

"Look, civilian control is a big deal," he



said. "But my highest priority is making sure this Army is trained and ready."

In case the congressional stranglehold on the Corps was not clear enough, the senators then tightened their grip. Warner, Stevens and Smith promptly asked the Corps for reams of documents related to "inappropriate political interference by executive branch officials" and set up a task force to investigate the administration's "politicization" of the Corps. One Democratic aide cracked that the task force should also investigate the urbanization of New York City and the militarization of the Army itself—the 225-year-old Corps, he said, has always been politicized: "They're just sending a message: Hands off the Corps."

Stevens and Sen. Pete V. Domenici (R-N.M.), chairman of the Appropriations energy and water development subcommittee, then sent an even blunter message. They tacked a far-reaching amendment onto a farm bill, barring any administration from reforming the Corps in any way: "None of the funds made available in this or any other Act may be used to restructure, reorganize, abolish, transfer, consolidate or otherwise alter or modify the organizational or management oversight structure; existing delegations; or functions or activities applicable to the Army Corps of Engineers." The measure died, but the power play sent another unmistakable signal.

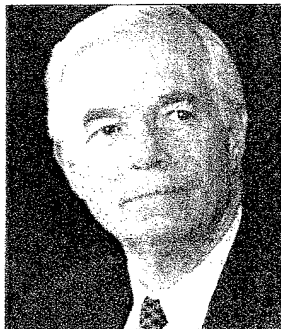
"They want the Army Corps to stay the way it is," a Domenici spokesman explained. "They want it to be accountable to Congress."

The White House is still considering a legal attack on the Yazoo Pump and Big Sunflower projects, which one aide called "the worst of the worst for the Corps." It could declare that the two projects violate environmental laws, a question that would have to be decided in court. But the administration's notions of seizing the Corps back from Congress have been tabled for now.

Still, there are some members of Congress who don't want the Corps to stay the way it is. Rep. Ron Kind (D-Wis.), author of the Corps of Engineers Reform Act of 2000, says, "There's a cloud hanging over just about everything that agency does." Senate Minority Leader Thomas A. Daschle (D-S.D.), who has proposed moving the Corps to the Interior Department, says he "can't think of a government agency in more dire need of reform than the Corps."

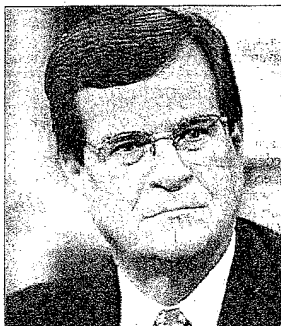
The only problem, they say, is persuading colleagues to support their calls for change:

"The Corps has some very powerful friends on Capitol Hill," Daschle said. "Even the people who agree with me tell me, 'Look, I can't get into this, I've got a project in my state.'"



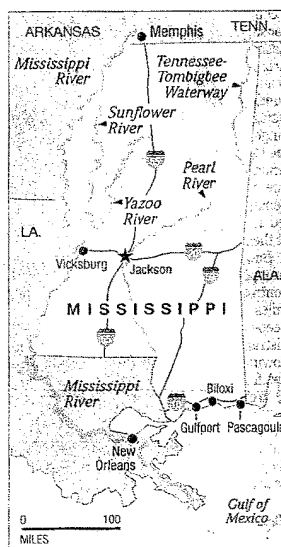
FILE PHOTO/ASSOCIATED PRESS

**Senate aid:** Sen. Thad Cochran protected farmers from pump costs.



FILE PHOTO/ASSOCIATED PRESS

**'Not ashamed':** Sen. Trent Lott steers many projects to Mississippi.



# The Washington Post

TUESDAY, SEPTEMBER 12, 2000

ENGINEERS OF POWER | Inside the Army Corps



BY MICHAEL GRUNWALD—THE WASHINGTON POST

**Baltimore-bound:** The Corps wants to deepen the C&D Canal despite falling container ship traffic.

## A Race to the Bottom

*With Flawed Analyses, Corps Dredges Ports Nationwide*

*Third of five articles*

By MICHAEL GRUNWALD  
Washington Post Staff Writer

CHESAPEAKE CITY, Md. — The Chesapeake and Delaware Canal is 35 feet deep. It is 14 miles long. And according to the Army Corps of Engineers, it flows in two directions at once.

At least that's what the agency's environmental studies suggest. In a study that bolstered its \$83 million plan to deepen the C&D for the Port of Baltimore, the Corps concluded the canal's net flow is west to east, which would minimize the project's damage to the Chesapeake Bay. But in a study for its \$311 million plan to deepen the Delaware River for the Port of Philadelphia, the same Corps district had concluded the same canal flows east to west.

The C&D project's economic analysis is as problematic as its water flow analysis. An ad-hoc quartet of tireless Maryland citizen critics has documented at least a dozen mathematical errors, overoptimistic predictions and other flawed assumptions by the Corps, all exaggerating the canal deepening's benefits to shipping lines or minimizing its costs to taxpayers. The Corps claims the project's benefits would slightly outweigh the costs; the citizen watchdogs calculate the costs would be at least 50 times the benefits.

Army Corps studies are supposed to provide impartial evaluations of proposed federal water projects, screening out the



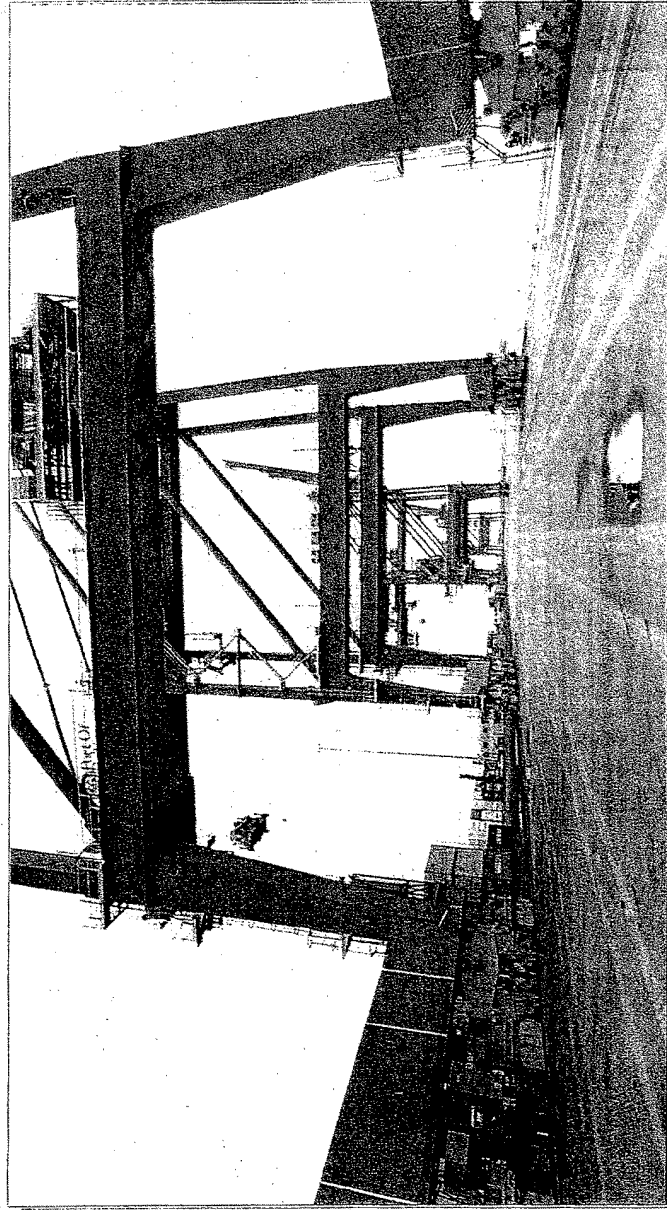
BY MICHAEL GRUNWALD—THE WASHINGTON POST

**Citizen watchdogs:** Don Burton, left, Richard Noennich, John Williams and Bill Jeanes have questioned Corps analyses.

wasteful and destructive ones, providing an objective seal of approval for the necessary ones. But a review of the proposed canal deepening for Baltimore illustrates how the Corps often justifies projects backed by powerful political interests with

See CORPS, A15, Col. 1

# ENGINEERS OF POWER | Inside the Army Corps



**Too optimistic:** Critics argue that the C&D project is not justified economically, saying the Corps inflated the number of container ships that call on the Port of Baltimore.

# Baltimore Clout Fuels C&D Project

CORPS. From A1

questionable technical analyses. If the four citizens hadn't devoted 7,000 hours of their spare time to phone-book-sized studies, and if their congressman hadn't taken an unheard-of stance against a Corps project in his own district, the canal would almost certainly be deeper by now.

In fact, Corps and Maryland Port Authority officials have not disputed many of the citizen critiques of the C&D, a project backed by Maryland Gov. Parris Glendening (D) and most of the state's bipartisan congressional delegation. Corps officials said they have been responsive, ordering up additional studies to ensure that they eventually reach the correct conclusions. At the same time, they have echoed the central argument of the port: that since the Corps analyzes all port projects the same way, the C&D shouldn't face stricter scrutiny.

"Their basic position is that they have to cook the books for this boondoggle the same way they cook the books for all the other boondoggles," said John Williams, a retired DuPont engineer who leads the four-citizen team. "It really makes you wonder about this agency."

There is a basic conflict of interest at the heart of all Corps studies. The same agency that evaluates proposed water projects gets to work on the ones it deems worthwhile. If the analysis concludes that the economic costs of a project outweigh its benefits, or that the ecological damage of a project is too extreme, the Corps loses a potential job.

That would not fit with the expansionist Strategic Vision developed by Corps leaders, a document that equates growth with success. The vision established "Seek Growth Opportunities" as one of the agency's three core principles, and ordered commanders to "develop relationships with targeted constituencies in areas with growth potential." North Atlantic Division commander Gen. M. Stephen Rhoades translated the vision into action in a November 1999 memo: "We must renew our commitment to grow our program. . . . District commanders will be assigned specific goals to grow their program."

This preoccupation with growth became a subject of public debate in February, after agency e-mails revealed that Corps officials had tried to manipulate a study to justify billion-dollar lock expansions on the Mississippi River, and had ordered all study managers to "get creative," "not take no for an answer" and "look for ways to get to yes as fast as possible." Corps commanders also devised a "Program Growth Initiative" that sought to double their budget for studies—or, as they put it, for "targeted studies that should lead to target construction activities with continuation of historical success rates."

There is no independent oversight of the Corps' studies; the Clinton administration delegated its technical review powers back to the Corps. So once a Corps study deems a project viable and Congress funds it, it may proceed.

Corps studies do reject many projects. And the agency's commanders fiercely de-

fend the integrity of their studies, saying the Corps system of internal checks and balances filters out the occasional mistakes.

"I am confident that our process, our execution, and the judgment of our leaders are sound and yield balanced recommendations for wise water resource investments," Gen. Joe Ballard, the agency's recently retired chief engineer, told a Senate committee this year. Ballard later ordered Corps officials not to speak to *The Post* for this series of stories.

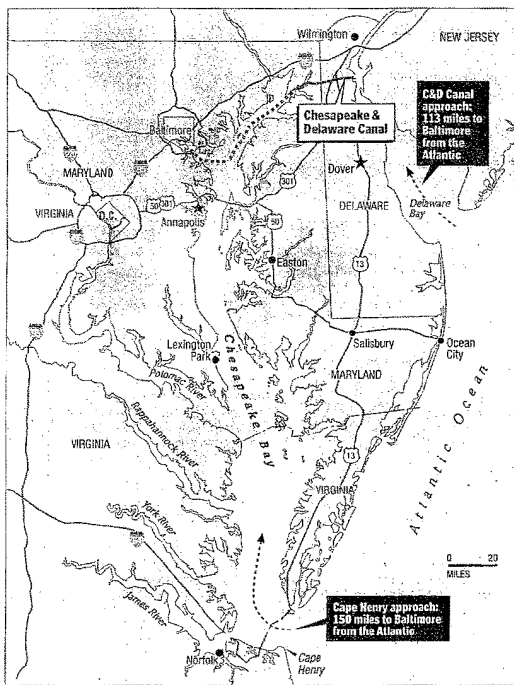
But the Baltimore study is one of a number of high-profile Corps analyses where there have been suggestions of pro-construction bias. To justify a \$181 million Mississippi Delta pump project, the Corps assumed that no landowner would ever voluntarily reforest existing farmland, even farmland that flooded every year. To justify a \$641 million lock replacement in New Orleans, the Corps predicted steady increases in barge traffic—and refused to modify its predictions when traffic decreased instead. On the study of the locks on the Mississippi River, Corps officials sent numerous e-mails ordering a study team to find a way to justify the lock expansions regardless of its economic analysis.

This phenomenon is especially pronounced for port projects, which often have hugely influential local and congressional advocates. Over the last decade, the Corps has used the same methodology challenged by the Maryland critics to approve \$5 billion worth of deepenings. The Corps' own internal reports suggest that the result has been an ecologically and economically destructive race to the bottom in which almost every major American port deepens its ship channels, using federal subsidies extracted by local members of Congress—and construction managed by the Corps.

In the last century, the Corps dredged many of America's rivers for expected barge traffic that never arrived. Now internal documents show that even some Corps officials believe the agency is dredging harbors for container ship traffic that may never materialize. The high-priced projects are creating environmental problems with spoil disposal and tidal flows along America's coasts, and industry experts say the real megaships probably will consolidate at just a few U.S. ports anyway.

"Most of these deepening plans are purely pie in the sky," said N. Shashikumar, an industry expert who chairs Maine Maritime Academy's business and logistics program. "They can't be justified with any kind of real economics. They're justified with politics."

The 294-year-old Port of Baltimore has evolved into the motherhood and apple pie of Maryland politics; the port authority's 1999 state legislative summary was titled: "Complete MPA Agenda Is Passed." And the port wants a 40-foot-deep C&D Canal. So Glendening has been an energetic supporter of the deepening, lobbying House Majority Leader Richard K. Armey (R-Tex.) and other congressional leaders. Maryland Sens. Barbara A. Mikulski (D) and Paul S. Sarbanes (D) have pushed hard, too, as have Maryland Reps. Steny H. Hoyer (D) and Robert L. Ehrlich Jr. (R).



The Corps revised its plan and now wants to deepen the C&D four feet at a cost of \$40 million.

The project has been wired from the start. But not quite wired enough.

### 'No Negative Reactions'

Williams, the retired DuPont engineer, attended his first Corps meeting about the Chesapeake and Delaware project because he was curious. And he was worried about the Chesapeake Bay. And he had nothing better to do. Williams, an intense wisp of a man with the brimstone eyes of a street-corner preacher, had no idea he would spend the next four years tilting at Corps windmills.

It was July 1996, and after quietly studying the canal for eight years, the Corps had produced a 1,600-page draft proposal to deepen it to 40 feet. The main approach to the Port of Baltimore is already 50 feet, as deep as any channel in the United States, but the MPA had proposed the project as a shortcut for deep-draft vessels. Baltimore's main competitive disadvantage is its inland location, 150 miles from the ocean; the C&D, linking the Chesapeake and Delaware bays, cuts the dis-

tance by 25 percent.

But deepening a canal between two bays can throw off tidal exchanges, and Williams wanted to know whether the project would draw pollutants and salinity from the Delaware into the somewhat more pristine Chesapeake. So he trekked to a high school in Chesapeake City, a quaint bed-and-breakfast town that has developed around the strip of water that slices it in two.

There were about 200 area residents at the meeting, and they ripped the Philadelphia District Corps officials for four hours. Many complained about the \$100 million C&D deepening of 1975, which wiped out a street, dried out local wells, forced the town to build new water and sewage plants, silted in the Elk River—and only attracted about one-seventh of the traffic predicted by the Corps. Others warned about future erosion, contamination and degradation of the upper bay. "Citizens Skeptical About Canal Plan," the Cecil Whig newspaper in Cecil County, Md., reported.

But a month later, the district released its

final report, endorsing the plan. Williams scanned it, and spotted this line: "The tentative project is considered to be essential by the local populace and no negative reactions have been detected by the general public."

Corps reports will never be best-sellers; they are long and dull and stuffed with graduate-level arcana. But Williams soon felt as if he was reading science fiction. The report stated that a decade-long monitoring program had showed no contamination of local groundwater, when Williams knew that no such program existed. (The Corps later said its claim was "inaccurate.")

In the draft report, numerous maritime officials had revealed serious doubts about the project; Williams realized their comments had been deleted from the final report. (One blunt example: "An increase in the canal's depth will not induce tonnage into the Port of Baltimore.") Finally, Williams realized the Corps had committed a basic math error that boosted the benefit-cost ratio from a falling 0.65 to a passing 1.21.

"I asked the Corps economists if it was a typo, and they just said, 'Oh, you know how the system works,'" recalled Williams. "I started to think, 'Aha, I'm onto something!'"

That October, Congress authorized the project, pending approval by Corps commander Ballard by the end of the year. But Williams presented his case to his congressman, Rep. Wayne T. Gilchrest (R-Md.), who represents the Eastern Shore and chairs the House maritime transportation subcommittee. Gilchrest had supported the project as a matter of course—until he listened to Williams, and listened to the Corps responses. Pretty soon, he was taking the biggest risk of his 10-year congressional career, battling the entire Maryland political establishment.

"It all sounds so logical—port: good," said Gilchrest, who is considered among the most ardent Republican environmentalists in Congress. "Until you read the studies."

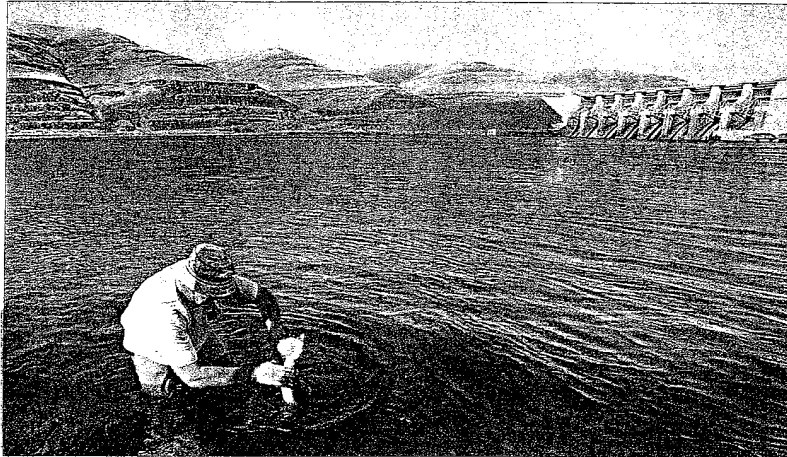
Gilchrest began by relaying Williams's concerns to the assistant Army secretary overseeing the Corps at the time, former Rep. Martin Lancaster (D-N.C.), who agreed to set up a meeting. So on Dec. 18, 1996, his 35th wedding anniversary, Williams had a seven-hour showdown with a phalanx of Corps and MPA officials in the Chestertown courthouse. His wife, Mary Jo, sat patiently in the back, waiting for him to drive her to the Outer Banks for their delayed anniversary getaway.

Williams raised more than a dozen issues during that first confrontation, but the one that tongue-tied the Corps was the math error, a flat miscalculation of "net present value" that he demonstrated on a spreadsheet. Lancaster's incredulous representative asked the Corps district officials point-blank: Did anyone check the math? They shrugged. "This guy made monkeys out of the Corps," recalled one agency official who was there. "It was just a very sophisticated critique. I've never been so embarrassed for the Corps in my life."

Tay Yoshitani, then the MPA's executive

See CORPS, A16, Col. 4

PH



FILE PHOTO/RY JACKE JOHNSON—ASSOCIATED PRESS

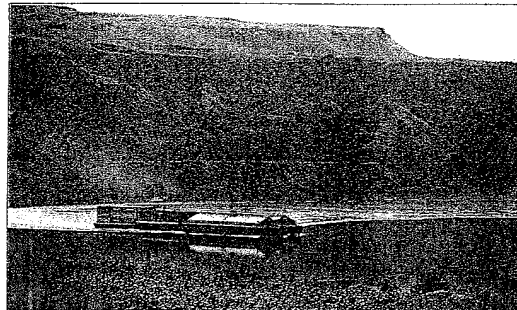
**A river's worth:** *An analyst says the Corps played down recreational use of the Snake River.*

# Snake River Dams: A Battle Over Values

## 2 Corps Analysts Say Study Results Manipulated

WALLA WALLA, Wash.—Phil Bengé says the Army Corps of Engineers is "obviously biased" against breaching the high-profile dams on the Snake River. John Loomis believes the Corps brass has "no appreciation" for the potential of a free-flowing Snake. They both think the agency's draft economics study of the Snake dramatically underestimated the recreational benefits of dam removal. And they both agree that had a lot to do with political meddling.

Critics second-guess Corps studies all the time, but not critics like these. Bengé, a Corps recreation planner, led the agency's recreation team on the Snake study. Loomis, a Colorado State University economist, is the Corps contractor doing the team's technical work. Now they both believe that Corps officials—under pressure from Sen. Slade Gorton (R-Wash.), a staunch defender of the Snake dams—manipulated and misrepresented their team's results.



FILE PHOTO/RY JACKE JOHNSON—ASSOCIATED PRESS

**Long haul:** *Business groups say barges depend on the dams. The Clinton administration supports leaving them in place, for now.*

"I really thought this was going to be a different kind of study for the Corps," said Bengé, a 20-year veteran of the Corps. "It tears me up that it got hung up in politics."

Loomis ultimately calculated a range for the recreation benefits of breaching the Snake's dams between \$70 million and \$416 million. Instead, after a series of Corps officials insisted that the benefits could not possibly be that high, the agency came up with its own "middle value" of \$82 million.

"It was a classic case of best professional practices saying one thing, and our fearless military leaders caving in to politicians and doing something else," Loomis said.

The four dams on the lower Snake River have become the focus of the Northwest's most intense political battle. Environmentalists and fishermen want to return the river to its natural state in order to save endangered salmon, but a broad coalition of farmers, barge interests, utilities and other business groups want to keep the dams for economic reasons. In July, The Clinton administration announced that it supported leaving the dams in place for now, while holding open the option of breaching them later.

The Corps built the dams in the 1960s and 1970s, and continues to manage them for hydropower and navigation, and to carry salmon around them in barges. Now it is supposed to be the honest broker in this debate, ferreting out the costs and benefits of the various options. But the combatants on both sides of the dams debate agree that the Corps economics have been drenched in politics.

Advocates of the dams are furious that even though the Corps concluded in its draft last December that breaching the dams would cost \$245 million a year, the Clinton administration ordered the agency not to recommend any course of action. Anti-dam activists are furious about the five-year study's initial conclusions, arguing that the Corps biased its analysis against dam-breaching through a series of questionable economic assumptions. The experience of the recreation team, they say, was typical of the entire study.

For example, even though the Environmental Protection Agency has found the Snake dams in violation of the Clean Water Act, the study ignored the potential costs of compliance if the dams remain. It also ignored the potential costs of salmon extinction, especially the costs to Indian tribes. The Corps acknowledged that its estimate for dam-breaching irrigation losses was "an overstatement of the economic effects," but used it anyway. It based its hydropower analysis on obsolete 1995 data favorable to dams. Envi-



ronmentalists believe that a host of other Corps conclusions about transportation costs, environmental costs, farm benefits and job benefits were similarly tilted against a free-flowing river.

Bengé, a 50-year-old former park ranger from San Diego, has never felt comfortable among the gung-ho engineers of the Corps. He's a nature guy; they're more construction types. But he was excited about the Snake recreation team. His bosses were saying all the right things about openness and objectivity, and Loomis had a reputation as a top recreation expert.

The team's problems began in 1998, as Loomis was preparing a survey to try to gauge how many Americans would want to visit an undammed Snake. First, Gorton delivered a speech on the Senate floor about "The Corps of Engineers Sweepstakes," lampooning the team's plans to include a \$2 bill with every survey to encourage responses. Those plans were promptly scrapped. But Gorton, a member of the Appropriations Committee, kept complaining to top Corps officials about bias in the survey, until the agency finally agreed to eliminate all of its questions about "existence values."

Existence values are a fairly squishy economic concept, designed to measure the worth of a free-flowing river to people who might not even use it. But they are common in studies like this, and team members of all political stripes wanted to inquire about them. In fact, Loomis believes that given the psychic importance of salmon to the Northwest, existence values alone might have justified breaching the Snake dams. He had estimated benefits anywhere from \$52 million to \$2.9 billion—unscientific guesses, but that's why he wanted to ask questions.

"Gorton didn't want us to find out anything that might hurt his cause, and the generals didn't want to say no to him," Loomis said. "I guess they were afraid he'd cut their budget."

In a statement, the Corps said it recog-

nized existence values as a "valuable component" of the study, but concluded that a survey of existence values would be unnecessary. The agency said it has received more than 200,000 comments on its draft report. "We will be further clarifying and fine-tuning the economic analyses, based on the comments received."

Gorton did not return several calls for comment, although an aide sent along language that Gorton inserted declaring that "the committee expects the Corps to work objectively in assessing the true impacts of any dam removal."

Bruce Lovelin, the top advocate for the dams, said Gorton was right to attack the inner workings of the study. "Come on: I think existence values are valid, but those numbers were ridiculous," said Lovelin, director of the Columbia River Alliance, a coalition of industry groups.

The team clashed with Bengé's bosses over more tangible values, too. For example, the team's e-mail traffic confirms that a series of Corps officials simply didn't believe that transforming the Snake from a series of slack-water pools into a free-flowing river would attract many visitors. When the survey suggested that many Californians and other westerners would come to the river to fish or raft or canoe, several e-mails described the results as "implausible," and one Corps official told Bengé to "get the numbers down."

"They just couldn't believe what the numbers were saying," Bengé recalled. "The Corps doesn't believe in the economics of recreation. It still gets step-child status."

Ultimately, the Corps got the numbers down on its own. Loomis, the agency's consultant, had calculated a "middle value" of 4.8 million annual visitors. He said the Corps then adopted his "low value" of 1.68 million visitors for the study—and reported it as the "middle value."

"They're guilty on that one," Loomis said. "That's not just conservative—that's wrong."

There is no way to know exactly what will happen to the Northwest economy, whether the dams stay or go. Gorton commissioned the General Accounting Office to investigate whether the Corps underestimated the costs of dam-breaching, and it recently agreed with him that the agency's analyses of transportation costs and air quality impacts were incomplete. Lovelin says that inevitably, the economics of Corps studies are in the eyes of the beholder.

"The truth is, this has been a political process from Day One," Lovelin said. "Everyone has biases, and that's not going to change. We're all like ships passing in the night."

— Michael Grunwald

# A Deepening Race To the Bottom

CORPS. *From A15*

director, finally dropped his briefing papers on the table in exasperation, according to several witnesses. "I don't care if the [benefit-cost ratio] is 1.2 or 1.0 or 0.8," he said. "I want a deeper C&D Canal!"

At that point, Ballard could have killed the project by withholding his signature for two weeks. Or he could have moved directly toward construction. A few days later, he chose a middle path, keeping the project alive, but acknowledging that a slew of questions needed to be answered before any dirt moved, and that the public needed to be included in the process.

In January 1997, the Corps district office abruptly declared its economic model "obsolete," and announced plans to redo the C&D study. It even hired a consultant already working for the MPA to do the work. Over the last three years, the Corps has scaled back the project to 39 feet and \$40 million. It recently dropped plans to dump dredge spoil in the Chesapeake Bay. But the citizen critics say it has continued to inflate benefits and understate costs, in addition to its dueling theories of the canal's flow.

This time, though, the citizen quartet has been watching: Williams; Donald Burton, another retired engineer; Richard Noennich, a retired DuPont manager; and William Jeanes Jr., a grain farmer. Williams, 62, is a liberal Democrat; Jeanes, 52, a centrist Democrat; Noennich, 54, a centrist Republican; Burton, 63, a conservative Republican. They had never met, but Gilchrest made sure they were all included on a citizens working group for the second C&D study. And they turned out to be monomaniacal soulmates. With the help of Gilchrest, who has often had to pry documents out of the Corps bureaucracy for them, they have shadowed the agency's every move.

"The Corps knows you've got to be crazy to read all their technical stuff," said Jeanes, who can now identify almost every ship that calls on Baltimore by sight, right down to its draft, length, engine type, cargo capacity and docking schedule. "Well, we're crazy."

Gilchrest, 54, confesses he might be a bit crazy himself.

He is a truly accidental politician, a Marine platoon leader who was wounded in Vietnam, then bounced around jobs as a chicken factory worker in Maine, a Forest Service moose counter in Idaho, a civics teacher in New Jersey and Vermont and Maryland. He was working as a house painter when he first decided to run for Congress; he just didn't like the idea of an uncontested race. Today, after a decade in the House, he is still one of the least slick politicians in Washington: balding, rumpled, polite, a bit scatterbrained. He is also truly independent, the only member of Congress in his party to support statehood for the District, perhaps the only one in either party to battle Corps projects in his own district.

Gilchrest has always been well-liked. But ever since he challenged the Corps, the bipartisan attacks have been unrelenting. Suddenly he is "mean-spirited" and "vicious." Suddenly he is the betrayer of Baltimore.

"I guess Mr. Gilchrest doesn't realize how many people get their bread and butter at this port," said former Rep. Helen Bentley (R-Md.), who began her career as a reporter covering the port and now works as a lobbyist representing it. A diminutive firebrand who relishes a fight, Bentley rode port issues to Congress in 1984, scorching her opponent as an obstacle to a 50-foot channel. "I'd hate to see a repeat of that," she said with a grin.

Gilchrest concedes that his four constituents sound a bit like conspiracy buffs, but he says that so far, no one has refuted any of their arguments. The Corps has spent nearly \$10 million on its analyses, but the four amateurs have debunked them point by point. (They did get one \$5,000 donation from an environmentalist, which they used to buy maritime data.) They are clearly infuriating Corps Philadelphia District officials, who have berated them for asking too many questions and sending too much e-mail, and have even threatened to disband the working group.

"This is not your process," Lt. Col. Robert Keyser, a former Philadelphia District commander, warned the foursome during one meeting, the agency's minutes confirm. "This is the Corps' process."



### 'Public' and Private Benefits

The good ship Evergreen, named for the Taiwanese shipping company that owns it, may never float through the C&D Canal. It is not even a cargo ship. But it is a fairly simple place to start explaining the complexities of Corps cost-benefit analyses.

The Evergreen is a yacht, the 11th-largest in the world, five decks high and a football field long. It is also a floating monument to corporate luxury, from its Ming Dynasty vases to its rosso Verona marble to its 21-man crew. USA Boat International magazine hailed its "sleek, easily-driven lines of a naval frigate," its 20 staterooms providing "accommodation of the highest standard." Not to mention Chairman Yung-Fa Chang's master suite, "spanning the superstructure from deck to deck," with "rich inlaid furniture from the Milan-based workshops of Dabini."

According to the method the Corps uses to analyze projects, those lavish perks for Taiwanese shipping tycoons can count as direct benefits to American taxpayers.

The Corps determines that a project is justified whenever the economic benefits to anyone—farmers, consumers, conglomerates—exceed the costs to taxpayers. So in re-studying the canal for Baltimore, the Corps

defined the project's benefits to the public as its benefits to private shipping firms, arguing that they would pass all their profits along to consumers anyway. And though the major container firms are foreign-owned, the Corps decided that "the public can be considered both U.S. and foreign."

So the project would be justified if Evergreen Co.'s profits from a deeper canal exceeded the price tag for American taxpayers—even if the company spends its profits on its yacht and its 216-bottle wine cooler, rather than passing them on to U.S. consumers.

But the Corps did more than equate the profits of foreign firms with benefits to the U.S. public; it also significantly overstated the benefits to those firms. Its analysis inflated the number of container ships that call on Baltimore, the percentage that use the canal, and the amount of time they save, the Cecil County residents discovered. The project still only barely passed the benefit-cost test—and correcting any one of the inflated figures would flunk it.

"With these studies, you've got to suspend your disbelief," sighed Noennich, an Elk Point Civic Association representative who lives near the canal.

Start with the basic premise behind the project: an imminent surge in container traffic to Baltimore.

The Corps predicted that Baltimore's share of the fast-growing container market would hold steady at 1996 levels, but that share had been plummeting for a decade. And sure enough, Baltimore's share has continued to drop since 1996. But when the four, some pointed this out, the Philadelphia District refused to admit its error in its written response to the citizens, arguing that market history and even the already-proven inaccuracy of its forecasts were irrelevant. "The past, even the recent past back to 1996, is not a particularly good indication of future growth prospects."

There was another explanation, too: This is how we always do it. The district noted that constant market share is "a standard assumption in all Corps deep-draft navigation studies," and that, for instance, Corps forecasts justifying the \$1.8 billion New York Harbor deepening were also "entirely inconsistent with the recent past, which shows very low growth."

Today, even MPA officials admit that Baltimore's prospects for container megaship growth are bleak; their advantages now lie with barges and smaller vessels that carry cars, steel, paper and construction material. Baltimore used to be the East Coast's second-busiest container port, but rail and truck deregulation has made its inland location a high-cost liability. It's now seventh and falling fast.

"We're losing ground on the container vessels every day," said Mel Balford, MPA's general manager for international sales. "We've got to recognize our reality as an inland port. We're just not where the big ships want to go. . . . Containers are not our future."

The assumption of dramatic container growth was questionable enough. But then the district predicted that 90 percent of the container ships that could use the C&D on their way to Baltimore would use it, extrapolating the rate from secret interviews with maritime executives who refused to fill out questionnaires. So the citizens demonstrated with existing port records that less than half the ships that already can use the C&D actually do. The C&D is a quicker route to Baltimore than the main channel, but its heavy pilot fees make it a more costly route, and its narrow channel makes it more dangerous.

Once again, the Philadelphia District refused to adjust its theoretical model to accommodate the evidence of real ships: "To argue that this data is 'wrong' because of more recent data does not detract from [its] validity." But Robert McIntyre, a review manager in Corps headquarters, agreed with the citizens in a memo that "the transportation cost analysis appears to have overstated potential savings that can benefit from the project."

As a final example, take the question of how much time each sailing would save. The Corps concluded that the C&D shortcut saves ships about six hours, so the time saved would be six hours. It assumed that ships load and unload and get back on the water as fast as they can. But the citizens suspected that many ships were in no hurry at all, that they would sit in port to wait for cheaper union labor rates that kick in at designated loading times. So they studied Baltimore crane logs. And yes, the average waiting time in port for ships that used the canal was more than seven hours. Again, McIntyre's memo warned that the dissidents may have flummoxed the Corps. "The concerned citizens provided useful information on the potential for time savings."

In their responses to the citizen critiques, Maryland officials have not tried particularly hard to defend the Corps benefit-cost analysis. But they have insisted repeatedly that the Corps owes them a level playing field, that "Maryland should not be held to a different standard." The Constitution specifically declares that "no Preference shall be given . . . to the Ports of one State over those of another," the MPA pointed out in one of its responses. "Most of the criticisms . . . are focused on Corps of Engineers methodology which is used for deep-draft navigation projects at ports all around the country."

Frank Hamons, MPA's manager of harbor development, agreed in an interview that the Corps studies are hard to defend, that the four gadflies "raise some very legitimate points." He simply insisted that if the Corps

See CORPS, A17, Col. 1

ODDPs, from 1/6

the Corps' own. "If we're not to be taken for granted, they must be taken for granted," he said. "If we're not to be taken for granted, they must be taken for granted."

He said the Corps is not to be taken for granted. "If we're not to be taken for granted, they must be taken for granted."

He said the Corps is not to be taken for granted. "If we're not to be taken for granted, they must be taken for granted."

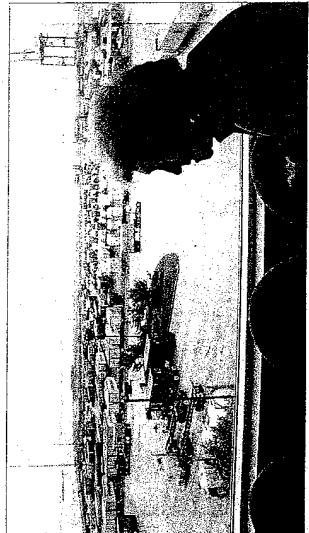
He said the Corps is not to be taken for granted. "If we're not to be taken for granted, they must be taken for granted."

### Digging Up a New Problem

The dilemma is known as overcapacity. In many deep-sea ports, the Corps has enough ships to handle the cargo, but not enough ships to handle the cargo.

He said the Corps is not to be taken for granted. "If we're not to be taken for granted, they must be taken for granted."

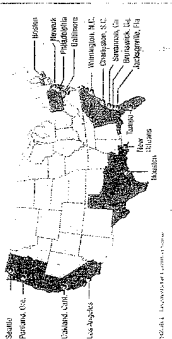
## ENGINEERS OF POWER | Inside the Army Corps



Apple pie: Baltimore's port authority is a powerful political force, with allies such as former Rep. Helen Bentley.

### Corps Deepening Projects at U.S. Ports

Planned, under construction or completed in past few years



collaboration, and while he started out pushing for new money for new deepening projects, he ended up advising the Corps may be going too far.

In my professional view, I don't think we're going to need as many deepening projects as we're planning. I think we're going to need as many deepening projects as we're planning.

He said the Corps is not to be taken for granted. "If we're not to be taken for granted, they must be taken for granted."

He said the Corps is not to be taken for granted. "If we're not to be taken for granted, they must be taken for granted."

He said the Corps is not to be taken for granted. "If we're not to be taken for granted, they must be taken for granted."

He said the Corps is not to be taken for granted. "If we're not to be taken for granted, they must be taken for granted."

He said the Corps is not to be taken for granted. "If we're not to be taken for granted, they must be taken for granted."

He said the Corps is not to be taken for granted. "If we're not to be taken for granted, they must be taken for granted."

He said the Corps is not to be taken for granted. "If we're not to be taken for granted, they must be taken for granted."

He said the Corps is not to be taken for granted. "If we're not to be taken for granted, they must be taken for granted."

# The Washington Post

WEDNESDAY, SEPTEMBER 13, 2000

ENGINEERS OF POWER Inside the Army Corps

## Reluctant Regulator on Alaska's North Slope

For Oil Projects, Corps' Answer Is Almost Always 'Yes'

Fourth of five articles  
By MICHAEL CAPOVILLA  
Washington Post Staff Writer

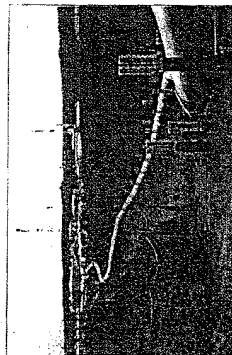
**T**he North Slope of Alaska was once the last frontier of the United States. It was a vast, unpopulated wilderness, a land of few rugged Eskimos and a few scattered reindeer herders. That was before the oil industry colonized the Slope, decorating its tundra with a sprawling industrial complex the size of Rhode Island.

Now the polar bears, caribou, seals and swans here at the top of America have been joined by 19 oil fields, 400 miles of pipeline, 1,100 miles of road, 22 gravel roads, 60 miles of gravel roads, 100 miles of gravel roads, 100 miles of gravel roads, 100 miles of gravel roads.

ades, oil firms have filled in 20,000 acres of the North Slope's rugged wetlands. They report a spill a day. The Army Corps of Engineers, which regulates nature and silence, emits noise as much as any producing nitrogen oxide as the entire District of Columbia.

But according to the Army Corps of Engineers, this transformation of the Arctic landscape has had no significant impact on the environment. The Corps, which regulates nature and silence, emits noise as much as any producing nitrogen oxide as the entire District of Columbia.

See CORPS, A23, Col. 1



**Moving crude:** The Trans-Alaska Pipeline carries North Slope crude oil from Prudhoe Bay to Valdez.

## CORPS, From A1

But the Corps has never even prepared an environmental impact statement to gauge the overall effects of onshore oil development here, as it is legally required to do if it suspects the environmental impacts "may" be significant.

The Army Corps, a Pentagon-based construction agency that has altered more wetlands with its dams, levees and other water projects than any other American developer, is also the nation's unlikeleest regulatory agency, assigned by the Clean Water Act to protect wetlands from development. A review of its work in Alaska and around the country shows that its \$117 million regulatory program is mostly just a permitting program, approving well over 99 percent of developers' requests to drain, dredge and fill wetlands, consistently finding that even sensitive projects would have negligible impacts.

Alaska still holds more than half of America's marshes, bogs, streams and other federally protected wetlands, but Corps regulators are also permissive in the increasingly drained-out and paved-over lower 48. In West Virginia, the Corps has let the coal industry decapitate scores of mountaintops and dump them into neighboring valleys, burying more than 1,000 miles of streams—and the agency has never detected a significant impact. In Mississippi, the Corps has permitted 20 casinos along the Gulf Coast, transforming a rural backwater into a booming resort—again, finding no significant impact every time.

"It's like a regulatory car wash. They squirt you off and send you on your way," said Jeff Ruch, director of Public Employees for Environmental Responsibility, which has published reports criticizing the Corps regulatory program in general and the Alaska District in particular.

In recent years, Corps leaders have pledged a clean break with their agency's history and culture of environmental destruction, touting a new "greening of the Corps." They have publicly embraced President Clinton's push to save wetlands, which can serve as feeding, nesting and spawning grounds for wildlife, improve water quality and reduce flood damage by absorbing excess runoff. But data obtained under the Freedom of Information Act suggest that the agency's regulatory program has become even less aggressive under the Clinton administration.

Last year, the Corps denied less than half as many applications to fill wetlands as it did in 1992. It approved more than twice as many wetland fills through near-automatic "nationwide" or "regional" permits. It conducted far fewer inspections to check for wetlands violations, and took far fewer violators to court. One Corps memo announced that on minor violations, "the Corps will normally do nothing further," and even on some major ones, it will try to "end its involvement with the case."

Michael Davis, the number two Clinton appointee overseeing the Corps, points out that America was losing more than 400,000 acres of wetlands a year during the 1970s, and is now losing only 100,000 acres a year. He said

that even though the Corps' regulatory program rarely rejects permits, its very existence has prompted developers to avoid wetlands.

"I submit that the Corps has had a very real effect on reducing those wetlands losses," Davis said. "It used to be no big deal to see a single project take out 500 acres."

But several current and former Corps regulators describe the Alaska District as a stark case study in the agency's reluctant approach to regulation. Their criticisms are bolstered by internal agency documents.

For example, after the recent district commander, Col. Sheldon Jahn, fast-tracked a permit for a BP Amoco oil field known as Northstar—a project high on the Alaska delegation's wish list—he bragged in a March 1999 e-mail that "I have done everything possible to get to this point including significant 'arm-twisting' and compression of the process." Jahn's predecessor, Col. Peter Topp, pledged in a September 1996 e-mail to smooth the way for a road project demanded by Senate Appropriations Committee Chairman Ted Stevens (R-Alaska): "I'll have my regulators look into it with an eye to required permits so they don't disrupt the planned project schedule."

Alaska has just three members of Congress—Stevens, Sen. Frank H. Murkowski (R) and Rep. Don Young (R)—but they have served a combined 80 years on Capitol Hill, and they chair powerful committees that intensify their builder-friendly influence on the Corps. For years, they have fought to exempt Alaska from national wetlands policies, and at times they have warned the Corps directly about overly aggressive green-policing. "Obviously, we take the delegation's concerns about regulation very, very seriously," said one Alaska District official.

Jahn, however, insisted that the perception of the Alaska District as a regulatory rubber stamp is "absolutely incorrect." He said his regulators often require changes before approving permits to fill wetlands, and noted that some Alaska developers complain that the Corps is too tough.

"We have a very challenging and difficult responsibility here," Jahn said during a brief interview in Anchorage, at a hearing on a wetland-fill proposal by the Ted Stevens International Airport. "We're working very diligently to do this right." He declined to comment further, citing orders from Gen. Joe Ballard, then the agency's chief engineer.

The Corps has a difficult job in Alaska, where almost half the state is considered wetlands. To the business community, this abundance creates an obvious rationale for looser environmental standards. To the conservation community, it makes Alaska a kind of Alamo, a last chance for regulators to protect a vast unplundered wilderness. The Corps stands uncomfortably in the middle, under constant pressure from both sides.

Last year, the Alaska District forced developers to modify some projects. But 99.7 percent of its requests for wetlands permits were approved, allowing developers to fill 93 percent of the wetlands they originally requested. The district also required developers to create one new acre of wetlands for every six acres they eliminated, a "mitigation" ratio far below the national average. To conservationists such as Michael Frank, an attorney at Trustees for Alaska, that is nowhere near the middle.

"Just once, I'd like to see the Corps come down on our side," Frank said.

## The Heat Is On

Robert Oja used to open his window in January. That may seem odd in Anchorage, but his office temperature sometimes reached 120 degrees. Which may seem odd as well, but Oja thinks it had a lot to do with his approach to regulation.

Oja served as the Corps' Alaska District regulatory chief from 1985 until 1997, when he was stripped of his title and relegated to receptionist duties. He was a by-the-book guy, intense about his job, obsessive about the law. He was also a brash critic of his bosses, frequently accusing them of thwarting his efforts to enforce wetlands violations, bending to pressure from oil executives and sacrificing science to appease their congressional patrons.

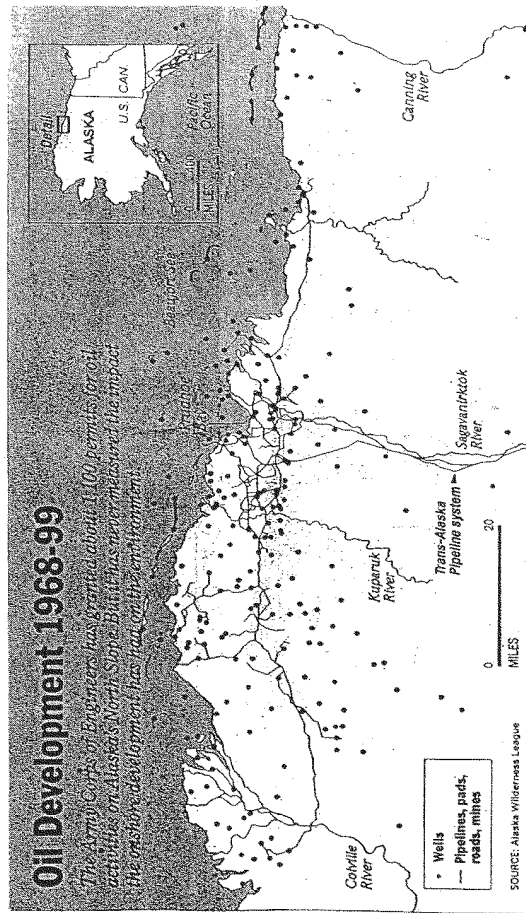
So during the seven winters when his work space sweltered like a northern outpost of Hades—and Oja was documenting the temperatures in his daily planner—Oja was under figurative heat as well. One time, an aide to Rep. Young called Corps headquarters to try to get him removed, Corps documents confirm. Another time, according to Oja, his commander asked, "Do you know how much Murkowski wants you fired?" One of Stevens's top aides, a former Corps colonel, used to call the district regularly to complain about regulatory issues.

In a statement, the Corps called Oja a good regulatory chief, and said renovations of district offices "resulted in heating and air-flow problems affecting many." But Oja suspects the political intrigue swirling around him might have had something to do with it, too.

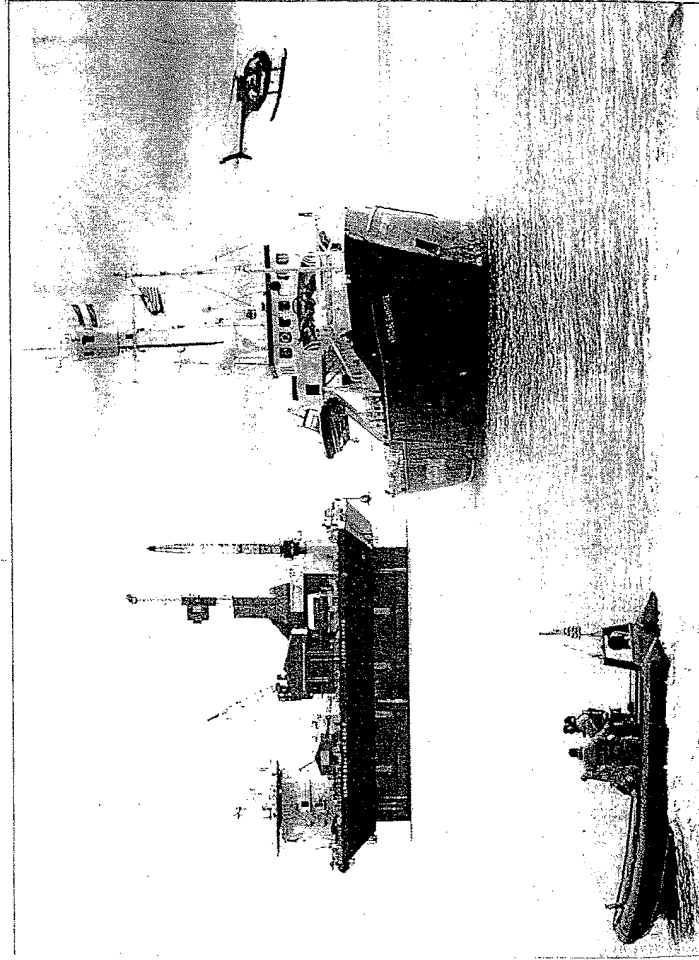
"The district just doesn't believe in regulation," said Oja, who quit the Corps soon after his demotion, citing a stress-related illness. "If you even mention an environmental concern, you're not a team player. The pressure to look the other way is incredible."

The Corps, Oja knew, is primarily an engi-

# Putting Permits on the Fast Track



# ENGINEERS OF POWER | Inside the Army Corps



**Battle of Beaufort:** Greenpeace activists, in 160-foot ship Arctic Sunrise, try to block movement of an Arco oil rig during 1997 protest in Beaufort Sea. The group recently camped out to protest BP Amoco's plan to connect an artificial island to the Arctic's first subsea pipeline.

neering agency. It is known for pouring concrete and moving dirt, and its political influence flows from projects that bring jobs and money to congressional districts. In the Alaska District's organizational chart, Regulatory is officially subordinate to Construction. The district dredges dozens of the state's harbors; it builds hospitals, barracks, power plants, ice runs and even ski slopes for the state's military bases; thanks to intense lobbying by top Corps brass, it is now gearing up to help build the national missile defense system, though the program has been delayed. The district claims an economic impact to Alaska exceeded only by the oil industry and state government.

"Regulatory is the sick orphan of the Corps," one civilian official explained. "We want to build things for people. That's what we do best."

In Alaska, Oja and other Corps whistleblowers have documented numerous cases of squelched regulatory efforts, from an illegal dumping incident in Nome to a mismanaged harbor project in Craig to the Stevens-ordered road to Metlakatla. And the pressure on Regulatory has been heaviest when Construction—or one of its contractors, or one of the "customers" who often steer work its way—has played a role in the project in question.

In 1997, for example, Corps regulators issued a notice of violation for an illegal temporary bridge at Fort Richardson in Anchorage. But after the fort hired the Corps to build a permanent bridge, the enforcement withered away. The same thing happened when Fort Greely built an illegal short-term berm; the violation vanished after the Corps agreed to design the fort's long-term flood-control plan.

"Let's just say it was extremely frustrating," said Jeffrey Towner, once the Alaska District's chief of enforcement, now a Fish and Wildlife Service supervisor in West Virginia.

Development advocates say the larger point is that Alaska still has wetlands to spare; it's hard to plant a shovel here without touching one. The state has 58 million acres of protected wilderness, more than the combined area of Pennsylvania, New Jersey, West Virginia and Maryland, Murkowski says. Alaska's real problem is a swarm of environmental groups that use the state to raise money, groups that gripe anytime anyone wants to develop anything. If the senator has any beef with the Corps, it's that the agency takes too long to approve permits.

"The fact is, the wetlands of Alaska are not threatened at all," Murkowski said. "How much of Alaska do the environmentalists want to preserve? All of it? We have rights, too."

The Corps' Alaska District is well aware of those views, and of the power of the men who hold them. Murkowski chairs the Senate Energy and Natural Resources Committee, which oversees the oil industry. Young chairs the House Resources Committee, which handles a variety of environmental and devel-

See CORPS, A24, Col. 1

## Overall Analysis Of Impact Is Lacking

CORPS, From A24

opment issues, and is vice chairman of the Transportation and Infrastructure Committee, which oversees the Corps.

And as Appropriations czar, Stevens has a say in just about every dollar the federal government spends, and personally secures every item in the Alaska District's \$279 million budget. He also leapt to the defense of the Corps when it was under fire this spring, helping to block the Clinton administration's attempts to reform the agency, even sponsoring an amendment that would have blocked any reforms by future administrations.

So the Corps tends to accommodate them. Joseph Westphal, the assistant Army secretary who oversees the Corps, spent a week last year touring Alaska projects with Stevens; he even watched the senator march in the remote town of Ketchikan's Fourth of July parade. Gen. Ballard, the recently retired chief military commander of the Corps, threatened at one Pentagon meeting to oppose the entire national missile defense plan if the Alaska District did not get an individual contract, according to sources at the meeting. In its response to questions, the Corps could not cite a single instance in which it resisted pressure from Stevens.

"Sen. Stevens is very concerned about Alaska's future," the Corps said in its responses. "This often involves encouragement for the Corps to make decisions on permit applications as quickly as possible—not unlike other senators and congressmen across the country." Stevens's office declined to comment.

"Basically, the Corps is scared to death of the delegation," Oja said. "So there's unbelievable pressure to do whatever they want."

The Corps said that is perfectly normal: "Pressures related to the Corps regulatory program, and wetland issues in particular, are not unique to the Alaska District. . . . All districts, divisions and headquarters are subjected to pressures that go with the job."

### 'Due Process' Fallback

This spring, the world learned about an obscure oil project called Northstar.

First Greenpeace activists camped out on the frozen Beaufort Sea to protest BP Amoco's plan to connect a five-acre artificial island to the Arctic's first-ever subsea pipeline. Then protesters dressed as polar bears crashed a BP Amoco meeting in London, and 13 percent of the firm's shareholders voted to abandon the project. Today, Northstar has become an international lightning rod for critics of offshore drilling, who warn that it will harm endangered birds, whales and other wildlife, and that BP has no adequate response plan for a major spill here.

In the spring of 1999, though, when BP Amoco was desperate to start building—and the Corps was anxious to get them started—hardly anyone was paying attention to Northstar. The field is less than 2 percent the size of Prudhoe Bay, enough to fuel U.S. consumption for just nine days. But hundreds of internal Corps e-mails from that crucial period in the permit process provide a vivid example of the Alaska District's relationship with the oil industry.

The correspondence shows that Jahn and other Corps officials, under pressure from Alaska's ever-present congressional triumvirate, fought as hard as they could to accelerate the process, hoping to issue BP Amoco a permit in time for the 1999 construction season. In the end, environmental concerns raised by the Interior Department's Fish and Wildlife Service caused enough delay to force BP Amoco to postpone construction until 2000. But as Jahn wrote in a May 1999 e-mail, "We tried!"

"We thought the Corps did a very good job with the permitting process," said BP Amoco spokesman Ronnie Chappell. "Our only concern was that it dragged on for as long as it did."

If the heat is always on Corps regulators in Alaska, the temperature rises when oil is involved.

The oil industry, after all, is more than Alaska's economic engine; it's practically the whole vehicle. Oil money funds three-quarters of the state budget. It supports a \$28 billion endowment that sent every Alaskan a \$1,769.84 check last year. It builds schools, roads and hospitals in isolated and impoverished Native Alaskan villages. The rest of the nation also benefits from North Slope drilling: America now imports more than half its oil, so more domestic production can mean less dependence on foreign cartels, and somewhat lower prices at the pump.

Washington politicians benefit from Alaskan oil, too: Petroleum interests contributed nearly \$100 million to federal candidates over the last decade. Young is the House's top recipient of oil money, and Murkowski and Stevens drill the industry's cash reservoirs as well.

The Alaska District set the tone for its approach to oil in 1972, when Congress passed the Clean Water Act, and the Corps simply refused to apply the law to the North Slope. In 1979, to avoid a lawsuit, the Corps finally required oil companies to seek wetland-fill permits on the Slope. But it never denied a major permit until a decade later, when Oja tried to stop BP Amoco from building a gravel causeway into the Beaufort Sea. That denial was rescinded by Corps officials in Washington, after meetings with angry oil executives and the Alaska delegation.

In May 1990, Oja was the star witness at a

congressional hearing on "The Manipulation of Science and the Regulatory Process Affecting Oil and Gas Development in Alaska," testifying that the oil industry had "systematically and successfully lobbied its self-interests at the expense of the public trust."

Less than a decade later, Jahn was holding private meetings about Northstar with impatient BP Amoco officials, then ordering his regulators to pick up the pace. BP Amoco was so eager to start construction last year that it spent \$4 million to build an ice road to the site on spec, gambling that the Corps would approve its permit before the spring melt. And Jahn made it clear to his troops that he was determined to make sure that happened. "The feeling among the regulatory staff was that the pressure was totally inappropriate," one regulator recalled.

By early spring, though, there was still a major dispute lingering over project design. BP Amoco wanted to run its pipeline beneath a sensitive lagoon—and the state of Alaska, the Minerals Management Service and the local Native Alaskan borough supported its plan. But Corps regulators had agreed with the Fish and Wildlife Service, the Environmental Protection Agency and the National Marine Fisheries Service on a different "environmentally preferred alternative," concluding it would be safer to avoid the lagoon altogether. The decision was up to Jahn, but the other agencies would have a right to appeal his decision to Corps headquarters.

On March 18, Gen. Carl Strock, Jahn's boss, warned Gen. Russell Fuhrman, then the deputy commander of the Corps, that Fish and Wildlife was threatening to appeal to Corps headquarters if Jahn chose the BP Amoco plan. "This is a big deal because virtually any delay at this point will result in loss of a year to BP's schedule," Strock wrote. That same day, the Alaska delegation sent a letter to Jahn and Westphal, the assistant Army secretary, urging support for the BP Amoco plan. The delegation repeated its arguments in a meeting with Strock, commander of the Pacific Ocean Division, and Stevens met separately with Ballard, the agency's military chief.

On March 30, Jahn chose BP Amoco's plan. "Although there is currently no indication of repercussions, the coexisting federal regulatory agencies in this process could eventually claim 'foul ball,'" conceded Jahn, who recently transferred to an Army base in Alabama. "I have pushed our original agreed-upon process much faster than anyone ever imagined or believed possible, and now the pundits could come in and complain that they were not allowed 'due process' as was originally agreed to."

A week later, when Fish and Wildlife did appeal Jahn's decision, BP Amoco announced that it was postponing construction at Northstar. Jahn e-mailed headquarters: "My recommendation is that we now fall back to a 'due process' approach."

"My team has been working under a lot of pressure up here (from me) to try and get a [permit] for the applicant this year—and have really stepped up to the plate," Jahn wrote. "It is frustrating that we apparently 'failed' (but not because of anything we did)."

In any case, now that "due process" had been reinstated, Fish and Wildlife pinned its hopes on its 19-page appeal. Congress built the appeal, or "elevation," process into the Clean Water Act to give environmental agencies a check on the Corps, which approves about 3,000 major permits a year. But the agencies almost never appeal, and the Corps almost never reverses its decisions, and rarely even agrees to review them. Before Northstar, Fish and Wildlife had appealed only 17 permits since 1992, and it was 0-for-17.

Still, Gary Frazer, the Fish and Wildlife Service's assistant director for ecological services, held out hope. His agency, after all, was legally the Corps' biological consultant on the Northstar project, and EPA and the National Marine Fisheries Service had threatened to appeal the BP Amoco plan as well. The Corps' own documents had estimated a disturbing 11 percent to 12 percent chance of a major spill under the plan, after a draft report suggested a stunning 25 percent chance. "Northstar was by far the best elevation I had ever seen," Frazer recalled. "I thought we had a very good chance."

Three weeks later, the service was 0-for-18. Fuhrman recommended that Westphal should deny the request for review, and Westphal did so with a brief no-thank-you letter, never explaining why he disagreed with the service. The Alaska congressional delegation immediately released a joint press release congratulating the Corps. "Dr. Westphal clearly saw that the Corps Alaska Region did a great job in their review," Stevens said in the statement.

### The Expanding Web

Today, the web of oil fields on the North Slope is expanding faster than ever. BP Amoco's Badami project extended the complex 30 miles east, to the doorstep of the oil-limits Arctic National Wildlife Refuge. Arco's new Alpine project extends it 34 miles west, to the edge of the National Petroleum Reserve Alaska. Northstar may usher in a new era of offshore drilling in the Beaufort Sea. And the Slope is buzzing with rumors of the first oil strike in the section of the petroleum reserve that was recently opened for drilling; meanwhile, in Washington, the Alaska delegation is pushing to open the Arctic refuge to oil exploration as well.

To Murkowski, this is a good thing. Until he sees proof of serious environmental damage, he'll continue to see the war over Alaskan oil as pure ecoterrorism. "Everyone wants to complain, because who's for big oil? But that's emotion, not science."

The problem, scientists say, is that no one really knows the environmental effects of building America's biggest industrial complex in an undisturbed tundra ecosystem, and the Corps has refused to analyze the impact. Academic studies suggest that polar bears are doing fine, and caribou herds have grown. But even though the Slope's projects are all literally connected by pipelines, the Corps has analyzed every one of them in a virtual vacuum.

At this point, Chappell says even BP would support a review of "the totality of what's happened on the Slope," and Stevens secured \$1.5 million for a compilation of earlier studies. But the Corps has continued to resist pleas by state and federal agencies for a comprehensive look. Oja's staff once spent more than \$100,000 laying the groundwork for a "cumulative impacts analysis," but in 1992,

the effort was killed in infancy by officials in Corps headquarters, and a memo from the district commander declared it "a dead issue."

The good news is that horizontal drilling technology has reduced the "footprint" of oil development. The hulking Prudhoe Bay complex was advanced for its day, but it littered the tundra with roads, buildings, smokestacks and airstrips. The new Alpine pad covers less than 1 percent as much tundra, and didn't even require a road. Today, a rig on the White House lawn could pump oil from underneath the entire District and a bit of the Virginia suburbs.

"The Corps recognizes how seriously we take our environmental standards," said Craig Doison, Alpine's construction manager. "We've all learned from the mistakes of Prudhoe Bay."

The bad news is that last year, Alpine workers somehow lost 2.3 million gallons of drilling chemicals while burying a pipeline under the scenic Colville River. There have been other impacts, too. The state recently identified 76 contaminated sites on the Slope. A million gallons of oil spilled here from 1996 to 1998. No one has figured out how to revegetate the Slope's used gravel pads. And there are troubling hints that man's presence has altered the natural way of life here, for example,

Arctic foxes, after scavenging behind polar bears for millions of years, now seem to prefer Dumpster-diving at Prudhoe Bay.

For biologists, the fear is not only what has happened on the Slope, but what could happen. Last fall, after the Northstar permit study suggested a 1 in 8 chance of a major spill, the state tested the industry's offshore responses with two "spill drills" in the Beaufort Sea. They were both abject failures. The first drill replicated a major spill in calm seas; the boom that was supposed to contain the oil broke. The second drill rehearsed a rough seas scenario; the lead response boat never made it to the imaginary spill.

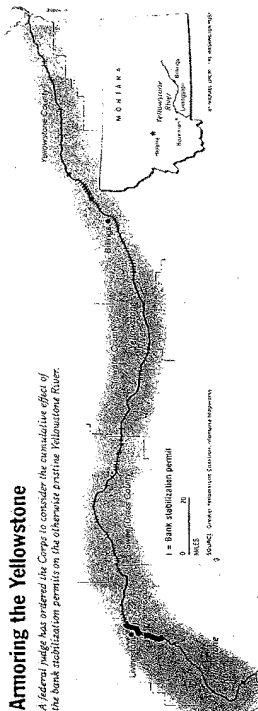
Chappell called the drills "a learning experience."

Environmentalists thought so, too. "Can you imagine a big oil spill in the Arctic?" asked Pamela Miller, a former Fish and Wildlife biologist who is now an environmental consultant in Anchorage. "The oil companies say 'Don't worry.' The Corps says: 'Don't worry.' Well, I worry."



## Armoring the Yellowstone

A federal judge has ordered the Corps to consider the cumulative effect of the bank stabilization permits on the otherwise pristine Yellowstone River.



LIVINGSTON, Mont.—It was no big deal when a few ranchers rode up their land along the Yellowstone River, scattering boulders along the banks to prevent erosion. It was no big deal when a few farmers did the same thing. But in recent years, scores of ranchers and farmers have armored the Yellowstone— and so have a trailer park, a lumber mill, a golf course, a railroad and a host of other landowners. The upper stretches of the West's longest free-flowing river are starting to look like charnelized rock piles.

And now a federal judge has ordered the Army Corps of Engineers to start paying attention.

Environmental regulators had been handing out bank stabilization permits to anyone who asked, signing off on everything with a "Pinding on No Significant Impact." The Corps never studied the construction's overall effect on the river's health, ignoring appeals from other federal agencies.

In May, U.S. District Judge Jack "Shartnoster" ruled that the Corps had "fallen far short" of its legal duty to analyze the cumulative impacts of individual projects. The Yellowstone may never be the same again.

The judge's criticism could have national implications as well. From oil projects on Alaska's North Slope to agricultural drainage in the Mississippi River Valley to rebot development in the Florida Keys, Corps regulators have often analyzed wetland-dill permits in isolation, despite federal laws requiring consideration of the cumulative impact. Now the Corps has been officially reminded that too many no-bid-dill projects can become a big deal, that they can nickel-and-dime an ecosystem to

The judge did not require the Corps to complete an environmental impact statement for the Yellowstone, the same requirement for the Yellowstone, which requires study of the cumulative impacts. "May" be significant. But his decision may require the Corps to conduct an environmental impact study of casino development on the Mississippi coast, blocking three "arbitrary, capricious" permits the Corps had already granted. Blasting the agency's "total lack of analysis of the growth-inducing effects of the casino projects."

The Yellowstone is still one of the West's best-preserved rivers, and one of the few without a dam. It is home to bald eagles and a world-famous trout fishery; it provided the backdrop for some of the fly-fishing scenes in "A River Runs Through It." But here in the Paradise Valley, the reach of river between Livingston and Yellowstone National Park, rocks, boulders, jetties, weirs and dams make it difficult to fish. In Park County, the Corps issued 38 bank stabilization permits in the two decades before 1966, when a heavy Yellowstone flood drove away chunks of valuable rip-

reside land. It approved 82 projects in 1998. The Corps regulates all the mentioned cumulative impacts in their permit approvals, but it was unable to admit the deficiency of their analysis. "It is not known whether these projects are having an adverse cumulative effect," one permit acknowledged. "The project is designed to be self-sustaining to determine whether or not cumulative impacts will occur, but the project is not available at this time," another one conceded. Several permits were denied that "a more intensive study is warranted to fully assess the cumulative impacts that this project may have on the surrounding area." But the Corps

Riprap projects do stop land from washing into the river. But they can also disturb aquatic habitats and increase erosion downstream by deflecting and accelerating the river, skewing the natural food chain while creating demand for even more projects. So the Fish and Wildlife Service and the Environmental Protection Agency have repeatedly urged the Corps to study their cumulative impacts on the Yellowstone. In fact, from 1996 through 1998, the service's Montana office wrote 82 official letters never at that intensive study.

[illegible]

Max Baucus (Mont.), the ranking Democrat on the Senate Environment and Public Works Committee, recently slashed \$1.15 million into a budget bill for a broader federal study.

"The environmentalists have lost all sense of reason," said O'Hair, whose nephew is Rep. Hill's state director in Montana. "They're tilted mining and timber in Montana. They're not interested in the good life, and they want to kill that, too. Green groups respond that man has been killing Montana's great rivers, and that the Yellowstone is almost all Mocha and Nutmeg. They're not interested in Nature has left. To the east, the Missouri is clogged behind dams. To the

"Now we'll see if the Corps is even capable of following the law," said Bruce Parting, the director of Montana Trout Unlimited, the lead plaintiff in the federal lawsuit.

— Michael Grunwald



**District chief:** Col. Sheldon Jahn, head of the Corps' Alaska District until recently, bragged of "arm-twisting" to aid development.



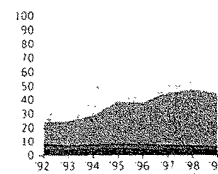
**Unbalanced diet:** An arctic fox eats scraps at Prudhoe Bay's Oxbow Landfill. Biologists are concerned about changes in animal behavior.

### A Permissive Program

The Army Corps of Engineers is denying fewer permits to dredge and fill wetlands, down from 487 rejections in 1992 to 211 in 1999. It also is granting far more permits, about 90,000 last year, mostly through a relatively easy process for nationwide and regional permits.

Permit approvals (in thousands)

- Nationwide permits
- ▨ Regional permits
- Letters of permission
- Standard permits



And it is conducting fewer site visits and inspections to check on developers.

Inspections (in thousands)

- ▨ Compliance inspections
- Site visits



In Alaska, the Corps has permitted thousands of development projects in wetlands, while denying only a handful of permits.

Total approvals and denials, 1992-99

Approvals	
Nationwide permits	3,307
Regional permits	2,815
Letters of permission	445
Standard permits	2,046
Denials	
Standard permits denied	63

SOURCE: Army Corps of Engineers

THE WASHINGTON POST

ENGINEERS OF POWER | Inside the Army Corps

# In Everglades, a Chance for Redemption

## Can Agency Reverse the Damage It Has Done?

Last of five articles

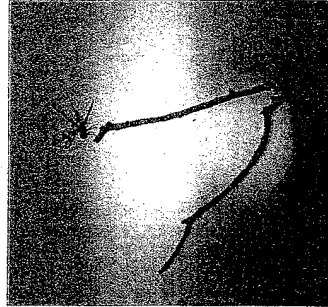
By MICHAEL GRUNWALD  
 Washington Post Staff Writer

**EVERGLADES NATIONAL PARK, Fla.** Congress assigned the Army Corps of Engineers to drain the Everglades in 1948, and the Corps did a superb job. It rerouted the slow-moving River of Grass through a maze of canals and levees and pumps, zipping billions of gallons of fresh water out of sawgrass prairies and cypress swamps to the residents of South Florida, controlling the floods that used to scatter corpses around this vast expanse of brown and green. The project, as its brochures point out, has been "inmensely successful!"

Except that it's killing the Everglades. So now Congress may assign the Corps to restore the Everglades, to replumb its original replumbing, to revive a shallow-water ecosystem of alligators and panthers and skinny-legged wading birds. The Corps has unveiled a \$7.8 billion plan to redistribute the region's water again, a project touted as the most ambitious environmental restoration effort ever. Half the original Everglades has been swallowed by development; much of the rest, an area the size of Delaware, is dying of thirst. This is the chance for redemption.

For the ecosystem, yes, but also for the Army Corps. There is a debate raging over the future of the Corps, and the Everglades

See CORPS, A20, C4, 1



**Ailing "treasure":** Dragonfly and sunset in Florida's Everglades.

THE WASHINGTON POST

A20 THURSDAY, SEPTEMBER 14, 2000 R 5M 1A

**ENGINEERS OF POWER** *Inside the Army Corps*

**Water, water everywhere?:** Half the original Everglades has been swallowed by development; much of the rest, an area the size of Delaware, is dying of thirst.

BY COLLEEN

# Redemption in the Everglades?

CORPS, From A1

plan represents one possible vision, an effort to redeploy the engineers who have armed rivers and drained wetlands for decades to restore nature instead. It is a notion with political as well as ecological appeal; the Everglades plan has overwhelming support, led by Vice President Gore (D) and his opponent's brother, Florida Gov. Jeb Bush (R), as well as Sens. Bob Graham (D-Fla.) and Connie Mack (R-Fla.).

"This is a model for what the Corps could do," said Frank Finch, a former Corps colonel who runs the South Florida Water Management District, the agency's Everglades partner. "The nation's values are changing, and so is the Corps. It's not a bunch of Neanderthals anymore."

But a little-noticed shadow hangs over the Everglades restoration plan: Some of America's most prominent scientists and environmentalists don't think it will restore the Everglades.

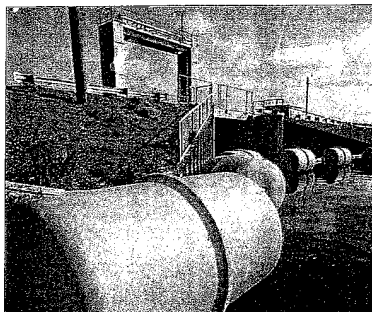
They call it an overly political plan, with too many water guarantees for sugar cane growers and South Florida residents, and hardly any for the environment. They call it an overengineered plan, reflecting the Corps' unending desire to micromanage nature with elaborate structures, and contend that simply removing key structures would re-create a much more natural flow of water for much less money. They also warn that the plan's first \$4 billion could produce almost no environmental benefits by 2010—and that the resulting disillusionment could imperil the rest of the plan, as well as future restoration projects.

These concerns have been lost in the bipartisan rush to embrace the Everglades, but critics believe that the ecosystem may never recover if they are not addressed now.

"The idea of restoring the Everglades to a truly natural system is completely anathema to the Corps philosophy," said University of Tennessee ecologist Stuart Pimm, who persuaded scientific superstars E.O. Wilson, Paul Ehrlich and Peter Raven to sign a letter last year criticizing the "serious failings" of the plan. "They just can't bear to give up any control."

This fall, Congress may take up the Everglades plan in its Water Resources Development Act (WRDA), the biennial smorgasbord of Corps projects. Several election-year conflicts could scuttle the bill, including an angry struggle over the Missouri River in the Senate and an obscure squabble over prevailing-wage rules in the House. But whenever it happens, the debate over WRDA and the Everglades could help determine the future direction of the Corps, who controls it, how it studies projects, and whether an agency that has eliminated more wetlands than any other American developer can reinvent itself as a defender of the environment.

The engineering talent of the Corps has



**Man-made aid:** This new water flow dam, shown in February, will help maintain clean water flowing through the Everglades.



**At risk:** The Everglades is the breeding ground for the tiny Cape Sable seaside sparrow. No one is sure how a project to restore the River of Grass would affect this endangered species.

never been in much dispute. President William H. Taft said he had "never met men... of greater skill in their profession." Gen. Dwight D. Eisenhower said the agency did a "splendid job in the Rivers and Harbors work." But there have always been disagreements about the projects for which the agency's talent has been deployed.

As early as 1836, the House Ways and Means Committee was complaining about "useless" and "fallacious" Corps construction projects. By 1951, Interior Secretary Harold Ickes was calling the Corps "the most powerful and most pervasive lobby in Washington" and fuming that "no more lawless or irresponsible federal group than the Corps of Army Engineers has ever attempted to operate in the United States, either outside of or within the law." In the 1970s, the dawning of a new ecological era led to critiques with such titles as "Army Engineers Draw Increasing Critical Fire for Disturbing Nature" and "New Roles for the Old Dam Builder?"

Today, there is some evidence that a new generation of Earth Day-era engineers is slowly changing the culture of some Corps districts, and that the Clinton administration is nudging the agency in greener directions. Its environmental spending has quadrupled since 1992 and is now one-fifth of its budget. The Corps is dismantling some of its dikes on the Mississippi and Missouri rivers, chaffeurung salmon around its dams on the Snake, restoring 100 miles of natural

meanders it sliced out of the Kissimmee here in Florida.

"The Corps has worked aggressively to incorporate national environmental restoration and protection goals," the Corps said in a statement. But as the agency hastened to add: "In speaking of the greening of the Corps, there are many shades of green."

Environmentalists have mixed feelings about the current shades. They say that while they are delighted that the Corps has begun trying to restore ecosystems and create new wetlands, they are dismayed that it is still pushing huge projects that damage ecosystems and drain wetlands—projects that could create a need for costly Everglades-style recovery efforts. And they fret that the Corps may be too political and insufficiently ecological to do major environmental projects right, that it could give restoration a bad name.

## Controlling the Water

Tommy Strowd knows where the water is, and he can make it move somewhere else.

Strowd, an unusually exuberant engineer with a wide, toothy smile, runs the "control room," the West Palm Beach nerve center for the 1,800 miles of canals and levees and 300 floodgates and pumps the Corps built to reroute South Florida's water—and a good place to understand the attitudes that have shaped the Everglades for the last 50 years. Strowd can check water levels anywhere in

the region through a microwave telemetry system that pipes streams of data from outdoor gauges into the room's computers. He can then open or close gates by remote control, or rev up pumping stations with a phone call, depending on who needs water where.

"It's a totally controlled system," exclaimed Strowd, a supervising engineer for the South Florida Water Management District. "I don't think people realize that."

This systematic reorganization of South Florida's water was a signature achievement for the old Corps, a triumph of human control over nature. It allowed the region to explode from a marshland backwater of 500,000 residents to a megalopolis of 6 million, ensuring them a steady supply of fresh drinking water and protecting them from vicious floods. Its only real downside was the impact on once-pristine lakes, estuaries, bays and the Everglades, which in those days was seen mostly as an uninhabitable and therefore useless mosquito swamp.

Today, the Everglades is seen in a more favorable light—and a politically unanimous one at that. "One of America's true national treasures," Gore called it in July. "A truly unique and precious landscape," Jeb Bush said in May. "A national environmental treasure," Senate Environment and Public Works Committee Chairman Robert C. Smith (R-N.H.) said at a January hearing. "An American treasure is in trouble," chimed in Joseph Westphal, the assistant Army secretary who supervises the Corps.

The River of Grass used to flow clockwise from Lake Okeechobee west of Palm Beach all the way down to the coral reefs and estuaries of Florida Bay, a wide sheet of water creeping through native grasses. That clean water was the lifeblood of the Everglades, the organizing natural principle that produced its unique mix of snakes and snails, gators and birds. The Corps replumbing has fractured the flow, squirting some of the lake's water straight out to sea, diverting the rest on a convoluted journey around sugar plantations and subdivisions, dumping too much on the Everglades in wet seasons and not enough during droughts.

Today, 68 of the ecosystem's plant and animal species are threatened with extinction. In the southern hall, Everglades National Park—which protects the largest swath of wilderness east of the Rockies and attracts 1 million visitors a year—has been cut off from much of its natural water flow by a levee and a bridge. More than 90 percent of the system's wading birds have vanished. The tiny Cape Sable seaside sparrow is in danger of extinction.

The Everglades restoration could be a signature achievement of the new Corps. But critics say the "national treasure" rhetoric in Washington has distracted attention from two central facts about the plan: It's not just for the Everglades, and it's not just for restoration.

Instead, it is a comprehensive water plan for South Florida, focusing heavily on urban and agricultural water supplies, which are usually local and state responsibilities. It is a scientific document, but with a 50-50 state-federal cost share for the project—and dozens of interest groups poised to sue if their demands are not met—it is by necessity a political document, too, forged through a "consensus process" with Indian tribes, developers, water utilities and sugar cane growers, as well as environmentalists and park officials.

Everyone agrees the only way to satisfy those interests and reverse the ecosystem's decline is to "get the water right." And some environmentalists contend that, given the intense political pressure, the Jacksonville District of the Corps has pushed hard for real restoration. Stuart Strall, the National Audubon Society's Everglades director, points out that bugs and birds don't have the same clout as, say, sugar executive Alfonso Fajul, who got President Clinton on the phone during one of his encounters with Monica S. Lewinsky.

But Strall says that while "this isn't a perfect plan, it's pretty incredible considering the political realities. The fact is, this project never would have gotten off the ground if it was only ecological."

The basic idea of the plan is to capture fresh water that has been draining out to the ocean, store it in new reservoirs, and then use some of it to mimic the natural flow of the pre-plumbing Everglades and some of it

## Bringing Back the River of Grass

The Army Corps of Engineers drained the Everglades with canals, levees, floodgates and pumps, controlling the system's water so agricultural and rural development could thrive. But the environment has suffered as the ecosystem has wilted from thirst. Now Congress is preparing to assign the Corps to restore the Everglades, to mimic the water regime of the natural system while also capturing new water for urban residents. But the \$7.8 billion Corps plan has been criticized by some top scientists and environmentalists, who say it's too complex and provides too few environmental benefits.

### ■ Pre-drainage

Until the early 1900s, development was limited to the highlands of the coastal ridge.

Most rainwater stayed within the wetlands of the Everglades, where it could seep through the ground and recharge the Biscayne Aquifer.

### ■ Now

The Corps built a system of canals, levees and pumps to prevent catastrophic flooding and open up land for agricultural and urban development.

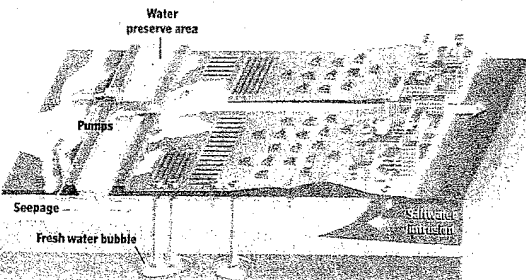
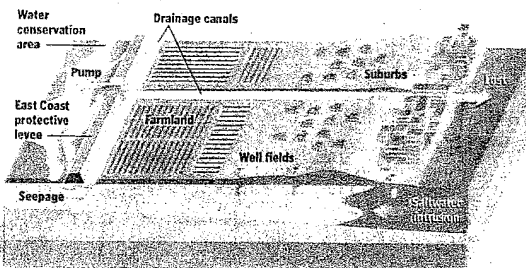
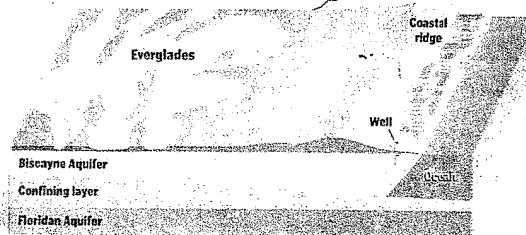
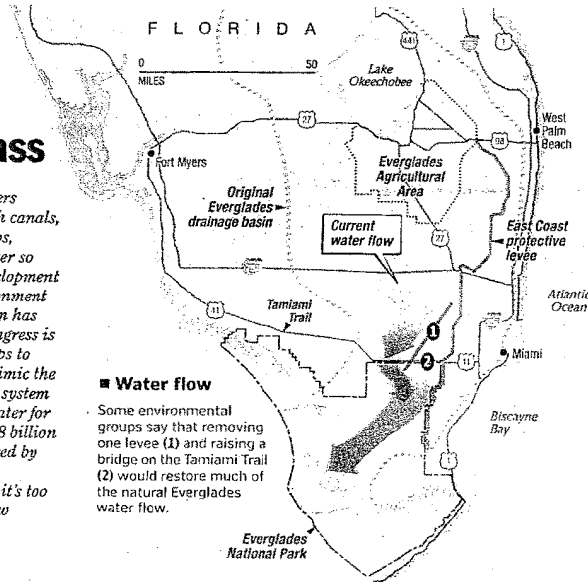
Two million acre-feet of water moves through the canals rather than the Everglades and Biscayne Aquifer. Water once stored in the Everglades is now seeping eastward, and the ocean is intruding on the aquifer, forcing wells further inland.

### ■ The Corps solution

The Corps plans to capture and store water now being lost into the ocean.

The water would be kept in reservoirs and used to replenish the Everglades and recharge the Biscayne Aquifer. Additional water would be stored as giant bubbles of fresh water in the deep, brackish Floridan Aquifer.

SOURCES: South Florida Water Management District, Environmental Defense



## Congress Ponders a New Mission

to stake the third of sugar plantations and the fast-growing South Florida population. The Audubon Society and other groups have argued that the perfect should not be the enemy of the good, that the plan is flexible enough to allow adjustments in the future, and that Congress needs to act now to get the restoration process underway. Eventually, they say, 80 percent of the plan's captured water will go to the Everglades.

But other groups, including Environmental Defense, the Natural Resources Defense Council and the Sierra Club—and, at times, some National Park Service officials—have argued that many of the plan's water-supply features are funded up front, while many of its restoration projects are scheduled decades in the future. For example, the main elements of the plan designed to bring additional fresh water to the park would not be built until at least 2019. Similarly, much of a 50,000-acre government tract purchased to store water for the natural system may be managed for sugar-irrigation instead. And much of the ultimate restoration strategy depends on untested technologies for underground water storage and wastewater recycling.

"I don't know what this is, but it's not a restoration plan," said hydrologist Bob Johnson, the park's research director. "This is just a situation where the engineer has no clothes. It might be a nice plan in 2040, maybe. But up front, there's hardly anything for the environment."

The critics also have a more fundamental complaint about the Corps plan: The agency is building elaborate new structures to move water in new directions instead of simply eliminating old structures and letting nature work its will. This will never be a purely natural system again, but the critics say a more natural approach would be more effective, less expensive and faster. In fact, Finn and his team of ecologists believe that the Corps could restore much of the system's historic north-to-south sweep through the park right away, largely by removing the one offending levee and raising the east-to-west bridge.

Corps officials declined to be interviewed. But their partners at the water district say the critics oversimplify complex problems. They say the ecologists' plan, which is derided within the agency as "let 'er rip," could worsen flooding problems for a sparsely populated area near the park, as well as for the Miccosukee tribe in the section of the Everglades north of the park. They say it also could shrink deer populations on state hunting grounds and eliminate tree islands that provide valuable habitat for wildlife.

The officials argue that, in general, control is a good thing; it allows them to make sure sparrows as well as humans have enough water but not too much. They say park officials are selfishly protecting the park at the expense of the rest of the system, ignoring the need to balance competing interests in a tense political environment.

"Unfortunately, when we send water to the park, it can hurt other areas," said Tom Teets, the water district's Everglades project manager. "We'd love to do more for the environment right away, but doing things too quickly can just make things worse."

The park is the heart of the remaining Everglades, covering 1.5 million acres and attracting 1 million visitors a year. An Everglades restoration that shorthanded the park, some environmentalists say, would be like a Grand Canyon restoration that shortchanged the canyon. "We understand that it's a balancing act for the Corps," said Lawrence Belli, deputy superintendent of the park. "But somehow, the environment always seems to lose."

### Washington Tug of War

So far, Congress has not focused on these scientific concerns about the Corps plan. But it has focused on the Clinton administration's attempts to force the Corps to address these concerns. And in the process, the Everglades has become a battleground for one of the major questions facing the Corps: Is it really an executive branch agency?

"The Corps stands in a very weird spot," said Rep. Mark Sanford (R-S.C.), a conservative who supports stronger executive control of the Corps. "The Founding Fathers set up three branches of government. . . . Somehow the Corps has slipped into an odd netherland."

The Corps unveiled its original Everglades plan in April 1999. But some environmentalists warned the White House and Deputy Assistant Army Secretary Michael Davis, the number two political appointee overseeing the Corps, that they would oppose it without solid assurances of restoration in the project's first \$4 billion. So Davis, a biologist, ordered the agency to insert new environmental commitments into its "chief's report," the final July 1999 plan submitted by then-chief of engineers Gen. Joe Ballard: more water for the park, an expanded role for the Interior Department in South Florida water decisions and a pledge that restoration would be the plan's top priority.

In Florida, this intervention has been criticized as political interference, an arrogant attempt by a Washington bureaucrat to trump a carefully negotiated compromise. And the Corps' military commanders have clearly resented the civilian intrusion on their turf. "There is one more change to the Michael Davis OOPS, SORRY chief's report that has to be made," one Corps colonel in headquarters complained in an e-mail at the time. Another Corps official warned, "Even though I understand that there is a significant need to get these

groups on board with total support, I am uneasy about changing what was in the report."

At a Senate hearing in May, Dexter Lehtinen—a fiery former U.S. attorney who represents the Miccosukee tribe, which also hired a former Corps colonel as a consultant—accused the administration of corrupting the process. "This is an outstanding example of the politicization of the Corps and Washington civilian interference which bends the process to placate the demands of groups with which the administration is close," Lehtinen charged.

In the end, Sen. Smith's committee passed the agency's April plan for the Everglades, without some of the July environmental commitments added by the administration. But Davis and the administration are still supporting the plan as the best chance to restore the Everglades. "I'm very confident this restoration will be a success," Davis said. "Nobody's ever going to be 100 percent satisfied with any plan."

Ever since Army Secretary Louis Caldera announced—and then hastily withdrew—some reforms in an effort to reaffirm executive branch control of the Corps this spring, GOP congressional leaders have battled to keep the administration's hands off the Corps, which has no civilian political appointees. They have even set up a task force to investigate the administration's alleged "politicization" of the Corps. And in a letter to the task force, Ballard cited his Everglades report as a prime example of "inappropriate political influence."

Ballard also complained about three other interventions, by Westphal: blocking Corps recommendations to maintain dams on the Snake River and to continue managing the Missouri River for year-round navigation, and ordering the Corps to relieve flooding around Devils Lake in North Dakota. But administration officials point out that the Corps is, after all, an administration agency. Westphal, the top political appointee supervising the Corps, did not substitute



his own recommendations for the Snake and the Missouri, he simply stopped the Corps from making proposals opposed by environmentalists.

"The Corps suggests that it is somehow inappropriate for the assistant secretary of the Army for civil works to be involved in decisions concerning the largest ecosystem restoration project in the world, an endangered species issue that affects . . . the entire Pacific Northwest, and . . . a system of massive reservoirs that affect vast reaches of the middle U.S.," one Caldera memo noted. "It was the need for [administration] involvement in just such important and controversial issues that caused Congress to create the position."

This power struggle could be settled in this year's WRDA debate in Congress. Senate Minority Leader Thomas A. Daschle (D-S.D.) is determined to strengthen executive branch oversight of the Corps, and he hopes to use the water bill to make it happen. He also has proposed a commission to investigate potential changes at the Corps—including privatizing some of its functions and possibly even transferring it to the Interior Department.

"That agency needs a shakedown, top to bottom," Daschle said.

Congress is not likely to move the Corps out of the Pentagon any time soon. But there are less drastic reform proposals that could surface in WRDA. A few examples:

- Democratic Reps. Ron Kind (Wis.), Tammy Baldwin (Wis.) and Earl Blumenauer (Ore.) have filed a bill that would require independent reviews of Corps technical studies for all projects over \$25 million, an effort designed to ease concerns about the agency's alleged pro-project bias. Rep. Sherwood L. Boehlert (R-N.Y.), chairman of the Transportation and Infrastructure water resources subcommittee, likes the idea, and Shuster agreed to try it for a few projects in the House version of WRDA. But barge firms, farm groups and other interests that benefit from Corps projects oppose the language

because they believe that Corps studies already take too long.

- The Corps signs off on projects whenever it determines the economic benefits are at least equal to the costs to taxpayers. Sanford and other conservatives want lawmakers to require at least a 2:1 ratio, to screen out marginal projects. "Right now, we are guaranteeing taxpayers a lousy rate of return on their investments," Sanford said. But the agency's defenders believe stricter rules would hold up important navigation and flood control projects.

- Kind also has proposed language that would require the Corps to take environmental considerations as seriously as economic ones when analyzing projects and would prevent the Corps from approving projects with severe ecological consequences. "If that language had been in place 50 years ago, we wouldn't be spending \$8 billion in the Everglades," Kind said. "I really think it would help restore the credibility of the Corps."

- The White House is considering end-of-term action against three huge flood-control projects detailed earlier in this series: The St. John's Bayou-New Madrid floodway project in Missouri and the Yazoo pump and Big Sunflower maintenance projects in the Mississippi Delta. And Caldera has not given up on the idea of some management changes designed to beef up executive branch oversight of the Corps, despite his resounding defeat this spring.

Today, the Senate will hold a confirmation hearing for Gen. Robert Flowers, who has been nominated to succeed Ballard.

Some would-be Corps reformers are skeptical that anything will change. Rep. Wayne T. Gilchrest (R-Md.), who is trying to stop the Corps from deepening the Chesapeake and Delaware Canal for the Port of Baltimore, said he is not optimistic about dramatic changes at the Corps so long as the agency controls the water projects that congressmen crave.

"It's funny," Gilchrest said. "There are a

lot of good environmentalists up here [in Congress]. There are people who really care about saving money. But they go soft on the Corps."

## New Avenue for Growth

Col. James May, the new Corps district engineer in Jacksonville, is listening. His new partners in the South Florida water district are briefing him on the Everglades restoration, explaining phosphorus loads and ecosystem models and habitat protection. They are really talking about a new way of doing business, a new way of looking at the world.

"Phenomenal," May finally says. "Very impressive."

For decades, Congress deployed the Corps to build dams and levees that turned free-flowing rivers into slackwater ditches to drain biologically diverse marshes for farmers and developers. Finch, the former Corps colonel who now runs the water district, sees a tremendous opportunity for his old agency in the Everglades, a chance for a new start. "You take all that technical expertise, and you unleash it on a new area of the environment," he said.

In its statement to The Washington Post, the Corps said it does what it is told, describing its partial redeployment as a reflection of America's changing values. "Over the last 150 years, the nation's environmental consciousness and public values have evolved from seeing the environment as something to be conquered to seeing it as something to be managed and conserved," the statement said. "The Corps has been the primary instrument for translating these broad social preferences into reality."

So now members of Congress are bringing Corps environmental projects home to their constituents. Sen. Max Baucus (D-Mont.) is pushing a study of the Yellowstone River. Sen. George V. Voinovich (R-Ohio) is shepherding a restoration project for the Ohio River. These days, the agency is planting seagrass in the Laguna Madre in Texas, building habitat for migratory waterfowl in the Central Valley of California and destroying a levee to restore tidal flows in Seattle. Rep. Jack Kingston (R-Ga.) just got the Corps to restore a degraded bend in the Savannah River.

At the same time, though, Kingston wants the Corps to spend \$230 million to deepen Savannah Harbor, a project that could threaten that very river. As he sees it, the Corps will go where the money is. After all, in the agency's Strategic Vision, Corps commanders vowed to "market and capitalize on opportunities for mission growth," to "continuously scan the horizon at all levels for emerging trends, challenges and opportunities." The environment, Corps memos suggest, offers an attractive opportunity for mission growth; a proposed restoration effort for Louisiana's coastal marshes would dwarf the Everglades plan.

The way I see it, the Corps is an agency that likes projects, no matter what they do to the environment," Kingston said. "Give them a dollar and they'll push it any way they want."

This may be the most important question facing Congress about the Corps: Should it keep expanding its missions, focus more on traditional missions, shift toward new environmental missions, or just do less? The Corps now builds schools and jails and water treatment plants. It cleans up nuclear and toxic waste. It pumps sand onto beaches. It works for government entities as diverse as American Samoa, the Unatila Indians and the Kennedy Center. The Corps works on sanitation in Mauritania, runway construction in Micronesia and landslide analysis in Ecuador. The agency has more than 250 program areas listed on its Web site, from a Paint Technology Center to a Management and Curation of Archaeological Collections Center to a Metallurgy and Welding Engineering Support Center.

Critics are beginning to say "Enough already." The Corps is supposed to take on only those projects that cannot be performed "reasonably and expeditiously" by the private sector, and Sen. Craig Thomas (R-Wyo.) wants to amend WRDA to rein in the agency's forays into school construction and other areas.

In February, after learning that Corps military commanders had drawn up a Program Growth Initiative to expand the agency, Westphal declared: "I don't think we should be in the business of searching for work. No way. We've got enough on our plate."

But in the administration's WRDA plan, Westphal proposed several new missions: a modernization program for the agency's 4,400 recreation sites, a "watershed planning" program and an industrial cleaning program that would send the Corps into urban "brownfields."

In fact, Westphal unveiled an even more expansive blueprint for the Corps last year in San Francisco, at a conference of the agency's leaders. The major challenge for the Corps, he said, would be "defining and preparing for new missions vital to our nation's future, both domestically and globally." He listed more than a dozen: Managing the nation's water supply. Preserving and restoring the environment. Promoting economic development and democracy abroad. And then he finished with a flourish, a truly soaring vision of a Corps future beyond the horizon.

"The Army Corps of Engineers is a great organization," Westphal concluded, according to a copy of the speech obtained by The Post. "So great, that I think our real next opportunity is to be ready to build the infrastructure man will need to settle the planets."

# Corps of Engineers Nominee Open to Reform

*Army's Flowers Vows to Obey Civilian Bosses; Senators Urge Him to Restore Confidence in Agency*

By MICHAEL GRUNWALD  
Washington Post Staff Writer

At a Senate hearing dominated by the controversial performance of the Army Corps of Engineers, President Clinton's nominee to lead the agency vowed yesterday to lead the agency with integrity, to protect the environment and ensure the integrity of Corps technical studies.

Maj. Gen. Robert B. Flowers, whom senators expect to be confirmed as chief of engineers in the coming weeks, expressed openness to some of the pending congressional proposals for reform of the Corps during his testimony before the Environment and Public Works Committee. And after years of fierce fighting in the Clinton administration and Congress over the Corps chain of command, Flowers stated in no uncertain terms that he would report to the administration's political appointees.

"It's very clear in my mind who I'd work for," said Flowers, a former commander of the Mississippi Valley Division of the Corps, who has the only engineering school at Fort Leonard Wood in Missouri. The Corps is formally an executive branch agency in the Pentagon chain of command, but efforts by administration officials to exert authority in recent years were resisted by the recently retired chief engineer, Maj. Gen. Joseph Westphal, as well as congressional leaders.

At the hearing, senators of both parties urged Flowers to restore public confidence in the Corps, citing evidence of the agency's flawed studies, unnecessary projects and environmental degradation reported



**Maj. Gen. Robert B. Flowers, nominee to head the Army Corps of Engineers, vows to respect civilian chain of command.**

use this as an opportunity to restore confidence in the Corps."

The committee's chairman, Sen. Robert C. Smith (R-N.H.), said at the hearing that it would be up to Flowers to "restore the reputation" of the Corps. He added in an interview that Congress should consider reforms "because of the opportunity of the agency to evaluate itself."

But Smith said that because Flowers already recognizes that he would report to the assistant Army secretary for civil works, there is no need for reforms designed to strengthen executive branch control of the Corps. Army Secretary Louis Caldera has said he still hopes to implement changes he proposed, but that he would wait until the next administration.

Smith said the committee would not tolerate the "gridlock" that characterized the relationship between Assistant Army Secretary Joseph Westphal and Ballard. But he announced yesterday that a GOP task force investigating the Corps had found no evidence of inappropriate influence or interference in Corps operations. "I don't see a 'poor judgment'—and no need for management reforms."

"I can already read the headlines. Hill Corps Comes Stop the Reforms," Smith said. "But that is not the message I want the nominee to take away from this hearing. There have been legitimate policy issues. There have been legitimate concerns about Corps economic analyses and the future role of the Corps. These issues should be examined, and, if necessary, fixed."

Caldera and Westphal said they would not comment before they heard directly

from Smith. The Corps also declined to comment.

The senators focused heavily on allegations that Corps officials manipulated studies of a lock expansion project on the Mississippi River and a dredging project on the Chesapeake and Delaware Canal. Yesterday, the agency sent proposals to Sen. George Mitchell (D-Maine) and Sen. Max Baucus (Mont.), the committee's ranking Democrat.

Flowers said only that he thought Congress should study the idea of independent reviews, and he warned that they might be "very difficult to do." But he said he would support an effort to stop Corps projects whose environmental damage could not be offset in a cost-effective manner—a reform being pushed by Rep. Ron Kind (D-Wis.).

"That sounds pretty good to me," Flowers said. He also said he would work to reduce the agency's backlog of neglected environmental "mitigation" work. "I will work to get that backlog under control," he added, but he said the Corps has dramatically expanded its missions. "We have a very, very full plate."

"Overall, I was encouraged by his testimony, and by the line of questioning," Kind said.

At a news conference yesterday to offer a preview of his plans for the Corps, Flowers said he would work to restore environmental groups and taxpayers for common sense said they were disappointed that Flowers had not denounced the agency's problems more directly.

# The Washington Post

AN INDEPENDENT NEWSPAPER

## *The Greening of the Corps*

**P**RESIDENT CLINTON'S nominee to head the Army Corps of Engineers told a Senate hearing last week that Corps projects under his tenure will respect the environment, and Corps decisions will earn "the full confidence of the American public." The challenges he'll face in meeting those goals have been sharply drawn in a series of reports by The Post's Michael Grunwald. Those reports show an agency that too often has made its own rules, pushing to justify or to permit gargantuan projects across the country, evading effective oversight within the Pentagon by playing to pork-happy members of Congress. Too often, it has relied on flawed economic assumptions to justify environmentally costly projects, including a dredging project for the port of Baltimore. In its role as regulator of wetlands development, the Corps has issued permit after permit—for oil drilling projects in Alaska, casinos on the Gulf Coast, bank stabilization projects on the Yellowstone River—without taking into account the cumulative effect on the local environment.

The Corps' roots are in a time when conquering nature was the accepted imperative, and environmental damage didn't weigh

against the benefits of flood control and improved navigation. But over the years a lot has changed, including attitudes toward the environment, uses of the nation's waterways and the shape of the national economy. Both protected and pressured by its patrons on the Hill, the Corps has operated with one foot in the old world and one (or at least a few toes) in the new. While it has touted green initiatives and is about to embark, in the Everglades, on its biggest restoration effort ever, it still has a long way to go to better balance the competing interests affected by its projects.

Congress can show its support for reform by moving forward on a proposal for independent review of Corps studies on major or controversial projects. That could help insulate them from the political pressure that too often swirls around them. The administration, meanwhile, needs to pursue its efforts to assert executive branch control over the Corps. Maj. Gen. Robert B. Flowers, the new chief engineer nominee, clearly acknowledged last week that he works for civilian bosses. That might seem self-evident, but in the case of the Corps, it's a sign of progress.

**STATEMENT OF JOHN POZSGAI  
(PREPARED WITH THE ASSISTANCE OF DAVID SOWERBUTTS, ESQ.)  
(OF THE FIRM CORDISCO & BRADWAY)  
THE COMMITTEE ON GOVERNMENT REFORM  
2157 RAYBURN HOUSE OFFICE BUILDING  
OCTOBER 6, 2000**

My name is John Pozsgai. I am an immigrant to this great land and want to thank you for taking the time to hear about my case today. I think it shows what the government can do when it forgets about the little people, those of us who work with our hands.

I am not a rich man, but I am an honest one. I never wanted to violate any laws, but there's a lot that I don't really understand about these environmental laws. There was a dump, right across the street from my house. Over the years, I watched it become more crowded with junk and tires. After a while, because of all the tires, our road started to flood, and so did my basement.

After about twenty years of flooding and looking at this junkyard, I thought it would be good to buy it and put a new garage on it. I am a mechanic by trade and own a small truck repair shop. I thought it would be a good piece of land to open a new building on. So, I bought it, and started pulling out the tires. That is when my problems started.

First the town told me I couldn't park my vehicles on it, and then I was fined for it. Then, I was told that if I donated to the local conservation fund, I could get this permit and build. Then the Army Corps of Engineers told me I needed another permit, but the Department of Environmental Resources said I didn't. Then the Environmental Protection Agency had me arrested.

Mr. Chairman, these rules are confusing. I am not a lawyer, or an engineer. I am a mechanic who mortgaged his house to buy a junkyard so I could put a garage on it. Now I've gone to jail and have a hard time getting by with a piece of property that is now worth nothing in

terms of money. But, it is worth everything to me and my family in terms of hard work it represents. I would have never bought it if I didn't think I could use it.

I am proud to have my daughters testify for me today. I put them through college. It was hard, but I did it. They are the first in my family to go to college. I am thankful that I could send them to college before the government wanted to take my property. I probably never would have been able to send them otherwise.

Mr. Chairman, please listen to them today. They can tell my story in better words than I can. Thank you.

[| Washington University School of Law Home Page | Publications Home Page |](#)  
[| Quarterly Home Page | Quarterly Issues |](#)

## Washington University Law Quarterly

c. 1998 by Washington University

Volume 76

Number 1

Spring 1998

### WETLANDS REFORM AND THE CRIMINAL ENFORCEMENT RECORD: A CAUTIONARY TALE<sup>[1]</sup>

Cite as 76 Wash. U. L.Q. 71

KATHLEEN F. BRICKEY<sup>[\*\*]</sup>

*See how the Fates their gifts allot,  
For A is happy--B is not.<sup>[1]</sup>*

Marinus Van Leuzen was a pretty lucky man. Van Leuzen owned a waterfront lot. Because the lot contained wetlands, local officials informed him that it could not be developed without a permit from the Corps of Engineers. Notwithstanding this advice, Van Leuzen raised the elevation of the site by about three feet and built a pole house. Unfazed by repeated warnings that his construction activity was illegal, Van Leuzen added a shell driveway, a concrete deck and sidewalks. He installed a septic system, sodded the lawn and added more fill.<sup>[2]</sup> Van Leuzen's development of the site in clear violation of the Clean Water Act<sup>[3]</sup> triggered a lengthy criminal investigation that culminated in high level discussions at the Justice Department about whether he should be prosecuted for filling wetlands without a permit. To Van Leuzen's good fortune, the criminal case was closed without further action and the matter was referred for civil enforcement.<sup>[4]</sup>

John Pozsgai had far worse luck. Pozsgai owned and operated a truck repair business. In order to expand his business, Pozsgai bought an adjacent lot that his lawyer described as a neighborhood dumpsite.<sup>[5]</sup> Because the entire tract was legally classified as wetlands, local authorities notified Pozsgai that he could not develop the land without a permit from the Corps. Equally unfazed by repeated warnings that his construction activities were illegal, Pozsgai filled and graded the site in preparation for building a garage. To Pozsgai's misfortune, a lengthy criminal investigation of his case culminated in his indictment, conviction<sup>[6]</sup> and three-year prison term for violating the Clean Water Act.<sup>[7]</sup>

Ironically, each case came under the glare of congressional scrutiny in its own right. Van Leuzen's first came to light in congressional oversight hearings convened to investigate allegations that management in the Justice Department's Environmental Crimes Section was in a state of disarray. Van Leuzen's was one of six environmental cases that were criminally investigated and, after discussions among high-level Justice Department officials, were dropped as criminal matters. Congressional investigators cited the six decisions as examples of inappropriate declinations to prosecute, and of the Justice Department's antipathy toward its environmental criminal enforcement program.<sup>[18]</sup> The government's refusal to pursue Van Leuzen's case even fueled the belief that the Justice Department had an unwritten rule against prosecuting wetlands violators.<sup>[19]</sup>

In the meantime, a successful media campaign orchestrated by several conservative groups made Pozsgai a cause célèbre of the property rights movement.<sup>[10]</sup> At House oversight hearings on the status of wetlands and wetlands regulation, Pozsgai's prosecution was described as an example of "enforcement overkill"<sup>[11]</sup> that bordered on the "incomprehensible."<sup>[12]</sup> Critics charged that the government pursued Pozsgai "as if he were Public Enemy No. 1," even though his crime was minor.<sup>[13]</sup> Pozsgai was portrayed as the victim of an absurd wetlands enforcement policy<sup>[14]</sup> that irrationally imprisoned "senior citizens whose only crime was to realize the American dream of owning and developing their own property."<sup>[15]</sup> Needless to say, conservative journalists eagerly joined in the cause.<sup>[16]</sup>

Pozsgai was only one of several wetlands violators who achieved notoriety through criminal prosecution. A media blitz orchestrated by the Fairness to Landowners Committee, for example, generated more than four thousand petitions and letters to President Bush on behalf of William Ellen, a marine construction project manager.<sup>[17]</sup> Ellen was convicted of illegally filling more than eighty acres of wetlands on a large tract of land that was being developed as a commercial hunting preserve. Notwithstanding that Ellen was not his constituent and that the sentence was a modest six months, Senator David Pryor sought a presidential pardon for Ellen, calling his case "a prime example of the strange and twisted consequences that can result from a bureaucracy out of touch with reality."<sup>[18]</sup> The Ellen prosecution prompted conservative writers to label wetlands regulators and enforcement officials as "Bureaucratic Enviro-Nazis"<sup>[19]</sup> and led property rights advocates to complain that something is terribly wrong when the government wants to jail a mere "dirt mover"<sup>[20]</sup> while murderers and rapists are being released due to prison overcrowding.<sup>[21]</sup>

In view of the extensive publicity that these and similar prosecutions received,<sup>[22]</sup> it should come as no surprise that when Congress considered a Clean Water Act reauthorization bill in 1995, wetlands regulation reform was high on the agenda. Responding to calls to inject "balance and common sense" into water pollution laws,<sup>[23]</sup> supporters of regulatory reform vowed to replace "oppressive wetlands regulations"<sup>[24]</sup> conceived by environmental "extremists" with a simplified law that would preserve the "best" wetlands while at the same time protecting the rights of property owners.<sup>[25]</sup> The Clean Water Act Amendments of 1995 would have accomplished all that and more. Dubbed by detractors as the "dirty water bill,"<sup>[26]</sup> the amendments would have resulted in the loss of protection for at least half of the nation's existing wetlands,<sup>[27]</sup> eliminated the Environmental Protection Agency's ("EPA") authority to enforce wetlands regulations,<sup>[28]</sup> abolished all administrative enforcement of wetlands regulations<sup>[29]</sup> and made criminal enforcement of wetlands regulations to prevent environmental harm literally impossible. The bill would have forbidden initiating a criminal prosecution until after the violator had disobeyed a compliance order and the government could show that the violation had caused "actual" (and perhaps irreversible) environmental "degradation."<sup>[30]</sup> Notably, proof of actual degradation of the



environment is not a prerequisite for criminal enforcement of any other environmental law.

What are the dynamics of the wetlands criminal enforcement program? Are wetlands prosecutions, as critics insist, classic examples of a system out of control? Or do they reflect reasoned judgments about enforcement priorities? What makes wetlands regulation and enforcement such a highly charged issue?

The furor over the wetlands enforcement program can be best understood when placed in its statutory context. Apart from concerns about unreasonable government interference with private property rights,<sup>[31]</sup> and about ambiguity<sup>[32]</sup> and complexity<sup>[33]</sup> found in water pollution laws, the fundamental bone of contention is the breathtaking reach of wetlands regulations.<sup>[34]</sup> The Clean Water Act defines the term "navigable waters" as "waters of the United States, including the territorial seas."<sup>[35]</sup> While regulations promulgated by the Corps of Engineers and EPA define waters of the United States<sup>[36]</sup> to include bodies of water that would be recognized as such in common parlance,<sup>[37]</sup> they also include wetlands that are adjacent to traditional waters, thus taking "a quantum leap onto land."<sup>[38]</sup> In consequence, a property owner could run afoul of wetlands regulations not only by filling in marshes, swamps and bogs, but by dumping dirt into a dry arroyo or ditch as well.<sup>[39]</sup> As one court put it:

In a reversal of terms that is worthy of *Alice in Wonderland*, the regulatory hydra which emerged from the Clean Water Act mandates . . . that a landowner who places clean fill dirt on a plot of subdivided dry *land* may be imprisoned for the statutory felony offense of "discharging pollutants into the navigable *waters* of the United States."<sup>[40]</sup>

Thus, the highly publicized convictions of Pozsgai and Ellen (and Van Leuzen's near miss) not only raise the spectre of a vigorous criminal enforcement program under which large numbers of criminal cases are processed—they also focus the mind on the prospect that innocent homeowners and unwitting entrepreneurs may be criminally prosecuted for violating regulations that forbid developing a site that, to the untrained eye, could not conceivably be considered legally protected wetlands.<sup>[41]</sup>

As logical as these intuitive inferences may seem, in reality they are common misperceptions. Despite estimates that suggest a high level of criminal enforcement activity,<sup>[42]</sup> a look at the enforcement record reveals surprisingly few wetlands prosecutions to date.<sup>[43]</sup> An exhaustive search of available sources of information revealed only twenty criminal prosecutions for wetlands violations.<sup>[44]</sup> And as the following discussion demonstrates, these violations share remarkably similar traits that reveal vulnerable fault lines in current criticisms of the wetlands enforcement program.

Critics of the Pozsgai prosecution cite it as evidence that "[t]he government means business . . . when it comes to prosecuting the little guy."<sup>[45]</sup> But a simple look at who gets caught in the criminal enforcement net suggests quite the opposite. In the nineteen wetlands prosecutions for which there is sufficient information to classify the defendants,<sup>[46]</sup> eleven defendants were corporate entities or partnerships that developed wetlands commercially. Eight of the twenty individual defendants were officers of those corporations who had operational responsibility for the development. Nine of the remaining defendants were contractors, commercial developers or professional engineers.<sup>[47]</sup> Thus, with three exceptions, all of the defendants were experienced in some facet of commercial real estate development and were (or should have been) knowledgeable about restrictions on developing sites containing wetlands.

William Ellen exemplifies this profile. Ellen operated a business that specialized in the design of, and acquisition of permits for, construction projects involving wetlands and subaqueous areas.<sup>[48]</sup> He

had a bachelor of science and engineering degree and had been a staff environmental engineer with a state agency. While holding that position, he had responsibility for reviewing the regulation of wetlands projects. He later formed his own company to specialize in the design of wetlands construction projects. As project supervisor for the commercial hunting preserve development, Ellen was directly responsible for acquiring environmental permits and complying with state and federal environmental regulations. Yet despite his extensive experience, specific project responsibilities and knowledge that the development site contained wetlands, Ellen failed to obtain a single permit.

Of the three defendants whose profiles differed from those described above, two (including Pozsgai) were business owners who developed property containing wetlands for the purpose of maintaining or expanding their businesses. Thus, with one lone exception,<sup>[49]</sup> all of the cases revolved around developing wetlands for commercial purposes. Unlike Van Leuzen, who sought to enhance his enjoyment of his waterfront lot, those who were prosecuted were economically motivated to violate the law.

The inference that commercial purpose or economic motive is relevant in deciding whether to prosecute wetlands violators is consistent with the record in Van Leuzen's case. Although some officials involved in the decisionmaking process disagreed about whether his violation should be treated as a criminal or civil matter, one factor that militated against criminal prosecution was the belief that the case was too small to be worth prosecuting.<sup>[50]</sup> The Assistant United States Attorney to whom the matter was assigned urged caution in selecting the first wetlands case for criminal prosecution in her district. Observing that past practice had been to rely on civil remedies for wetlands violations, she noted that guidelines for deciding whether to pursue a case civilly or criminally were needed to avoid the appearance of being "arbitrary or unfair."<sup>[51]</sup> Those sentiments also had been echoed by an Assistant Attorney General who recommended forbearance in bringing criminal charges in wetlands cases until prosecutors found "a worthy subject[---]i.e., a developer."<sup>[52]</sup>

Thus, it seems safe to say that the wetlands criminal enforcement program is aimed primarily at commercial actors who seek to profit from their violations. The perception that the government singles out the unsophisticated "little guy" for wetlands prosecutions is simply not true.

The offense profiles of the cases in the data base provide even more striking evidence of why they were considered appropriate targets for prosecution. They demonstrate that defendants were selected for criminal prosecution when there was strong evidence not only of culpability in a legal or technical sense, but of actual awareness of wrongdoing as well. Defendants in five cases hired (and sometimes fired) one or more professional consultants who warned them that the property contained wetlands and could not legally be developed without approval from the Corps. More telling still, defendants in a dozen cases had received one or more verbal warnings from regulators that the development was illegal. And in ten of the cases, the defendants ignored one or more written cease and desist orders directing them to stop further development immediately.

Several of these cases distinguish themselves from the rest of the pack. In one, a defendant who received cease and desist orders attempted to bribe an official to unlawfully issue a permit.<sup>[53]</sup> In another, the putative defendant filed suit to enjoin the government's criminal investigation.<sup>[54]</sup> In two others, the defendants' probation was revoked because they continued to develop wetlands illegally without a permit.<sup>[55]</sup> But the grand prize goes to the defendant in *United States v. Bieri*.<sup>[56]</sup> Bieri, a contractor, filled in the same site three different times after restoring it twice on orders from the Corps.<sup>[57]</sup> Worse still, Bieri flaunted his lawbreaking to gain a competitive edge. In his discussions with potential customers, Bieri exaggerated the amount of time it takes to obtain a permit and said that he

could finish the job sooner because he would not delay a project to apply for one.<sup>[58]</sup>

The unsung examples are legion, but let us return to the sung heroes of the wetlands reform movement. Once again, William Ellen fits the profile. Ellen hired a civil engineer who told him that the project site contained wetlands and that a permit was required. Four to five months later, Corps officials toured the property with Ellen and pointed out which areas were wetlands. On a follow-up visit, Corps officials actually marked off the wetlands area by tying survey ribbons on trees and bushes. Yet despite these and other unmistakable warnings, Ellen refused to stop the work because of contractual deadlines.<sup>[59]</sup>

And what about John Pozsgai, the small businessman who was simply trying to realize the American dream of owning and developing his own land? Was he unfairly singled out for prosecution? Heed the rest of this cautionary tale. Before he purchased the fourteen-acre tract, Pozsgai hired an engineering firm to determine whether the land was suitable for expansion of his truck repair business. The engineering consultant advised him by letter that it was not. The entire site constituted wetlands and could not be developed without a permit from the Corps. While he was still considering purchasing the site, a Corps of Engineers biologist also informed him that he could not fill the land without a permit. As negotiations to buy the property continued, Pozsgai hired a second engineering consultant to evaluate the site, was again told that the property was wetlands and was again warned that any site preparation would require prior approval from the Corps. Ever the optimist, Pozsgai hired yet a third engineering consultant, who confirmed that the tract was protected wetlands. After receiving the three consultants' reports and the notice from the Corps, Pozsgai turned adversity into advantage by renegotiating the purchase price downward by \$32,000--and then began filling in the site.<sup>[60]</sup>

Following this negotiating coup, Corps of Engineers officials repeatedly warned Pozsgai that he was violating the law. Yet despite the warnings, which included at least two cease and desist letters,<sup>[61]</sup> Pozsgai relentlessly filled in the land. Even after the United States Attorney filed a civil action and obtained a temporary restraining order ("TRO") against him, Pozsgai remained undeterred. Two days after the issuance of the TRO, a video camera installed by the EPA on nearby property recorded the dumping of twenty-five truckloads of debris onto the land and showed Pozsgai operating a bulldozer to level the fill. Shortly thereafter, the court held Pozsgai in contempt.<sup>[62]</sup>

Like their counterparts in other wetlands prosecutions then, Pozsgai's and Ellen's violations were neither casual nor inadvertent. They were committed in flagrant disregard of clearly stated rules of the game.<sup>[63]</sup>

The trait of flagrant disregard of authority becomes manifest in other offense characteristics as well. Many wetlands violations that resulted in criminal prosecution were aggravated by acts of misrepresentation, concealment and obstruction. Defendants lied to the Corps of Engineers about wetlands on property they were developing.<sup>[64]</sup> They falsely promised regulators that they would come into compliance, but at the same time instructed their workers to proceed apace.<sup>[65]</sup> They lied to purchasers of property about the nature of the work being performed and the regulated status of the property,<sup>[66]</sup> and erected physical barriers to conceal illegal construction activity from public view.<sup>[67]</sup> One defendant even threatened his environmental consultant, ordering him to destroy an unfavorable report on the status of the property and not to communicate the contents to regulatory authorities.<sup>[68]</sup> Although in this particular regard Ellen and Pozsgai were not the worst of the lot, their crimes were compounded by acts of misrepresentation and concealment as well.<sup>[69]</sup>

*Things are seldom what they seem,  
Skim milk masquerades as cream.*<sup>[70]</sup>

What lessons can be learned from this cautionary tale? It presents the available details of the wetlands criminal enforcement record in virtually the entire universe of wetlands prosecutions. What does the empirical evidence tell us about the use of criminal prosecution as an enforcement tool?

First, it is abundantly clear that criminal prosecution for wetlands violations is the exception rather than the rule. Public relations campaigns notwithstanding to the contrary, the criminal enforcement record reflects sometimes remarkable restraint. The details of the record reveal that the decision to prosecute normally follows repeated efforts by Corps and other officials to obtain compliance through persistent but relatively informal administrative steps over a substantial period of time.<sup>[71]</sup> Criminal prosecution seems to be viewed as a measure of last, rather than first, resort. Stated differently, the criminal enforcement record is consistent with highly selective enforcement decisions that reserve criminal prosecution for the rare (but aggravated) case.

A second lesson flows from the first. The case studies reveal recurring patterns of flagrant and repeated violations committed under circumstances that leave no room for doubt about the violator's culpability. The decision to prosecute more often than not follows repeated civil and administrative efforts to bring the violator into compliance. Thus, no matter how technical or complex wetlands regulations may be, criminal liability for wetlands violations is not a trap for the unwary. The criminal wetlands cases are (or should become) notorious for the wealth of evidence of actual culpability. The defendants had all been warned that they were violating the law. Nonetheless, they all chose to ignore the warnings, and in many instances took affirmative steps to cover their tracks. The picture that emerges is one of a cast of characters who are, on the whole, an uncommonly colorful lot. Defiant, deceitful and largely unrepentant, their violations bespeak disdain for regulatory authority rather than a failure to comprehend arcane and technical regulations. They obstinately refused to conform their conduct to the law.

A third and related lesson is that those who are prosecuted for wetlands violations are scarcely unsophisticated innocents. On the contrary, they are almost exclusively knowledgeable economic actors. They are businesses and experienced businessmen whose economic stake can provide a powerful incentive to ignore wetlands regulations that could delay, impede or even prevent a lucrative commercial development. They seem to view the possibility of a civil fine or restoration order and the minimal risk of criminal prosecution as costs of doing business--nothing more, nothing less.

In sum, the cautionary tale boils down to this. Anecdotal narratives about environmental criminal enforcement policies and records are suspect. Their often distorted pictures of reality can lead to exaggerated claims about the existence or dimensions of problematic criminal enforcement issues. Uncritically accepted as true, those claims can provide a seemingly credible basis for misguided proposals that have the potential to do more harm than good. In the case of wetlands criminal enforcement, the anecdotal narrative would have us believe that the government is shooting wildly from the hip, with little rhyme or reason. After studying the criminal enforcement record, the best that can be said is that no matter how sincere the narrator, the narrative is utterly uninformed.

---

[\*] Copyright 1998 by Kathleen F. Brickey.

[\*\*] James Carr Professor of Criminal Jurisprudence, Washington University. A.B., University of

Kentucky, 1965; J.D., University of Kentucky, 1968. I am grateful to the Deer Creek Foundation for its generous support of my ongoing empirical study of environmental crime prosecutions.

[1.] SIR WILLIAM S. GILBERT & SIR ARTHUR SULLIVAN, *THE MIKADO*, act 2.

[2.] See *United States v. Van Leuzen*, 816 F. Supp. 1171 (S.D. Tex. 1993).

[3.] See 33 U.S.C. §§ 1311(a), 1319(c)(2) (1994). Although Van Leuzen could have legally constructed the pole house if he had obtained a permit from the Corps, he would have had to comply with whatever terms and conditions the permit imposed. See *EPA's Criminal Enforcement Program: Hearing Before the Subcomm. on Oversight and Investigations of the House of Representatives Comm. on Energy and Commerce*, 102d Cong. 48 (1992) [hereinafter *1992 Hearings*] (U.C. Memorandum to U.C. Members from the Honorable John D. Dingell, Chairman, Sept. 9, 1992) [hereinafter *Dingell Memorandum*].

[4.] See U.S. DEPT OF JUSTICE, REPORT TO THE ASSOCIATE ATTORNEY GENERAL: INTERNAL REVIEW OF THE DEPARTMENT OF JUSTICE ENVIRONMENTAL CRIMES PROGRAM 193-209 (Mar. 10, 1994) [hereinafter *INTERNAL REVIEW*]. Van Leuzen ultimately was required to restore the land and pay a civil penalty. See *Van Leuzen*, 816 F. Supp. at 1171.

[5.] See *Status of the Nation's Wetlands and Laws Related Thereto: Hearings Before the Subcomm. on Water Resources of the House of Representatives Comm. on Public Works and Transportation*, 101st Cong. 1098-99 (1991) (testimony of Paul D. Kamenar) [hereinafter *Wetlands Hearings*].

[6.] A Justice Department spokesman said that Pozsgai's case was the first wetlands prosecution whose outcome was determined by a jury. See *Developer to Spend Three Years in Jail, Pay \$202,000 Fine for Illegally Filling Wetlands*, 20 ENV'T REP. (BNA) 579 (July 21, 1989) [hereinafter *Developer to Spend Three Years in Jail*].

[7.] See *United States v. Pozsgai*, 757 F. Supp. 21 (E.D. Pa. 1991). His sentence was reported to be the longest ever imposed for an environmental crime as of that point in time. See *Wetlands Hearings*, *supra* note 5, at 949 (testimony of Paul D. Kamenar). Pozsgai was also sentenced to pay a \$200,000 fine.

[8.] See *1992 Hearings*, *supra* note 3, at 9-10; see also *Developer to Spend Three Years in Jail*, *supra* note 6, at 579; *EPA's Criminal Enforcement Program: Hearing Before the Subcomm. on Oversight and Investigations of the House of Representatives Comm. on Energy and Commerce*, 103d Cong. 2 (1993) [hereinafter *1993 Hearings*] (opening statement of Mr. Dingell). The Justice Department vigorously defended its decisions not to prosecute as appropriate exercises of prosecutorial discretion. See *INTERNAL REVIEW*, *supra* note 4, at 172-302.

[9.] See *1992 Hearings*, *supra* note 3, at 47-48; see also ENVIRONMENTAL CRIMES PROJECT, GEORGE WASHINGTON UNIVERSITY (NAT'L LAW CTR.), CRIMINAL ENVIRONMENTAL PROSECUTION BY THE U.S. DEPT OF JUSTICE: PRELIMINARY REPORT 6, 22 (1992). The Justice Department defended its decision not to prosecute Van Leuzen as principled and fair. See *INTERNAL REVIEW*, *supra* note 4, at 206-09; see also Carol E. Dinkins & Thomas R. Bartman, *Criminal Enforcement of Wetlands Protection Law*, 25 ENV'T REP. (BNA) 1320, 1323 (Nov. 4, 1994) (noting that the Department of Justice's internal investigation effectively refuted the claim that it had an unwritten policy against prosecuting wetlands violators).

[10.] See *1992 Hearings*, *supra* note 3, at 47 (Dingell Memorandum). The Washington Legal

Foundation represented Pozsgai on appeal. *See Wetlands Hearings*, *supra* note 5, at 950 (testimony of Paul D. Kamenar).

[11.] *Wetlands Hearings*, *supra* note 5, at 950 (testimony of Paul D. Kamenar).

[12.] *Id.* at 954 (remarks of Rep. Arlan Strangeland).

[13.] *Id.* at 1104 (testimony of Paul D. Kamenar). Pozsgai was a Hungarian immigrant who fled the 1956 Uprising. Conservative organizations that attacked the government's prosecution of Pozsgai likened diligent environmental enforcement to a Stalinist dictatorship. *See 1992 Hearings*, *supra* note 3, at 47 (Dingell Memorandum).

[14.] *See Wetlands Hearings*, *supra* note 5, at 1096 (testimony of Paul D. Kamenar) (claiming that the wetlands enforcement policy was subject to "the whim and caprice of uncontrolled regulators").

[15.] *Id.* at 1107 (testimony of Paul D. Kamenar).

[16.] *See, e.g.,* James J. Kilpatrick, *Courts All Wet in Pozsgai Case*, THE CINCINNATI ENQUIRER, Jan. 25, 1994, at A06 (describing Pozsgai's prosecution as "patently absurd").

[17.] *See Wetlands: Bush Yet to Rule on Pardon Request for Jailed Virginia Man, Pryor Aide Says*, DAILY ENV'T REP. 239, at D3 (Dec. 11, 1992) [hereinafter *Bush Yet to Rule*]. The Fairness to Landowners Committee was an 11,000 member grass roots organization formed for the purpose of bringing rationality into wetlands regulation. *See id.*

[18.] *Id.* Senator Pryor explained that his motive for intervening in Ellen's behalf was fear that farmers and developers who were his own constituents in Arkansas could face similar problems. *See id.*

[19.] Walter E. Williams, Editorial, *When the Enviro-Nazis Gain the Upper Hand*, THE CINCINNATI ENQUIRER, Nov. 29, 1992, at H03 [hereinafter *Enviro-Nazis*].

[20.] *Bush Yet to Rule*, *supra* note 17, at D3.

[21.] *See Enviro-Nazis*, *supra* note 19, at H03; *see also Wetlands Hearings*, *supra* note 5, at 953 (testimony of Paul D. Kamenar) (law enforcement resources would be better spent on prosecuting rapists and drug dealers than on investigating and prosecuting relatively minor environmental violations).

[22.] In response to the wetlands prosecution of Ocie Mills and his son, *see infra* note 51, members of the John Birch Society conducted a letter-writing campaign that raised about \$3000 for the Mills' legal defense. *See Stubborn Polluters Sent to Jail*, ST. PETERSBURG TIMES, Sept. 3, 1989, at 6B [hereinafter *Stubborn Polluters*].

[23.] *Bush Yet to Rule*, *supra* note 17, at D3.

[24.] *Water Pollution: Focus Shifts to Senate Following Passage of Sweeping CWA Rewrite Bill in House*, DAILY ENV'T REP. 96, at D11 (May 18, 1995) (quoting Senator J. Bennett Johnston's aide).

[25.] *See Wetlands: Four House Members Issue Defense of Clean Water Act Rewrite Provisions*, DAILY ENV'T REP. 88, at D4. As Pozsgai's lawyer succinctly summed the issue up, "there are wetlands and there are other so-called wetlands." *Wetlands Hearings*, *supra* note 5, at 951 (testimony of Paul D. Kamenar).

For a cogent commentary on the use of anecdotal evidence to support legislative initiatives, see David A. Hyman, *Lies, Damned Lies, and Narrative*, 73 IND. L.J. 799 (1998).

[26.] *The Clean Water Act Amendments of 1995: Hearings on H.R. 961 Before the Subcomm. on Water Resources of the House Comm. on Transportation and Public Infrastructure*, 104th Cong. (1995), available in 1995 WL 76953, Federal Document Clearing House (testimony of Steven N. Moyer) [hereinafter Testimony of Steven N. Moyer].

[27.] *See The Clean Water Act Amendments of 1995: Hearings on H.R. 961 Before the Senate Comm. on Rules*, 104th Cong. (1995) (testimony of Rep. Robert A. Borski), available in 1995 WL 283183, Federal Document Clearing House.

[28.] The bill would have reposed enforcement authority exclusively in the Corps of Engineers.

[29.] The bill's civil enforcement procedures would have required the following steps: (1) issuance of a compliance order to the violator by the Corps of Engineers; (2) notifying the violator of the compliance order; (3) waiting for the outcome of an appeal if the violator disputed the determination that he was not in compliance; (4) filing civil suit within 60 days of a decision denying the appeal or, if there was no appeal, filing suit within 150 days from the date of notification. *See* H.R. REP. NO. 104-112, § 803 (1995) (inserting new §§ 404(k)(1)-(3)).

[30.] *See* H.R. 104-961, § (k)(5) (1995). The bill did not define actual degradation of the environment.

[31.] Property rights activists claim that government regulation of privately owned property constitutes an uncompensated "taking" of the property. *See* *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). *See generally* James J. S. Johnson et al., *Bogged Down Trying to Define Federal Wetlands*, 2 TEX. WESLEYAN L. REV. 481 (1996); Nancie G. Marzulla, *State Private Property Rights Initiatives As a Response to "Environment Takings"*, 46 S.C. L. REV. 613 (1995). Environmentalists view wetlands preservation as essential to flood control, water quality and wildlife habitats. *See* Ted Williams, *The Wetlands-Protection Farce*, AUDUBON, Mar. 13, 1995, at 30; Testimony of Steven N. Moyer, *supra* note 26.

[32.] *See* Kilpatrick, *supra* note 16, at A06 (calling the Clean Water Act "a model of legislative ambiguity").

[33.] *See* Richard J. Lazarus, *Meeting The Demands of Integration in the Evolution of Environmental Law: Reforming Environmental Criminal Law*, 83 GEO. L.J. 2407, 2471 (1995) (observing that highly technical and exacting factual inquiries are needed to determine whether a tract of land is a wetland).

[34.] *Cf.* *United States v. Wilson*, 133 F.3d 251, 257 (4th Cir. 1997) (invalidating 33 C.F.R. § 328.3(a)(3) (1986) on the ground that the Corps of Engineers exceeded its congressional authorization under the Clean Water Act by defining "waters of the United States" to include intrastate waters whose degradation or destruction could affect interstate or foreign commerce).

[35.] 33 U.S.C. § 1362(7) (1994).

[36.] *See* 33 C.F.R. § 328.3(a) (1986) (Army Corps definition); 40 C.F.R. § 230.3(s) (1980) (EPA definition).

[37.] "Waters of the United States" include lakes, rivers and streams, for example, 33 C.F.R. § 328.3(a)(3) (1986).

[38.] *United States v. Mills*, 817 F. Supp. 1546, 1551 (N.D. Fla. 1993). The definition includes "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas." 33 C.F.R. § 328.3(b); 40 C.F.R. § 230.3(i).

[39.] *Cf. Wilson*, 133 F.3d at 258 (holding erroneous a jury instruction that defined waters of the United States to include adjacent wetlands having no direct or indirect surface connection to other waters of the United States).

[40.] *Mills*, 817 F. Supp. at 1548 (emphasis in original).

[41.] See Kilpatrick, *supra* note 16, at A06 (noting that under current regulations, "water is defined as land, and land is defined as water," that the term "adjacent" means far away," and that the concept of navigable waters has been stretched to include ditches, creeks and arroyos that "haven't seen even a rowboat in years"). Or, to quote Pozsgai's lawyer again, there is "no way" that Pozsgai's property could qualify "as any kind of wetland." *Wetlands Hearings*, *supra* note 5, at 950 (testimony of Paul D. Kamenar).

[42.] Compare Roger J. Marzulla, *Specific Wetland Criminal Issues*, in ENVIRONMENTAL CRIMINAL LIABILITY 221 (Donald A. Carr ed., 1995) (stating that between January 1990 and May 1992, 47 corporations and individuals were prosecuted for wetlands violations) with Todd Shields, *Developer Convicted of Destroying Wetlands*, WASH. POST, Mar. 1, 1996, at C01 (a spokesman for the Justice Department's Environmental Crimes Section said that *United States v. Wilson*, which resulted in the 1996 conviction of Wilson and his two companies, was the twenty-sixth criminal wetlands prosecution in the last decade) and Mark Platte, *Swap Meet Owner Pleads Guilty to Filling Wetlands*, L.A. TIMES, Mar. 21, 1992, at B1 (stating that only 13 criminal prosecutions for wetlands violations had been brought to date). Although it is not entirely clear, estimates of the level of criminal enforcement activity that tend to be on the high side may include some civil enforcement actions in the total count. See Marzulla, *supra*, at 221 n.1. As wetlands prosecutions often have multiple defendants, moreover, calculations based on the total number of defendants rather than the total number of prosecutions may also create the impression that there is a higher level of criminal enforcement activity than may actually be the case. See *id.* at 221.

[43.] See Dinkins & Bartman, *supra* note 9, at 1323 ("[c]onsidering the currently substantial public visibility of wetlands protection as an environmental concern, the comparatively low number of wetlands convictions seems surprising"); Platte, *supra* note 42, at 1 (characterizing criminal wetlands prosecutions as rare). According to a Justice Department spokesman, Pozsgai's case was the sixth wetlands prosecution the government had pursued. See *Developer to Spend Three Years in Jail*, *supra* note 6.]

Hard pressed to explain why wetlands prosecutions are so few and far between, commentators posit several plausible reasons: (1) uncertainty about applicable regulatory standards and the "potentially technical nature" of the evidence needed to prove the case; (2) public controversy over successful wetlands prosecutions; and (3) the ongoing political debate about the proper scope of wetlands protection. See Dinkins & Bartman, *supra* note 9, at 1323. They also observe that a high percentage of convictions for wetlands violations are appealed, presumably because of the lack of legal precedent and



attendant uncertainties about applicable legal standards. *See id.*

[44.] The data base includes wetlands prosecutions initiated under the Clean Water Act, 33 U.S.C. §§ 1311(a), 1319(c)(2) (1994). The data was gathered from a number of sources. Printed sources include U.S. EPA Office of Enforcement of Environmental Criminal Prosecutions (Nov. 1992) (containing summaries of prosecutions instituted during Fiscal Years 1983-1992); EPA Office of Enforcement and Compliance Assurance, Enforcement and Compliance Assurance Accomplishments Report FY 1995 (July 1996); EPA Office of Enforcement, Enforcement Accomplishments Report FY 1994 (May 1995); EPA Office of Enforcement, Enforcement Accomplishments Report FY 1993 (April 1994); EPA Office of Enforcement, Enforcement Accomplishments Report FY 1992 (April 1993). Additional cases were located by searching the LEXIS Genfed courts file and the WESTLAW Allfeds file using the search terms "Clean Water Act" & "Wetlands." Information about the cases was supplemented by reference to published and unpublished judicial opinions, indictments and informations and related documents obtained through the clerks of court, the NEXIS electronic data base and other miscellaneous sources.

The data base excludes wetlands cases brought under the Wildlife Refuge Act, 16 U.S.C. § 668dd(c) (1994). These prosecutions typically involve federal easements containing wetlands that provide habitat for wildlife. *See, e.g.,* United States v. Johansen, 93 F.3d 459 (8th Cir. 1996); United States v. Vesterso, 828 F.2d 1234 (8th Cir. 1987). Enforcement in these cases is initiated by the Fish and Wildlife Service rather than the Corps of Engineers.

[45.] *Wetlands Hearings*, *supra* note 5, at 1104 (testimony of Paul D. Kamenar).

[46.] There were 31 defendants in these cases.

[47.] One of the engineers, James Brackenrich, was a former state senator who chaired the senate's committee on natural resources. *See EPA: Former State Legislator Sentenced in First West Virginia Wetlands Prosecution*, M2 PRESSWIRE, June 17, 1996; *Former West Virginia State Legislator Pleads Guilty to Clean Water Act Violation*, ENVTL. LABORATORY WASH. REP., May 13, 1996. Brackenrich had been fined twice before for storing chemicals in a leaking tank and allowing raw sewage from one of his businesses to leak into a limestone cavern. *See* Paul Owens, *Brackenrich to Keep Job--Former Senator's Jail Sentence Won't Affect the Highway Job*, CHARLESTON DAILY MAIL, June 21, 1996, at 1A; *Ex-Lawmaker's Attorney Says Appeal is Possible*, CHARLESTON DAILY MAIL, June 12, 1996.

[48.] *See* United States v. Ellen, 961 F.2d 462, 463 (4th Cir. 1992).

[49.] The exceptional case is the prosecution against Ocie Mills and his son Carey. *See* Mills v. United States, 36 F.3d 1052 (11th Cir. 1994); United States v. Mills, No. CR-88-03100-WEA (N.D. Fla. 1988) (indictment). While Ocie Mills, a retired contractor, fits the profile described above, Carey's background is unknown. The case is exceptional because the Mills were prosecuted for developing two lots as a homesite for Carey. Notwithstanding the lack of evidence of economic motive, however, the offense characteristics in the Mills prosecution are remarkably similar to Pozsgai's case. *See infra* text accompanying notes 60-63. Most notably, the previous land owners received a cease and desist order from the Corps, the Mills purchased the property with full knowledge of its designation as wetlands and of the resulting implications for unrestricted development, and they continued to fill in the site without a permit in defiance of two additional cease and desist orders issued to them. A government lawyer characterized the Mills as "blatant [and] flagrant violators," and a Corps of Engineers official placed them "near the top of the list in stubbornness." *Stubborn Polluters*, *supra* note 22. An EPA official said that "Mills was adamant" about taking on federal officials about the wetlands violation. H. Jane Lehman, *Trials and Tribulations of Landowners*, L.A. TIMES, Oct. 18, 1992, at K2; *see also* Marzulla,

*supra* note 42, at 227 & n.54. Thus, factually, the Mills' offense was comparable to the other wetlands offenses in the criminal enforcement data base. *See infra* text accompanying notes 53-71.

In addition, like Pozsgai and Ellen, Mills became a cause célèbre of the right--this time, the John Birch society. Supporters wrote letters to the editor and raised about \$3000 to defray the Mills' legal expenses. *See Stubborn Polluters*, *supra* note 22.

[50.] *See* INTERNAL REVIEW, *supra* note 4, at 201 & n.272.

[51.] *Id.* at 200 n.270.

[52.] *Id.* at 201.

[53.] *See* United States v. Pasquariello, No. 89-6196-CR-ZLOCH(S)(S)(S) (S.D. Fla. 1991) (superseding indictment). *See also* Dinkins & Bartman, *supra* note 9, at 1322.

[54.] *See* Hartford Assoc. v. United States, 792 F. Supp. 358 (D.N.J. 1992) (holding that the court has no power to enjoin threatened criminal proceedings). Hartford Associates subsequently pled guilty to violating the Clean Water Act. EPA Office of Enforcement, Enforcement Accomplishments Report FY 1993, at 3-83 (Apr. 1994).

[55.] *See* United States v. Holland, 874 F.2d 1470, 1472-74 (11th Cir. 1989); United States v. Bieri, No. 87-CR-20030-BC-01 (E.D. Mich. 1990) (judgment including sentence upon probation violation); *see also* 1 CHRISTOPHER HARRIS ET AL., ENVIRONMENTAL CRIME § 2.54, at 2-151 (1995) [hereinafter, HARRIS ET AL., ENVIRONMENTAL CRIME]. The probation violation in *Bieri* led to Bieri's pleading guilty to another Clean Water Act violation. *See Bieri*, No. 87-CR-20030-BC-01.

[56.] United States v. Bieri, No. 87-CR-20030-M-BC (E.D. Mich. 1987) (criminal complaint) (affidavit of John Konik). Bieri was one of the defendants whose probation was revoked for committing additional Clean Water Act violations. *See supra* note 55 and accompanying text.

[57.] *See Bieri*, No. 87-CR-20030-M-BC (E.D. Mich. 1987) (information). Bieri initially applied for a permit following an early warning from the Corps, but later abandoned the application and continued the work despite posted stop work signs, cease and desist orders and warning letters. *See id.*

[58.] His competitors complained that they lost business because of this tactic.

[59.] *See* United States v. Ellen, 961 F.2d 462, 466-67 (4th Cir. 1992); United States v. Ellen, No. CRS-90-0215 (D. Md. 1990) (indictment). Ellen told his civil engineer that he would not apply for permits until some of the work was completed because he did not want the project delayed.

[60.] *See* United States v. Pozsgai, 999 F.2d 719, 721-22 (3d Cir. 1993).

[61.] The previous owners, from whom Pozsgai purchased the land, had also received a cease and desist letter, and Pozsgai admitted that local officials had shown him that letter. *See id.* at 722.

[62.] *See id.* at 722-23.

[63.] The government's decision not to prosecute Van Leuzen should not be accepted as conclusive on the issue of his culpability. His many confrontations with Corps officials made the permit requirements clear. But Van Leuzen testified at his civil trial that notwithstanding his receipt of a lawful

order from the government, "if it was inconvenient, he was free to simply disregard it." *United States v. Van Leuzen*, 816 F. Supp. 1171, 1173 (S.D. Tex. 1993). He essentially told a representative of the enforcement section of the Corps of Engineers that he was "old and could do what he wanted to," and he even "bragged" to some people that he was "getting away with it." *Id.* at 1174. Van Leuzen had also had previous disputes with the Corps about work that was performed without a permit. *See id.* at 1178. Thus, Van Leuzen easily fits the pattern of flagrant disregard of authority.

[64.] *See, e.g., United States v. Wilson*, No. C.R.A.W.-95-0390 (D. Md. 1995) (amended indictment) (defendant caused company to deny knowledge that wetlands were on property in question).

[65.] *See, e.g., id.* (defendant caused employees to tell Corps that company would take necessary steps to bring project into compliance and prevent future violations while he was directing continued efforts to drain and fill wetlands); *United States v. Suarez*, No. CR 92-00036 (D. Guam 1992) (indictment) (defendant twice promised Corps representative that he would remove illegal fill, but on both occasions failed to do so and continued to add more fill).

[66.] *See, e.g., Wilson*, No. C.R.A.W.-95-0390 (defendants used false affidavits to obtain inaccurate expert opinion letters about regulated status of property before selling it for nearly \$2.5 million).

[67.] *See, e.g., United States v. Pasquariello*, No. 89-6196-CR-ZLOCH (S)(S)(S) (S.D. Fla. 1991) (superseding indictment) (defendant tried to conceal construction activity by ringing a lake with huge tanks; he also told employees to use a fill method that would keep floating material submerged and to take coffee breaks when inspectors were on the scene).

[68.] *See, e.g., United States v. Rapanos*, No. 93-CR-20023-BC (E.D. Mich. 1993) (superseding indictment) (defendant was charged with using intimidation and threats to persuade consultant to withhold and destroy or conceal wetlands report from law enforcement authorities).

[69.] On at least one occasion, Pozsgai falsely told Corps of Engineers agents that he had stopped work on the property. *See United States v. Pozsgai*, 999 F.2d 719, 723 (3d Cir. 1993). Ellen canceled several regularly scheduled Corps of Engineers inspections to postpone discovery of his continued illegal activity. *See United States v. Ellen*, No. CRS-90-0215 (D. Md. 1990) (indictment).

The potential seriousness of environmental harm that could flow from the illegal acts may be another relevant factor in the decision whether wetlands violations should be criminally prosecuted. That offense characteristic is much more difficult to gauge from available records, however. In some cases, the potential for serious harm seems obvious--for example, bulldozing three acres of wetlands as part of a \$500 million Galleria retail, office and hotel development, *see United States v. Bill L. Walters Cos.*, No. 88-CR-375 (D. Colo. Dec. 22, 1988) (information); filling in more than 80 acres of wetlands that are part of a 3000 acre site to be developed as a commercial hunting preserve, *see Ellen*, No. CRS-90-0215; bulldozing a five-acre tract of wetlands on a shopping mall development site containing more than 20 acres of wetlands, *see United States v. Marathon Dev. Corp.*, 867 F.2d 96 (1st Cir. 1989); *United States v. Marathon Dev. Corp.*, No. C.R.87-129-MC (D. Mass. 1987) (superseding indictment); clearing and filling wetlands on part of a 175 acre site to make it more attractive to a shopping mall developer who has an option on the property, *see United State v. Rapanos*, No. 93-CR-20023-BC (E.D. Mich. 1993) (indictment); developing five parcels containing wetlands that are part of an 8,000 acre planned residential community, *see United States v. Wilson*, No. C.R.A.W.-95-0390 (D. Md. 1995) (indictment); and constructing a 375 mile commercial pipeline that crosses more than 500 rivers, streams and wetlands in a two-state area, *see United States v. Mango*, No. 96-CR-327 (RSP) (S.D.N.Y. 1996) (indictment). *See also Ken Ward, Jr., Ex-Senator Sentenced to Jail Term*, THE CHARLESTON GAZETTE, June 12, 1996

(defendant was sentenced to jail for destroying part of West Virginia's largest wetland).

William Ellen's case, which involved the commercial hunting preserve, fits this profile. In other cases, the potential for serious environmental harm is more difficult to assess. In Pozsgai's case, for example, we know only that he was filling in a 14 acre site that he claimed had been used as a neighborhood dumpsite. *See Wetlands Hearings, supra* note 5, at 1098-99 (testimony of Paul D. Kamenar). The Corps of Engineers and his environmental consultants determined that it contained wetlands. Beyond this, we know little about the characteristics of the land. It was reported, however, that Pozsgai's wetland filling activity caused neighboring land to flood during rainstorms. Louis J. Schiffer, Luncheon Address, *reprinted in* AMERICAN LAW INSTITUTE, REMARKS AND ADDRESSES AT THE 74TH ANNUAL MEETING, 48, 57 (May 21, 1997).

[70.] SIR WILLIAM S. GILBERT & SIR ARTHUR SULLIVAN, H.M.S. PINAFORE, act 2.

[71.] Efforts to bring William Ellen into compliance spanned a period from August, 1987 through March, 1989, for example. *See* United States v. Ellen, 961 F.2d 462, 463-64 (4th Cir. 1991). John Pozsgai disregarded officials' efforts to halt his illegal conduct from April, 1987 through September, 1988. *See* United States v. Pozsgai, No. CR 88-00450 (E.D. Pa. 1988) (indictment).

| [Washington University School of Law Home Page](#) | [Publications Home Page](#) |  
| [Quarterly Home Page](#) | [Quarterly Issues](#) |

© 1998 by Washington University

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION  
v. :  
JOHN POZSGAI, et al. : NO. 88-6545

MEMORANDUM AND ORDER

FULLAM, Ch.J.

JANUARY 8, 1990

The United States brought this action under the Clean Water Act, alleging that defendants discharged fill, without a permit, into protected wetlands in violation of 33 U.S.C. §1311(a). The site in question, a 14-acre tract of land located in Bucks County, Pennsylvania, is owned by defendants John and Gisella Pozgai. I issued a temporary restraining order against further dumping at the site on August 24, 1988 and granted the government's motion for a preliminary injunction on September 16, 1988. A final hearing was held on December 16, 1988.

FINDINGS OF FACT

1. Defendant Pozgai

1. The Pozgai site, located on West Bridge Street between Routes 1 and 1A in Falls Township, is adjacent to an unnamed tributary of the Pennsylvania Canal, which flows into the Delaware River. The site was and is protected wetlands, and as such performs critical environmental functions.

2. In April 1987, the U.S. Army Corps of Engineers learned that fill material was being discharged at the site without a permit. At the time the Corps began its investigation, defendants John and Gisella Pozsgai were prospective buyers of the property, and Pozsgai had already arranged for the discharge of fill onto the site. The Pozsgais became owners of record of the property on June 19, 1987. Between April 1987 and November 1987, The Corps repeatedly warned John Pozsgai, both orally and by issuance of a cease and desist letter, not to continue filling the site until he obtained the permits required by the Clean Water Act. Each time the Corps biologist visited the site, he noted that substantial additional filling had taken place since his previous visit.

3. On December 17, 1987, the Corps issued an administrative directive instructing them to cease and desist the filling activity and remove the fill within 45 days, or to cease and desist filling and apply for an "after the fact" permit within 10 days. Pozsgai did not apply for a permit and continued to fill the site through 1988.

4. I issued a temporary restraining order on August 24, 1988. John Pozsgai continued to have fill discharged at the site and to use his bulldozer to level the fill. After a two-day hearing, I held Pozsgai in contempt of court on September 16, 1988.

2. Defendant Vinoh

5. J. Vinch & Sons, Inc. is a company that has been engaged in the business of demolition, excavation and hauling since 1970. A part of Vinch's daily operations is finding locations to dispose of the debris generated by its excavation and demolition activities.

6. Vinch owns and operates a state-licensed landfill in New Jersey.

7. Vinch knew or should have known that local and state permits are frequently required for the disposal of solid waste. Vinch, which does business in Mercer County, New Jersey, also knew or should have known that by county ordinance, all waste from the county that it did not dispose of at its own landfill was required to be disposed of at the Grows landfill in Falls Township, Pennsylvania.

8. Between May 1987 and August 1988, Vinch disposed of 340 loads of fill at the Pozsgai site. Each load contained 16 to 20 cubic yards of dirt and concrete, for a total of at least 6800 cubic yards of fill.

9. Vinch would have had to pay \$22 per cubic yard to dispose of fill at the Grows landfill, but was allowed by Pozsgai to dispose of fill at a cost of \$1 to \$1.25 per cubic yard (\$20 per load), for a savings of at least \$142,800.

10. Pozsgai told Vinch that the rear of his site contained wetlands. Vinch did not have a permit to dispose of fill at the Pozsgai site, nor did Vinch ask whether Pozsgai had any permits.

11. Vinch also reached an agreement in principle with Pozsgai to purchase five acres of the site, but only if there were no environmental or permit problems.

12. Vinch knew or should have known that discharging fill onto the site was a violation of federal law.

3. Defendant Mercer

13. Mercer Wrecking and Recycling Corp. has been engaged in the business of demolition and metal and concrete recycling for three years.

14. In 1985, Mercer disposed of three of four truckloads of bricks at the site at Pozsgai's request.

15. On May 11, 1988, a Corps biologist called Mercer and warned the company that the discharge of fill at the Pozsgai site without a permit was a violation of the Clean Water Act.

16. By July 1988, Mercer had disposed of 25 loads of rock and eight loads of stone at the site.

17. In June or July 1988, Mercer disposed of 50 loads (16 cubic yards each) of dirt at the site.

18. Pozsgai did not charge Mercer for dumping fill material, saving Mercer \$22 per cubic yard (what Mercer would have paid at the Grows landfill), for a total savings of at least \$30,262 (86 loads of 16 cubic yards each times \$22 per load).

19. Mercer did not have a permit to dump at the Pozsgai site, nor did Mercer ask Pozsgai whether he had any permits.



20. Mercer knew or should have known that discharging fill onto the site was a violation of federal law.

4. The Restoration Plan

21. The Corps has submitted a feasible restoration plan to remove the fill and restore the Pozsgai site to its wetlands condition. This plan will confer maximum environmental benefits consistent with its feasibility and its equitable relationship to the degree and kind of harm perpetrated by the defendants.

CONCLUSIONS OF LAW

1. The Pozsgai site contained and still contains protected wetlands. See 33 U.S.C. §§1251-1376; 33 C.F.R. §§209.120, 323.2-3; 328.3.

2. The Clean Water Act imposes strict liability upon persons who discharge fill into wetlands without obtaining an Army Corps of Engineers permit. See 33 U.S.C. §§1311, 1344.

3. Defendants John and Gisella Pozsgai own the Pozsgai site and are strictly liable for the discharge of fill material without a permit into protected wetlands located on the site.

4. Defendants J. Vinch & Sons, Inc. and Mercer Wrecking and Recycling Corp. are also strictly liable for the discharge of fill material without a permit into protected wetlands located on the site.

001-J6-00 THU 02:12 PM USFMS PA FIELD OFFICE FAX NO. 8142340748 P. 08/27

5. The United States is entitled to a permanent injunction against any further filling and to a restoration order.

An appropriate order follows.

001 00 00 100 02 10 PH USFWS PA FIELD OFFICE FAX NO. 8142340748

P. 13/27

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Regulatory Branch  
Surveillance and Enforcement Section

SUBJECT: CENAP-OP-R-177300202-52

DEPARTMENT OF THE ARMY  
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS  
WASHINGTON BUILDING, 100 PENN SQUARE EAST  
PHILADELPHIA, PENNSYLVANIA 19107-3390

Mr. John Pozsgai  
536 West Bridge Street  
Morrisville, PA 19067

Dear Mr. Pozsgai:

MAR 20 1997

Inspection by personnel of this office has revealed that dredged and/or fill material has recently been placed in waters of the United States, including wetlands, on property identified as Tax Parcel 13-28-83 and located southeast of West Bridge Street in Falls Township and Morrisville Borough, Bucks County, Pennsylvania.

Mr. Michael H. Hayduk of this office inspected the property on February 5, 1997 with you and your son-in-law, Mr. Charles Heater. Mr. Hayduk observed unauthorized work, including grading and the placement of a pile of dredged and/or fill material, at the front of the property along West Bridge Street (Enclosure 1). Mr. Hayduk also observed unauthorized work in areas subject to Federal jurisdiction along My Lane (Enclosure 2). In addition, inspection of aerial photography indicates that land leveling has occurred in areas subject to Federal jurisdiction at the front of the property along West Bridge Street.

You are again put on notice that earthwork, e.g., grading, land leveling and/or filling, in areas subject to Federal jurisdiction on your property requires authorization from this office prior to commencement of the work.

You were advised in a letter from this office dated January 18, 1996 that performance of regulated work requires prior authorization by this office.

The above noted work is considered to be a knowing and flagrant violation of the January 18, 1996 Cease and Desist directive. Further, this office considers the continued performance of unauthorized work to be violations of the Federal Court Order in United States v. John Pozsgai, Civil Action No. 88-6545. A copy of this letter is being sent to Mr. William J. Miles, U.S. Probation Officer, Philadelphia, Pennsylvania, for his consideration.

Work of this nature, when conducted without a Department of the Army permit, is a violation of Section 301 of the Clean Water Act.

- 2 -

Since you have not been granted authorization for the above referenced work, you are hereby directed to cease and desist from conducting or permitting any further work of this nature in areas subject to Federal jurisdiction.

In a letter dated February 26, 1997, our Office of Counsel offered you the opportunity to apply for after-the-fact authorization for all unauthorized work on the subject property.

To legalize the unauthorized work identified above, two courses of action are available to you:

- a. Remove all dredged and/or fill material placed in areas subject to Federal jurisdiction indicated on Enclosures 1 and 2 and restore those areas to their former condition in accordance with the enclosed Removal and Restoration Guidelines (Enclosure 3) within 30 days of the date of this letter; or
- b. Apply for after-the-fact authorization for the above noted unauthorized discharges of dredged and/or fill material in addition to all other unauthorized work on the property, by completing and submitting to this office the enclosed permit application package (Enclosure 4).

In the event that you elect to remove the unauthorized work discussed above, you are requested to sign both copies of Enclosure 3, to retain one copy, and to return one copy to this office within 10 days of the date of this letter. A return envelope is included for your convenience (Enclosure 5).

The outcome of the processing of a permit application may be approval of the existing work, approval of the work subject to special conditions, or denial of the requested permit accompanied by a request for restoration of the affected areas.

Please inform Mr. Hayduk of this office within 5 days of the date of this letter, of the course of action you have selected to resolve the above noted violation.

Should you have any questions concerning the above matters, please contact Mr. Hayduk of this office at (215) 656-6729.

Sincerely,

Frank J. Cianfrani  
Chief, Regulatory Branch

Enclosures

DEPARTMENT OF THE ARMY  
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS  
WAWAKAKET BUILDING, 100 PENN SQUARE EAST  
PHILADELPHIA, PENNSYLVANIA 19107-5380

P. 10/21

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Regulatory Branch  
Surveillance and Enforcement Section

SUBJECT: CENAP-OP-R-177300202-52

DEPARTMENT OF THE ARMY  
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS  
WAWAKAKET BUILDING, 100 PENN SQUARE EAST  
PHILADELPHIA, PENNSYLVANIA 19107-5380

Mr. John Pozsgai  
536 West Bridge Street  
Morrisville, PA 19067

NOV 07 1997

Dear Mr. Pozsgai:

Inspection by personnel of this office has revealed that dredged and/or fill material has recently been placed in waters of the United States, including wetlands, on property identified as Tax Parcel 13-28-83 and located southeast of West Bridge Street in Falls Township and Morrisville Borough, Bucks County, Pennsylvania.

Mr. Michael H. Hayduk of this office inspected the property on October 8, 1997 with you and Mr. Charles Heister. Mr. Hayduk observed unauthorized work in areas subject to Federal jurisdiction along My Lane (Enclosure 1).

You are again put on notice that earthwork, e.g., mechanized landclearing, grading, excavation, and land leveling and/or filling, in areas subject to Federal jurisdiction on your property requires authorization from this office prior to commencement of the work.

You were advised in letters from this office dated January 18, 1996 and March 20, 1997 that performance of regulated work requires prior authorization by this office.

The above noted work is considered to be a knowing and flagrant violation of our January 18, 1996 and March 20, 1997 Cease and Desist directives. Further, this office considers the continued performance of unauthorized work to be violations of the Federal Court Order in United States v. John Pozsgai, Civil Action No. 88-6545. A copy of this letter is being sent to Mr. William J. Milles, U.S. Probation Officer, Philadelphia, Pennsylvania, for his consideration.

Work of this nature, when conducted without a Department of the Army permit, is a violation of Section 301 of the Clean Water Act.

- 2 -

Since you have not been granted authorization for the above referenced work, you are hereby directed to cease and desist from conducting or permitting any further work of this nature in areas subject to Federal jurisdiction.

At the on-site meeting held on October 8, 1997, you agreed to remove all of the unauthorized fill material identified on Enclosure 1. The fill material must be removed in accordance with the attached Removal and Restoration Guidelines (Enclosure 2).

Should you have any questions concerning the above matters, please contact Mr. Hayduk of this office at (215) 656-6729.

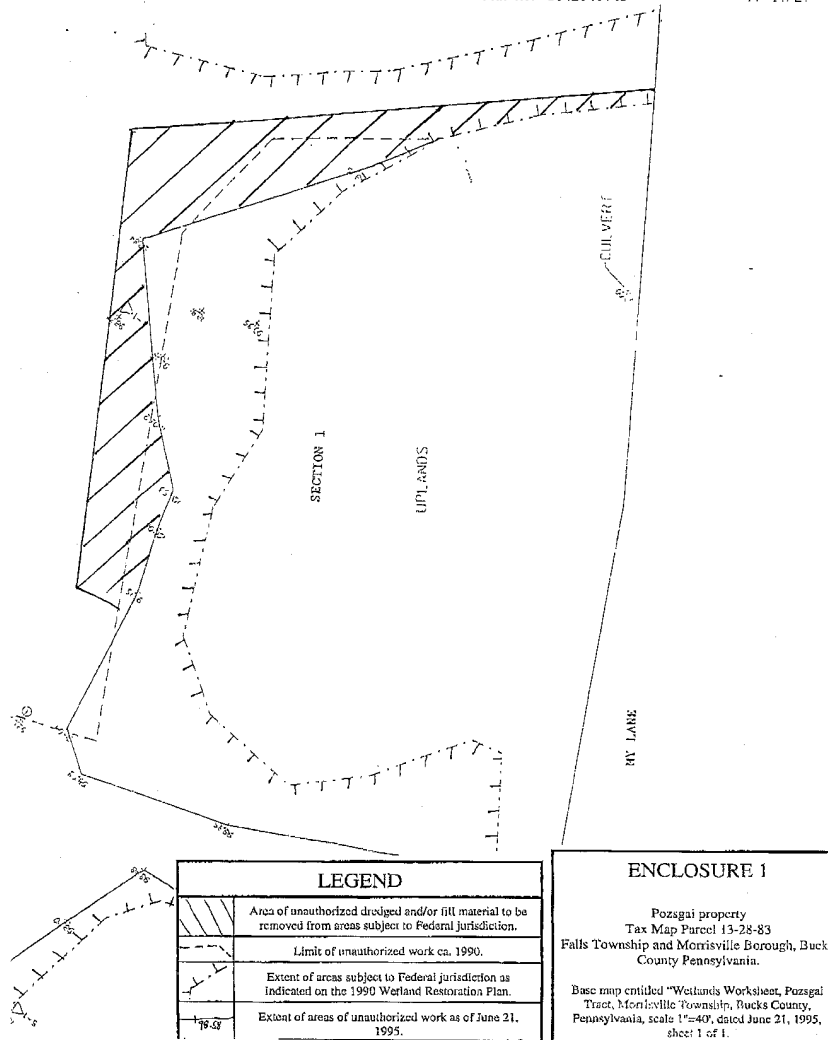
Sincerely,

Frank J. Cianfrani  
Chief, Regulatory Branch

Enclosures

Copies Furnished:

US Fish and Wildlife Service, State College, PA  
US Environmental Protection Agency, Region III, PA  
PA Department of Environmental Protection, Conshohocken, PA  
Falls Township  
Bucks County Conservation District  
Kathy Votaw, US Attorney General's Office  
Mr. Paul Kamenar, Esquire  
Mr. William J. Miles, U.S. Probation Officer



WV 00 00 110 02-10 FII USFWS FH FIELD OFFICE FAX NO. 8142340/48

P. 18/27

REMOVAL AND RESTORATION GUIDELINES

NAME OF VIOLATOR: John Pozsgai  
 VIOLATION NUMBER: CENAP-OP-R-177300202-52  
 COUNTY: Bucks  
 STATE: Pennsylvania

DATE:

NOV 07 1997

1. All dredged and/or fill material, including soil, stone, and other materials, shall be removed from the area shown on the enclosed portions of the 1995 Wetland Worksheet for the Pozsgai Tract, scale 1"=40', dated June 21, 1995, sheet 1 of 1.
2. Dredged and/or fill material shall be removed to the grade that existed prior to the recently performed unauthorized work.
3. Material may be removed up to four inches below the previously existing ground surface but in no instance shall material be left above the ground surface existing prior to the performance of unauthorized work.
4. In no event shall completion of removal of dredged and/or fill material occur later than 30 days of the date of these guidelines.
5. All dredged and/or fill material removed from the area subject to Federal jurisdiction shall be placed on an upland, nonwetland area approved by this office.
6. The area restored shall be seeded with a seed mix suitable for wet areas. All seeding shall be completed within five days of dredged and/or fill material removal.
7. In the event that weather conditions are not suitable for seeding immediately after dredged and/or fill material removal, contact this office, to establish a date for seeding.
8. Seeded areas must achieve 100 percent coverage by the fall, 1998.
9. The upland/wetland edge of the restoration area shall be graded to a slope no steeper than 3:1 (horizontal to vertical) and stabilized to prevent erosion.
10. Maintain the existing silt fence at the toe of the slope of the fill material until the earthwork has been approved by this office.
11. No portion of the toe of slope of the upland/wetland edge shall occur in the area subject to Federal jurisdiction.
12. All disturbed areas along the slope of the upland/wetland edge shall be seeded with a commercial seed mix to prevent erosion of sediment into the restored area.
13. All erosion control work, including seeding, shall be performed within five days of dredged and/or fill material removal.
14. All restoration work shall be completed within 35 days of the date of this letter.

ENCLOSURE 2



OFFICE OF THE ATTORNEY GENERAL, OFFICE OF THE FIELD OFFICE - FMA NO. 8142340/48

P. 19/21

- 2 -

In the event that the work has not been performed satisfactorily, the performance of additional work would be required.

STATEMENT OF AGREEMENT TO PERFORM WORK:

I agree to perform the above described work, within the time limits specified, to resolve the above referenced violation.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

ENCLOSURE 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 841 Chestnut Building  
 Philadelphia, Pennsylvania 19107-4431

FAX NO. 8142340748

P. 22/27

APR 06 1998

F-Pozsgai

March 25, 1998

Lieutenant Colonel Robert B. Keyser,  
 District Engineer  
 U.S. Army Corps of Engineers  
 Wanamaker Building  
 100 Penn Square East  
 Philadelphia, PA 19107-3390

Attention: Mr. Frank Cianfrani, Chief  
 Regulatory Branch, Philadelphia District

RE: CENAP-OP-R-199701484-15-B

Dear Lt. Colonel Keyser:

The United States Environmental Protection Agency Region III (EPA) has completed our review of Public Notice Number CENAP-OP-R-199701484-15-B, dated March 16, 1998. In the process of our review it is evident that there are a multitude of complex factors which effect the review and dispensation of this application. The following is a list of concerns which the Agency has identified and should be reflected in your decision making process and final determination in this matter. Our concerns are:

- 1) This site has been the object of a number of enforcement activities in both the civil and criminal arenas. Courts have ruled and ordered that this site should be restored in order to mitigate for the environmental harm which was caused by Mr. Pozsgai's violations of Section 404 of the Clean Water Act. It would seem that, prior to any application review, Mr. Pozsgai **must** comply with the issued court orders and findings. Since the applicant has been remiss in compliance with the requirements of the court and Section 404 it would seem doubtful that there would be compliance with the terms of an issued permit and would only create additional compliance problems.
- 2) The applicant has failed to demonstrate that there are no feasible upland alternatives to his proposed and speculative activities which his consultant has indicated are the intended project purpose. This permit application does not take into account the Section 404 (b)(1) Guidelines for this project, it is not a water dependant activity, there have been no attempts to minimize the size and extent of the fill. purpose and need have not been

Lieutenant Colonel Robert B. Keyser,  
Page 2

clearly and conclusively identified, and no compensatory mitigation has been offered by the applicant in order to off-set the environmental harm caused by the current and proposed filling. While a review of all future site activities is essential to an informed Agency decision and response, speculative filling has never been an activity which should be permitted as a justifiable environmental harm in the 404 process.

EPA recommends that this permit application be denied and that the applicant be made to perform the restoration orders of the court. Should the Corps fail to deny this application, EPA may invoke our authority to veto the issuance of the Section 404 permit as specified in Section 404 (c) of the Clean Water Act by elevating this matter to the Administrator of EPA.

Should you have any further questions regarding this matter please contact Mr. Jeffrey D. Lapp, of my staff, who is assigned to this matter at (215) 566-2717.

Sincerely,



Roy E. Denmark, Jr., Deputy Director  
Office of Environmental Programs

cc: EPA - John Forren (3EP30)  
FWS- Jared Brandwien, Tobyhanna Field Office  
PADER- Ken Anderson, Conshohocken, PA  
COE-William Jenkins, Philadelphia District

001-00-00 INU 02-22 PM USFWS PH FIELD OFFICE  
 CERTIFIED MAIL - RETURN RECEIPT REQUESTED

FAX NO. 8142340148

P. 24/27

DEPARTMENT OF THE ARMY  
 PHILADELPHIA DISTRICT, CORPS OF ENGINEERS  
 WANAMAKER BUILDING, 100 PENN SQUARE EAST  
 PHILADELPHIA, PENNSYLVANIA 19107-3390

Regulatory Branch  
 Surveillance and Enforcement Section

SUBJECT: CENAP-OP-R-177300202-35

APR 08 1998

Mr. John Pozsgai  
 550 W. Bridge Street  
 Morrisville, Pennsylvania 19027

Dear Mr. Pozsgai:

This letter is written with further regard to our Cease and Desist letter dated November 7, 1997, concerning resolution of the unauthorized discharge of dredged, excavated, and/or fill material into areas subject to Federal jurisdiction, including wetlands, on property identified as Tax Parcel 13-28-63 and located southeast of West Bridge Street in Falls Township, Bucks County, Pennsylvania.

In order to resolve recently performed unauthorized work, you were directed to remove all unauthorized dredged, excavated, and/or fill material from areas subject to Federal jurisdiction (Enclosure).

Based upon a site inspection conducted on March 31, 1998, it was determined that the required restoration work has not been performed. As such, you are directed to remove the unauthorized fill material within twenty days of the date of this letter. Further, additional work has been, and is being, performed adjacent to My Lane. This work is being evaluated to determine whether portions of the work have been performed in areas subject to Federal jurisdiction.

The above noted work is considered to be a knowing and flagrant violation of our January 18, 1996 and March 20, 1997 Cease and Desist directives. Further, this office considers the continued performance of unauthorized work to be violations of the Federal Court Order in United States v. John Pozsgai, Civil Action No. 88-6545. A copy of this letter is being sent to Mr. William J. Miles, U.S. Probation Officer, Philadelphia, Pennsylvania, for his consideration.

You are again put on notice that earthwork, e.g., mechanized landclearing, grading, excavation, and land leveling and/or filling, in areas subject to Federal jurisdiction on your property requires authorization from this office prior to commencement of the work.

Please be advised that failure to perform the above noted work may result in civil and/or criminal action being brought against you and the possible imposition of civil penalties and criminal fines.

001-00-00 180 02:22 PM USFWS PA FIELD OFFICE

FAX NO. 8142340748

P. 25/27

-2-

This letter does not affect your responsibility to obtain any other Federal, State, or local approvals required by law for the above noted work.

Should you have any questions regarding the above noted matter, please contact Mr. Michael Hayduk at the above address or by telephone at (215) 656-6727.

Sincerely,

Frank J. Cianfrani  
Chief, Regulatory Branch

Enclosure

Copies Furnished:

US Fish and Wildlife Service, State College, PA  
US Fish and Wildlife Service, Eastern PA Field Office  
US Environmental Protection Agency, Region III, PA  
PA Department of Environmental Protection, Conshohocken, PA  
Falls Township, Mr. Wayne Bergman  
Bucks County Conservation District, Mr. Eric Wightman  
Kathy Votaw, US Attorney General's Office  
Mr. Paul Kamenar, Esquire  
Mr. William J. Milles, U.S. Probation Officer

DEPARTMENT OF THE ARMY  
 Corps of Engineers  
 Waterways Division  
 Waterways Building, 1635 Pennsylvania Avenue  
 Philadelphia, Pennsylvania 19107-3360

Regulatory Branch  
 Application Section I

DEC 07 1998

SUBJECT: CENAP-OP-R-199701484-15

Mr. John Pozsgai  
 538 West Bridge Street  
 Morrisville, Pennsylvania 19067

Dear Mr. Pozsgai:

This is in regard to your application for a Department of the Army permit to maintain and construct facilities for a truck repair and salvage business at Block 93, Lots 4 and 5, along the southerly side of West Bridge Street in Falls Township, Bucks County, Pennsylvania.

After a complete review of the information submitted with your application and the comments received in response to our public notice, it has been determined that the proposed maintenance of previously placed fill and additional filling on the above referenced site would have an unacceptable adverse impact on the aquatic ecosystem and would not reflect the National concern for both the protection and utilization of important public resources. The proposed maintenance of previously filled areas and proposed additional filling is contrary to current Federal Regulations (33 CFR 320 et seq) and Federal Guidelines (40 CFR 230) regulating the discharge of dredged and fill material.

Our findings in this matter indicate that the proposal would contribute to significant degradation of the waters of the United States. These findings are based on our determination that the proposal represents a significant adverse effect on the diversity, productivity, and stability of the aquatic ecosystem that is primarily comprised of the waters and wetlands on the above referenced site.

On balance, it has been determined that the project as proposed is contrary to the general public interest. Therefore, under the authority vested in me by the Secretary of the Army, your request for a Department of the Army permit is denied.

Pursuant to the order filed in the United States District Court for the Eastern District of Pennsylvania by the Honorable John S. Fullam on January 8, 1990 in resolution of the United States v. John Pozsgai, et al., Civil Action Number 88-6545, you are required to restore the subject site. If you should choose to not restore the site as required, please be advised that this office will pursue enforcement of the above referenced court order. A copy of the court order is enclosed for your information.

-2-

It is required that you contact Mr. Jeffrey Steen, Chief, Surveillance and Enforcement Section, Regulatory Branch, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania, 19107-3390, (215)-656-6725 within 10 days of the date of this letter for specific information related to the site restoration requirements.

It should be noted that there are no federal administrative appeal procedures that exist after a decision has been rendered by this office. In making the final decision on your request, this office has relied on the information and data presented by the public, the involved Federal, State and local agencies and yourself.

BY THE AUTHORITY OF THE SECRETARY OF THE ARMY:

Debra M. Lewis  
Lieutenant Colonel, Corps of Engineers  
District Engineer

Enclosure

Copies Furnished:

USFWS, State College  
USEPA, Region III  
NMFS, Oxford  
PADEP, Conshohocken - - - -

Agent:  
Mr. John E. Engelberger, P.E.  
32 South Lafayette Avenue  
Morrisville, PA 19067

Attorney:  
David J. Sowerbutts  
Cordisco and Bradway  
234 Mill Street  
Bristol, PA 19007

*Wetlands Horror Story*

## The Rest of the Story: John Pozsgai -- Shattered American Dream Or Ravaged Wetland?

**The Story:**

The press, the industry financed "National Wetlands Coalition" and several members of Congress have passionately told the story of John Pozsgai, a poor Hungarian immigrant whose American dream was shattered by federal wetlands laws and villainous federal regulators. Mr. Pozsgai owned a small parcel of land in Bucks County, Pennsylvania, on which he ran a diesel mechanic shop. He had hoped to expand his business on nearby property, but instead ran up against wetlands regulations and landed in jail with a three year sentence and a \$200,000 fine. So much for the American dream. . . or so it would seem.

**The Rest of the Story:**

The Federal District Court's ruling on Mr. Pozsgai and other relevant documents shed a completely different light on this case. Prior to purchasing his property, Mr. Pozsgai was told by the Corps of Engineers and others that the site contained wetlands, and that he would need a Section 404 permit to develop the land. Similarly, several engineering firms contracted by Mr. Pozsgai (and later fired) found that the site contained wetlands. Armed with this information, Mr. Pozsgai negotiated a substantially reduced price for the property.

Shortly after buying the land, and in clear defiance of the Corps' notification that he needed a permit for work on the land, Mr. Pozsgai began filling the property. The supposedly "clean" fill materials included concrete rubble, wood and other building scraps. The Corps and local officials repeatedly notified Mr. Pozsgai that his actions were illegal, but he continued filling the wetland on at least 30 separate occasions. Mr. Pozsgai's intransigence astounded the judge at his trial. When asked if he had violated the court's order to stop his activities, he denied doing so. The judge at that point postponed the hearing, recommending that Mr. Pozsgai's attorney inform him of the penalties for perjury. During sentencing, the judge observed:

It is hard to visualize a more stubborn violator of the laws that were designed to protect the environment. I think the sentence has to take into account not only punishment for that high degree of willfulness but also serve as a deterrent to others...

The Corps repeatedly told Mr. Pozsgai that he would need a permit to develop his land. Had he cooperated with the agencies rather than stubbornly ignoring their notices and violating the law, Mr. Pozsgai would have likely received his permit and never been taken to court. The permit process is designed to protect wetlands from avoidable development, and to ensure that other alternatives are considered before wetlands are used.

-more-



Working for the Nature of Tomorrow  
NATIONAL WILDLIFE FEDERATION  
1400 Sixteenth Street, N.W., Washington, D.C. 20036-2266  
790



Shortly after Mr. Pozsgai's illegal actions, neighbors began complaining of flooded basements, mildewed furniture, and other property damage caused by the flooding. The real victims of this story are Mr. Pozsgai's neighbors, not himself as some would have you believe. The losses of public values incurred by wetlands filling are precisely the reasons why Section 404 exists today.

**For more information, please contact:**

Doug Inkley, National Wildlife Federation (202) 797-6878  
Terry Schley, National Wildlife Federation (202) 797-6880  
Linda Winter, National Wildlife Federation (202) 797-6881

April 1993

PAGE A4

The  
12/29/88

BUCKS COUNTY COURIER-TIM

# Witnesses claim Pozsgai chased them from land

By Andrea Cohen

Calder, Philadelphia Bureau

PHILADELPHIA — Two witnesses testified Wednesday that Morrisville businessman John Pozsgai chased them off his land, threatened them and cursed at them when they tried to investigate flooding problems.

Franab Goswami, who owns apartments adjacent to Pozsgai's land, and Howard B. France, a consulting engineer hired by Goswami, told a federal jury that when they were analyzing Goswami's flooding problems, Pozsgai told them to get off his property.

Pozsgai is being tried in U.S. District Court on a 41-count criminal indictment that alleges that he violated the Clean Water Act by dumping on a 14-acre tract of land in Falls that authorities say is environmentally sensitive wetlands.

Pozsgai and his attorney, Henry Loeb, are trying to show the land is not wetlands.

Answering questions from Assistant U.S. Attorney Seth Weber, Goswami said he bought the apartments in October 1986 and

started getting tenants' complaints in July 1987 about rodents, especially rats, he said. He then hired an exterminator.

He also said he was getting pools of water around outside areas and hired France.

Pozsgai bought the adjacent land in the spring of 1987.

"I thought the water was coming from the Pozsgai property because of the bulldozer activity, and the ground next to my property was higher," Goswami said. "The elevation was higher because of the dumping."

"I met Mr. Pozsgai, and I told him I wanted to take a look at how to improve the drainage on my property. He asked me to leave the property immediately and started threatening me."

France also testified about the confrontation with Pozsgai.

"Mr. Goswami introduced me to Mr. Pozsgai and described my purpose of being there, to see what may have caused the flooding," he said.

"We were ordered off the property in no uncertain terms and we left."

He said he saw a "considerable amount of fill on the property" and could not complete his investigation because he was not allowed on Pozsgai's property.

France told the court that after that incident, Pozsgai called him and used "every foul word there is that I know."

France told the jury he wrote Goswami a letter stating what Pozsgai had said.

"He said Mr. Goswami was dumping at night and thought he was repusing to or working with the Army Corps of Engineers," France testified.

He then recounted what Pozsgai told him.

"Pozsgai said, 'I'll kill the S.O.B. (Goswami),' " France said. "He said he was going to do what he wanted and he had permission from township officials."

Pozsgai told me (that) Mr. Goswami thought he had problems now, wait until I'm done."

Other prosecution witnesses testified Wednesday that dumping took place on the land.

Prosecution testimony is scheduled to resume this morning.

## POLLUTION CAN SAVE YOUR LIFE



**FINALLY!**  
**THE ENVIRONMENT**  
**ON YOUR TERMS!**

- ★ Protect yourself from the sun.
- ★ Protect your family from the sun.
- ★ Instantly contaminate your own living room.
- ★ Pollute when you want, where you want.

**NEW \$2.99**

*Other products from Home Pollution Services Inc.:*

- CRUDE OIL for furniture and floor — eliminates all pests.
- RADIATION for air and water supply — insures increased half-life.
- SECONDHAND-SMOKE MACHINE — perfect for pets and kids.

6-17 WYF  
 By T. H. Watkins

**T**he Environmental Protection Agency has announced that it will issue a regulation in July intended to reduce tropospheric, or ground-level, ozone by 10 percent. This action, several alert conservative economists have revealed, means that the agency not only is determined to impoverish us but is also out to kill us.

Reducing ground-level ozone, the main component of urban smog, would decrease the incidence of asthma and other respiratory diseases — by as many as 15 million cases a year, according to the American Lung Association. But conservative analysts like Wendy L. Gramm and Susan E. Dudley, have wondered out loud whether tropospheric ozone has anything to do with respiratory problems.

T. H. Watkins, a consulting editor for Audubon magazine, has written numerous books on history and environmental subjects.

Even if it does, Dr. Gramm and Ms. Dudley wrote last week in The Wall Street Journal, a 10 percent reduction would be too expensive: the E.P.A. estimates that the new rule could cost \$6.3 billion a year, while its benefits amount to a paltry \$2.1 billion. Clearly, it would be fiscally irresponsible to do anything but let the victims of ozone-rich smog sicken and die.

Even worse, the conservative ana-

**Smog is good.  
 Trees are bad.**

lysts say, the E.P.A. proposal ignores the health benefits of tropospheric ozone — it is good for you, they contend, because it helps screen out ultraviolet-B radiation, a cause of sundry skin cancers, including lethal melanomas. Just as surely as a well-placed bullet will prevent someone from having a heart attack, then, daily doses of tropospheric ozone could keep you from getting a killer

melanoma. Providing your lungs don't collapse first.

Other experts say the filtering effect of tropospheric ozone is minuscule, but let's not get technical. The revelation of the previously unused benefits of a major pollutant could revolutionize environmental decision making.

At night, do trees exude carbon dioxide, which is harmful to humans if inhaled directly? You bet, but we could virtually eliminate this threat if we stopped up forest destruction.

Can you get salmonella from a bad salmon? Sure. Is there a better reason to let all the salmon in the fisheries of the Pacific Northwest die from the effects of dams and clear-cutting (see above)? Does someone occasionally fall into a swamp and drown? Fill the wetlands and you've got your problem solved.

For too long, the E.P.A. and other predatory agencies have ignored these and many other benefits of habitat destruction and air and water pollution. But, incredibly, there is more. Many conservative critics say the new E.P.A. rule would make goods and services more expensive, reducing disposable family income. That charge has been leveled

against the agency for years, of course, though so far it doesn't appear that your average family has lost a nickel of mall money because of anything the E.P.A. has ever said or done. But this time is different. This time the agency intends to kill.

Dr. Gramm and Ms. Dudley, citing a study by the Office of Management and Budget, say that every \$9 million to \$12 million decline in aggregate personal income is associated with one statistical death. Thus, they contend, their estimates of the full costs of the E.P.A. proposal — which are much higher than the agency's own estimates — mean the new regulation would kill 7,000 people a year.

My God. Isn't it had enough that the E.P.A. wants to deprive us of our melanoma-shielding smog? It also wants to kill 7,000 people a year by reducing their aggregate personal income. In our spineless devotion to environmental regulation, we are about to turn another killer loose.

This is a danger the nation ignores at its peril. In the meantime, now that summer is here I'm going to go find me a good inversion layer and hunker down in a life-preserving mist of tropospheric ozone. Kaff kaff.

Gordon/Falck/Booker

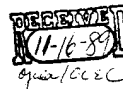
UNITED STATES OF AMERICA

v.

JOHN POZSGAI

Brief for the United States, Appellee

## I N D E X



Page

Opinions Below-----	1
Jurisdiction-----	1
Statement of the Issues-----	2
Statement of the Case-----	2
1. Statutory and regulatory background-----	3
2. Statement of facts-----	6
3. The criminal trial-----	16
Statement of Related Cases-----	20
Standard of Review-----	20
Summary of Argument-----	21
I. Defendant Was Properly Convicted For Unlawfully Filling A Wetlands Site That Was A "Water of the United States"-----	24
II. Defendant's Argument That He Is Entitled To A Reversal On the Ground of the Ineffective Assistance of Counsel Is Without Merit-----	28
III. The Evidence At Trial Established That Defendant Discharged "Pollutants" In Violation of Section 201 of the Clean Water Act-----	31
IV. The Trial Court's Sentencing Was Consistent with the Sentencing Commission's Guidelines and with Prior Law-----	33
Conclusion-----	42
Cases:	
<u>Avoyelles Sportsmen's League, Inc.</u> <u>v. Marsh</u> , 715 F.2d 897-----	32
<u>Bayou Des Familles Development Corp. v.</u> <u>U.S. Corps of Engineers</u> , 541 F. Supp. 1025-----	40
<u>Dooley v. Petsock</u> , 816 F.2d 885-----	28
<u>East Coast Tender Serv. v. Robert T.</u> <u>Winzinger</u> , 759 F.2d 280-----	32
<u>Glasser v. United States</u> , 315 U.S. 60-----	19
<u>Heckler v. Chaney</u> , 470 U.S. 821-----	41
<u>Hormel v. Helvering</u> , 312 U.S. 552-----	31
<u>Leslie Salt Co. v. United States</u> , 700 F. Supp. 476 (N.D. Cal. 1989), appeal pdg., 9th Cir. No. 89-15337-----	26
<u>Joseph G. Moretti, Inc. v. Hoffman</u> , 526 F.2d 1311-----	40
<u>Morrison v. Kimmelman</u> , 752 F.2d 918, aff'd, 477 U.S. 365-----	20
<u>Muth v. Central Bucks School Dist.</u> , 839 F.2d 113-----	31
<u>NRDC v. Callaway</u> , 392 F. Supp. 685-----	5
<u>Oyler v. Boles</u> , 368 U.S. 448-----	40

	Page
Alternative Fines Act, 18 U.S.C.:	
3571(b)-----	39
3571(b)(3)-----	33
18 U.S.C. 3742(a)(3)-----	36
28 U.S.C. 994(m)-----	37
28 U.S.C. 1291-----	2
28 U.S.C. 1331-----	1
28 U.S.C. 1345-----	1
28 U.S.C. 1355-----	1
28 U.S.C. 2107-----	2
Rivers and Harbors Act of 1899, 33	
U.S.C. 401 <u>et seq.</u> -----	37
Clean Water Act:	
Section 101, 33 U.S.C. 1251-----	4
Section 301, 33 U.S.C. 1311-----	24,32
Section 301(a), 33 U.S.C. 1311(a)-----	Passim
Section 306, 33 U.S.C. 1316-----	33
Section 307, 33 U.S.C. 1317-----	33
Section 309(c), 33 U.S.C. 1319(c)-----	4,34
Section 309(c)(2), 33 U.S.C. 1319(c)(2)-----	39
Section 309(c)(2)(A), 33 U.S.C. 1319(c)(2)(A)-----	2,6
Section 401(a)(1), 33 U.S.C. 1341(a)-----	29
Section 402(a), 33 U.S.C. 1342(a)-----	24
Section 404, 33 U.S.C. 1344-----	4,25
Section 404(d), 33 U.S.C. 1344(d)-----	4
Section 502(6), 33 U.S.C. 1362(6)-----	Passim
Section 502(7), 33 U.S.C. 1362(7)-----	5
Section 502(14), 33 U.S.C. 1362(14)-----	3
Fed. R. App. P. 4(a)(1)-----	2
42 Fed. Reg. 37122-----	5
30 C.F.R. 328.3(c)-----	25
33 C.F.R. 328.1-----	5
33 C.F.R. 328.3(a)(1)-----	5,27
33 C.F.R. 328.3(a)(5)-----	5,27
33 C.F.R. 328.3(a)(7)-----	5,27
33 C.F.R. 328.3(b)-----	5,23
33 C.F.R. 328.3(c)-----	25
33 C.F.R. 330.5(a)(26)-----	30
33 C.F.R. 330.5(b)(11)-----	29
33 C.F.R. 330.7-----	29,30
33 C.F.R. 330.7(a)-----	29
33 C.F.R. 330.7(b)-----	30
33 C.F.R. 330.7(c)-----	30
33 C.F.R. 330.7(d)-----	30,31
33 C.F.R. 330.9(a)-----	29
33 C.F.R. 330.9(b)(3)-----	29
40 C.F.R. 230.3(q-1)-----	4
40 C.F.R. 230.41-----	4

- 6 -

conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

33 C.F.R. 328.3(b), and "adjacent" is defined as "mean[ing] bordering, contiguous, or neighboring." 33 C.F.R. 328.3(c).

The Act defines "pollutant" to mean "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, \* \* \* wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. \* \* \*." Section 502(6), 33 U.S.C. 1362(6).

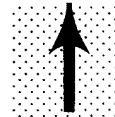
The criminal provision of the Act, Section 309(c)(2)(A), 33 U.S.C. 1319(c)(2)(A), provides that "Any person who -- knowingly violates section 1311, \* \* \* of this title, \* \* \*;

\* \* \* \* \*

shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not less than 3 years, or by both. \* \* \*.

2. Statement of facts. -- Defendant John Pozsgai owns and operates a truck repair business in the town of Morrisville, Bucks County, Pennsylvania. In the fall of 1986, Mr. Pozsgai decided to buy an adjoining 14-acre tract in order to expand his business. Originally, 80 to 85 percent of the tract constituted forested wetlands. Tr. Miller, Supplemental Appendix (S.A.) 1-2; Claffey S.A. 22-24; Mellon S.A. 28. A stream that was a tributary adjacent to the Pennsylvania Canal went through the middle of the tract. Tr. Claffey S.A. 25; Exhs. G-1 and G-7.

Approximately eight months prior to his purchase of the property Mr. Pozsgai gained knowledge of the nature of the tract as



- 7 -

wetland and that he would need permits. This evidence came from Douglas Mason. Mr. Mason, a realtor whose firm was the listing agent for the prior owner and who ultimately handled the sale, testified that Mr. Pozsgai contacted his firm in October of 1986 seeking to buy the tract for his business. Tr. Mason S.A. 33, 34. Mr. Mason related that he advised defendant to hire an engineering firm and to do everything that had to be done to acquire necessary building permits. Mr. Mason testified that after his firm received a report from an engineering firm hired by Mr. Pozsgai that there were wetlands at the site, the sellers inserted an "as is" clause in the contract of sale, and when, on June 19, 1987, the sale was consummated the price of the property was reduced from \$175,000 to \$142,500 to reflect the condition of the property as wetland. Exh. G-17; Tr. Mason S.A. 33, 34, 35-37.

Further evidence of Mr. Pozsgai's knowledge came from Nicholas J. Moran, president of J.G. Associates, Inc., an engineering and surveying firm. Mr. Moran testified that on December 8, 1986, Mr. Pozsgai told him that he was interested in buying the property. Tr. Moran S.A. 40, 41. Mr. Moran advised Mr. Pozsgai to commission a wetlands study of the tract in order to protect himself. Id. 41, 42, 45, 46. Defendant asked Mr. Moran to conduct a wetlands analysis on the site. Id. 69. Since Mr. Moran was not a wetlands expert, he hired William E. Palkovics, Ph.D., an expert in soil classification and identification, to perform a wetlands analysis. Using the three-part criteria employed by the U.S. Army Corps of Engineers, involving an analysis of the



- 10 -

maps of the area, studied a Corps report, had investigated the site and he testified that in his opinion the tract was wetlands. Tr. Perry 50-53, 56-60, 61, 63-64. He explained that an area that is fed strictly by groundwater discharges can become wetlands, adding that damming does not cause wetlands, <sup>8/</sup> groundwater does. *Id.* 58, 60-A, 62. ("\* \* \* the reason that wetland is there, is not because of that stream, it's because it is ground water, probably [a] ground water discharge site" *id.* 62-A.) He related that the experiments of Blake Parker, who wrote the Corps' approach to wetlands, had estimated that it takes about 100 years for soil to develop the characteristics of wetlands. *Id.* at 58, 59.

Four other expert witnesses, Claffey, Mellon and Perry) confirmed Dr. Palkovics' determination that the tract was a wetland.<sup>9/</sup> They also testified that this information was given to Mr. Pozsgai months before he even purchased the property. Rick Mellon, a consulting biologist who specializes in wetlands delineation, related that Mr. Pozsgai asked him to check whether the site contained wetlands. Mr. Mellon testified that in November of 1987, seven months before he purchased the tract, Mr. Pozsgai asked him to make an investigation of whether the tract contained wetlands. Mr. Mellon testified that he made an investigation and told Mr. Pozsgai that most of the site was previously filled wetlands, and that Mr. Pozsgai would need a permit if he wanted to

<sup>8/</sup> In United States v. Riverside Bayview Homes, Inc., 474 U.S. 121, 129-130 (1985), the Court held that it was sufficient for wetlands jurisdiction that the source of the water be groundwater.

<sup>9/</sup> See Dr. Palkovics' testimony, S.A. 65-76, 77-79.

- 12 -

35. Mr. Vinch stated that his company stopped dumping after August 23, 1988, when he found out that it was illegal. Id. 90.

“ Meanwhile, defendant’s neighbors began to experience flooding from the tract. Pranab Goswami, a consulting engineer who owned an apartment house complex adjacent to the Pozsgai site, testified that beginning in July 1987 he began receiving complaints from tenants about flooding in the basement and of driveways and walkways from defendant’s property. This had never happened before. Tr. Goswami S.A. c91-93. Mr. Goswami hired an engineer, Howard B. France, to investigate, and cure the problem which he attributed to the raising of the elevation on the Pozsgai site. Mr. Goswami, together with Mr. France, went onto the Pozsgai site, where they saw Mr. Pozsgai bulldozing fill and cutting down trees. Mr. Pozsgai ordered them off the property, cursing them roundly. Id. 94-97, 97A. A.

Another neighbor, Julian Yakelevicz, owner of Jule’s Tires, Inc., likewise testified that he observed Mr. Pozsgai cutting down the woods on his property and filling in the land. He also observed trucks coming in day-in and day-out. Afterwards, when Mr. Yakelevicz’s property started to flood he called the local zoning and regulatory authorities and the Corps. Tr. Yankelvicz S.A. 98-100.

Another neighbor, Joan Sevits, testified that after she saw material being dumped on defendant’s property, she started to keep records. She also saw defendant operating a front-end loader or a bulldozer, moving dirt and knocking down trees. At first she did not know that this was illegal, but when she was told that it

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,      Appellee

v.

JOHN POZSCAT, et al.      Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES

VICKI A. O'MEARA  
Acting Assistant Attorney General  
Environment and Natural Resources Division

MICHAEL BAYLSON  
United States Attorney  
Philadelphia, PA 19106

CATHERINE VOTAW  
Assistant United States Attorney  
Philadelphia, PA 19106

PETER R. STEENLAND, JR.

ROBERT E. KEARQUIST

VICTOR L. BLAUT

Attorneys

Appellate Section

Environment and Natural Resources Division

Department of Justice

P.O. Box 23795

Defiant Plaza Station

Washington, D.C. 20026

(202) 514-4158

OF COUNSEL:

MARTIN R. COHEN

BARRY F. GALT

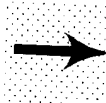
U.S. Army

Corps of Engineers

## I N D E X

	Page
Statement of jurisdiction .....	1
Statement of issues .....	1
Statement of the case .....	2
Statement of the facts .....	4
1. Statutory and regulatory background .....	4
2. The evidence .....	7
3. The district court order .....	15
4. Post-trial civil proceedings and criminal proceedings .....	15
Statement of Related Cases .....	17
Standard of Review .....	17
Summary of the Argument .....	18
Argument:	
I. Pozsgai is precluded from raising on appeal the jurisdictional issues necessarily decided against him upon criminal conviction for illegally filling these wetlands .....	19
II. The United States had jurisdiction under the Clean Water Act to regulate Pozsgai's property .....	26
A. The district court properly concluded that the stream on Pozsgai's property was a tributary of the Pennsylvania Canal and that the Canal was a tributary of the Delaware River .....	26
B. The district court properly concluded that the Pennsylvania Canal and the Delaware River were vehicles for interstate commerce .....	28
C. The United States was not required to prove that Pozsgai's filling activities themselves affected interstate commerce .....	31
III. The United States proved that Pozsgai discharged pollutants within the meaning of the Clean Water Act .....	37
IV. Pozsgai's discharges did not qualify for a nationwide permit under 33 C.F.R. 330.5(a)(26) .....	39
V. The temporary restraining order and contempt decrees were valid exercises of the district court's discretion .....	41
A. The temporary restraining order was valid .....	41
B. The contempt decree was valid .....	43
VI. The restoration order was a valid exercise of the district court's discretion .....	47
Conclusion .....	50
Certificate of service	
Addendum: Corps of Engineers Clean Water Act Regulations, 33 C.F.R. 320 <u>et seq.</u>	

engineer would be calling the Corps about permitting requirements. GX 2 (record of phone conversation April 29, 1987). The investigator explained the permitting and water quality certification requirements and cautioned Pozsgai not to place or push fill into the wetlands until those requirements had been met. Ibid. Because Pozsgai did not then own the property and denied having placed the existing fill, the Corps sent a cease and desist order to the record owners, Dr. and Mrs. Cassalia. JA 80a.

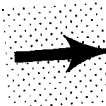


Pozsgai purchased the property from the Cassalias in June 1987, after negotiating a \$32,000 drop in the purchase price. The real estate agent who negotiated the sale testified that the original 1986 contract for \$175,000 had been contingent on Pozsgai being able to obtain permits to build his building on the property. JA 226a-228a; GX 29 (1986 purchase contract). In an effort to determine whether this contingency could be met, Pozsgai hired three independent engineering firms to evaluate the suitability of the property for building. One after another, each engineer reported to Pozsgai that the land was federally-regulated wetlands and that any development on the site would have to be approved by the Corps of Engineers. JA 228a-232a. See GX 30 ("entire site" is wetlands). As a result of these reports, Pozsgai negotiated the \$32,000 reduction in the price in exchange for dropping the permit contingency, and took the property in June of 1987 in "as is" condition. JA 229a; GX 31, 32.

When the Corps returned to the site in August 1987, after the consummation of the purchase, two more acres of fill

characterization. Using photos from 1987 and 1988, the Corps expert testified that the soils were "very dark" indicating that the area was "very saturated." JA 248a. There was also inundation, or "ponding," evident throughout the property. JA 249a. Wetland vegetation, though sparse after the filling had taken place, was nonetheless evident in the "lush skunk cabbage" that grows in swampy areas. JA 249a.

The impacts of the massive filling were various and significant. The Corps' expert testified that wetlands like these provide four major benefits: flood control, food chain production, fish and wildlife habitat protection, and hydrological support.<sup>6/</sup> The Corps' proposed restoration plan (GX 33) would restore these functions by removing the fill and planting appropriate vegetation. JA 245a-246a.

 <sup>6/</sup> Flood retention: flood waters from storms dissipate in wetlands and reduce flooding downstream, particularly in adjacent developed areas and on roads. JA 241a. Factual witnesses bore this out: since the filling, the water level on adjacent property has risen 3-4 feet every rainstorm and apartments adjacent to the property have been flooding. JA 158a.

Food chain production: as water moves through wetlands, it carries with it the detritus of dead plant material, which feeds invertebrates, which feed smaller fish, and on up the food chain. JA 241a-242a.

Fish and wildlife habitat protection: this wetland's vegetation is habitat for migratory birds and songbirds. It also supports raccoons, possums, amphibians, and reptiles, some of which spend their entire life cycle in wetlands. JA 242a-243a.

Hydrological support: the property is both a discharge area for groundwater coming up from the aquifer and a recharge area during dry spells, bringing water down into the aquifer. JA 243a. As a recharge area, these types of wetlands are particularly important because the wetland vegetation acts as a purifying filter, removing impurities by catching them against root systems or stems. JA 243a-244a.

1                   IN THE UNITED STATES DISTRICT COURT  
 2                   FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3                   - - - - -  
 4   UNITED STATES OF AMERICA,   )  
                                   ) Criminal Action  
 5                   vs.            )  
                                   ) No. 88-450-1  
 6   JOHN POZSGAI,                )

7  
 8                   TRANSCRIPT OF PROCEEDINGS

9                   of sentence in the above-entitled action on Thursday,  
 10                  July 13, 1989 before the Honorable Marvin Katz,  
 11                  District Judge.

12                 APPEARANCES:

13                 For the Government:

14                   U. S. Attorney  
 15                   3310 U.S. Courthouse  
 16                   601 Market Street  
                   Philadelphia, Pa. 19106  
 17                   By: Seth Weber, Esq., AUSA

18                 For the Defendant:

19                   David J. Sowerbutts, Esq.  
 20                   2149 Galloway Road  
                   Centre Plaza  
                   Bensalem, Pa. 19020

21                   and

22                   Washington Legal Foundation  
                   1705 N. Street, N.W.  
                   Washington, D. C. 20036  
 23                   By: Paul D. Kamenar, Esq.

24                 Florence Jones

                  Official Reporter

25                 Proceedings recorded by mechanical stenography, transcript  
                   produced by notereading.

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 - - - -

4 UNITED STATES OF AMERICA, )  
 ) Criminal Action  
 5 vs. )  
 ) No. 88-450-1  
 6 JOHN POZSGAI, )

7  
 8 TRANSCRIPT OF PROCEEDINGS

9 of sentence in the above-entitled action on Thursday,  
 10 July 13, 1989 before the Honorable Marvin Katz,  
 11 District Judge.

12 APPEARANCES:

13 For the Government:

14 U. S. Attorney  
 3310 U.S. Courthouse  
 15 601 Market Street  
 Philadelphia, Pa. 19106  
 16 By: Seth Weber, Esq., AUSA

17 For the Defendant:

18 David J. Sowerbutts, Esq.  
 2149 Galloway Road  
 19 Centre Plaza  
 Bensalem, Pa. 19020

20 and

21 Washington Legal Foundation  
 1705 N. Street, N.W.  
 22 Washington, D. C. 20036  
 23 By: Paul D. Kamenar, Esq.

24 Florence Jones

Official Reporter

25 Proceedings recorded by mechanical stenography, transcript  
 produced by notereading.



1 (The following proceedings were held  
2 commencing at 2:05 p.m.)

3 THE COURT: Hello.

4 MR. SOWERBUTTS: Good afternoon, Your Honor.

5 THE COURT: I first am required to ascertain whether  
6 the defendant has had an opportunity to read the presentence  
7 report and discuss it with counsel.

8 THE DEFENDANT: Yes.

9 THE COURT: Let me do first if I may any objections  
10 to the factual statements made in the presentence report and  
11 I'll hear first --

12 MR. SOWERBUTTS: No, Your Honor.

13 THE COURT: Any from the Government in that regard?

14 MR. WEBER: No, Your Honor.

15 THE COURT: Okay. Thank you.

16 The next thing is the guideline calculations in the  
17 presentence report and I'll hear both sides as to the guideline  
18 calculations if I may.

19 MR. SOWERBUTTS: Your Honor, prior to beginning, I  
20 respectfully request an opportunity to put one preliminary  
21 matter in front of you. There's an attorney here today to  
22 act as co-counsel on behalf of Mr. Pozsgai. His name is Paul  
23 Kamenar from the District of Columbia and I would like to move  
24 for his admission pro hac vice for the purposes of this  
25 sentencing hearing.

1 THE COURT: Glad to have you here.

2 MR. SOWERBUTTS: Would Your Honor like to first hear  
3 from the defense or the Government.

4 THE COURT: As to the guideline calculations? It  
5 doesn't matter to me, whichever side is comfortable in going  
6 first may.

7 MR. SOWERBUTTS: We'll accede to the Government on  
8 this.

9 THE COURT: Okay. Fine. Sure.

10 MR. WEBER: Your Honor, initially, the Government  
11 submitted a sentencing memorandum which --

12 THE COURT: I have that.

13 MR. WEBER: -- calculated the guideline range to be  
14 21 to 27 months. That complies with the initial sentencing  
15 report submitted by the Probation Department in this case.  
16 Since that time, the Government had learned additional evidence  
17 which caused it to believe that the guideline range should be  
18 recalculated with an additional score of plus two for an  
19 obstruction of justice as set forth in the sentencing guidelines  
20 Paragraph 3(c)(1).1 which provides for an increase for  
21 obstructive efforts concerning the investigation and prosecution  
22 of a case.

23 The Government submitted a letter to Frank Marshal  
24 of the Probation Department with a copy to the Court on May 17th,  
25 1989 which set forth the reasons for the Government's increase

1 in the sentencing guideline range which would bring the range  
2 to 27 to 33 months in prison.

3 THE COURT: The May 17 letter is attached to the  
4 Probation Officer's report?

5 MR. WEBER: Yes, Your Honor, and the reasons are  
6 stated in that letter that in addition to violating a temporary  
7 restraining order issued by Chief Judge Fullam of this Court  
8 back in August of 1988 for which there were videotape violations  
9 32 different instances in approximately a two-week period, he  
10 additionally following that in October of 1988 after he was  
11 charged and convicted of environmental crimes in Bucks County  
12 in 1988 went to the District Attorney's office in Bucks County  
13 and filed groundless charges against township officials and  
14 the township zoning officers in this case saying they were  
15 attempting to bribe him; they were attempting to extort money  
16 from him. The Bucks County District Attorney's office conduct-  
17 ed an investigation into those allegations and found them to  
18 be "totally groundless".

19 THE COURT: This was when in relationship to the  
20 Government --

21 MR. WEBER: This is in October of 1988 prior to his  
22 conviction on these charges which was December of 1988.

23 In addition, Your Honor, following his conviction in  
24 this case, he again attempted the same obstructive efforts this  
25 time on a Federal level writing letters to Senator John Heinz .

1 as well as going to the U. S. Attorney's office and the Federal  
2 Bureau of Investigation claiming that the U. S. Army Corps  
3 of Engineers as well as counsel to the U. S. Army Corps of  
4 Engineers attempted to bribe and extort money from him in  
5 exchange for giving him the required permits which he did not  
6 have.

7           Again, the FBI conducted a full investigation as to  
8 those charges. I have talked with Mr. Pozsgai's prior attorney  
9 who was present on the occasions when these alleged extortion  
10 and bribery attempts were made and he advises me that no such  
11 attempts were made so again, Your Honor, we have an obstructive  
12 attempt by Mr. Pozsgai similar to the State effort which he  
13 made on a Federal level.

14           Because of these obstructive efforts and the complete  
15 disregard for the Court's order back in August of 1988 which  
16 restrained him and enjoined him from permitting any more fill to  
17 be placed on the wetland site, the Government believes there's  
18 an obstruction of justice provision in the guidelines which  
19 would increase his score plus two which would increase the  
20 sentencing guideline range to 27 to 33 months.

21           And, Your Honor, those would only apply the sentencing  
22 guidelines to Counts 16 through 41 of the indictment. Counts 1  
23 through 15 are all offenses which occurred prior to November '87  
24 so the guidelines would not be applicable to those offenses.

25           THE COURT: Let me hear the other side with regard to

1 that claim if I may.

2 MR. SOWERBUTTS: Your Honor, I have several of my  
3 own claims as well. Would you prefer that I respond to the  
4 claim of the Government?

5 THE COURT: However you're most comfortable. It  
6 doesn't matter.

7 MR. SOWERBUTTS: In that regard, I would prefer to  
8 present my own arguments and then respond to the Government's  
9 issue on the obstruction.

10 In regard to the presentence report, there's been an  
11 error made in the calculation of the total offense level and  
12 the error concerns the application of Section 2(q)(1)(3)(b)(1).

13 THE COURT: Let me see if I can find that in my book.

14 MR. SOWERBUTTS: Pardon me, Your Honor. That would  
15 be (b)(4) not (b)(1).

16 THE COURT: It says, "If the offense involves a  
17 discharge without permit or in violation of a permit, increase  
18 by four levels."

19 MR. SOWERBUTTS: That is correct, Your Honor. It is  
20 my position -- It's the position of the defense that the base  
21 offense level is six and the base offense that occurred here  
22 was a discharge into a wetlands without a permit. You can't  
23 have a base level of six for discharging without a permit and  
24 then an aggregation for discharging without a permit. It's  
25 our position that that is a double penalty if you will and that

1 the instances of the fill being placed onto the site. If the  
2 permit had been obtained first and if whatever parameters had  
3 been set with the permit had been followed, filled material  
4 to have been placed on the site, a separate permit would not  
5 have been necessary for each instance. If this was a case  
6 involving the placing of drums filled with toxic chemicals  
7 which had been seeping into the ground for a long period of  
8 time, I believe that (b)(1) might have some application in an  
9 instance like that but in this particular case, while obviously  
10 I'm not disputing, it would be ludicrous for me to dispute that  
11 there are many counts to this indictment that cover a period  
12 of many months, again, I have to look at the basic offense  
13 which is the lack of the permit and the dumping which took place  
14 and I would argue that (b)(1) does not apply and that (b)(4)  
15 does not apply and what we are dealing with here is the base  
16 offense which is the failure to obtain the permit which would  
17 reduce the total offense level to six which would allow a  
18 sentence in the range of I believe six to ten months which  
19 would also enable the Court to consider a probationary sentence.

20 Your Honor, in further regard to that argument, I  
21 would like to call the Court's attention to the application  
22 found in the commentary on the very next page. It would be  
23 Application Note 4 which deals with Subsection (b)(1). The  
24 first sentence of the application states "Subsection (b)(1)  
25 assumes a discharge or admission into the environment resulting

1 in actual environmental contamination."

2           It is even reflected in the presentence report and  
3 I believe that the testimony that was produced at trial  
4 supported this position as well that the material that was  
5 brought on this site was basically clean: building debris,  
6 topsoil, etc. I do not believe there's been any evidence  
7 produced that there has been contamination and I believe that  
8 the word "contamination" can be plainly read and understood.  
9 We're not dealing with toxic and hazardous substances and,  
10 furthermore, I believe the testimony of the trial and some of  
11 the reports we have today bear out the site had been dumped on  
12 for years in the past. This wasn't an initial violation.  
13 This was not an initial placing of material onto this site  
14 so taking the plain language of the application, I do not  
15 believe that (b)(1) applies. I believe that the increase in  
16 the offense level is intended for offenses that produce more  
17 harm and in a different manner than the offenses for which  
18 Mr. Pozsgai has been convicted or in fact committed and this  
19 is just based on the plain language of the sentencing guide-  
20 lines themselves.

21           Your Honor, I have other alternative arguments as  
22 well relative to the application of (b)(1) and (b)(4). If  
23 you wish to hear my alternative arguments first -- I intend  
24 to be straightforward today. If the Court would like me to  
25 state my alternative arguments first or if you'd prefer to dis-

1 cuss my initial arguments first, whatever is the Court's  
2 pleasure --

3 THE COURT: Why don't you complete your arguments  
4 so that I can get the full picture of what it is you intend.

5 MR. SOWERBUTTS: In the alternate, and I'm hesitant  
6 to offer the alternate argument because I feel very strongly  
7 that (b)(1) and (b)(4) were not intended to apply for this  
8 offense for the reasons I've stated but upon reviewing the  
9 application that's found in the commentary, I would  
10 specifically again like to call the Court's attention to  
11 Application Note 4 and Application Note 7 both of which permit  
12 an adjustment of up to two points in either direction based  
13 upon a careful examination of the nature of the offense and  
14 the harm involved.

15 Again, the plain language in there does reference  
16 and does make use of the words "duration of the offense, the  
17 quantity of the offense".

18 THE COURT: What is it you're arguing now? Is it  
19 Commentary 7?

20 MR. SOWERBUTTS: Note 7 and Note 4. Note 4 applies  
21 to Subsection (b)(1).

22 THE COURT: Right and 7 applies to (b)(4).

23 MR. SOWERBUTTS: Correct, Your Honor, and both of  
24 those application notes permit a downward reduction in the  
25 total offense level of up to two points each which would



1 result in a total reduction of four points which we think is  
2 clearly warranted here, Your Honor, upon a careful examination  
3 of the offense for which the defendant has been committed but  
4 again I want to stress this is an alternate argument for a  
5 reason. It is an alternate argument because I believe based  
6 upon the language in the guidelines that (b)(1) and (b)(4) do  
7 not apply to this offense because of the facts that were pro-  
8 duced at trial as to what was placed on the site and what is  
9 the central offense that was committed. If you boil this  
10 down to a nut, Your Honor, there's no getting around the fact  
11 that the central offense is that he did something he shouldn't  
12 have done. I guess that's true in any offense. In this case,  
13 what he did was proceeded after being told he needed a permit  
14 without finishing the process and without completing the pro-  
15 cess to get the permit so that proper parameters could be set  
16 and that is essentially one process to apply for in obtaining  
17 a permit so those are my initial arguments on the total offense  
18 level, Your Honor.

19 As far as the obstruction of justice charge goes, I think  
20 the central point there is that relative to the contacts made  
21 with the U. S. Attorney's Office and the FBI about this case,  
22 that occurred after the trial. How did that obstruct the  
23 investigation leading up to the trial? Obviously it didn't  
24 obstruct the trial because he was convicted and there have been  
25 no charges placed against him for obstructing justice or filing

1 false reports or false swearing or anything and whether or not  
2 he felt that there was some unwarranted or untoward request  
3 made of him, that's his right to file a complaint. It's up to  
4 the FBI or whatever other authorities that would assume control  
5 over the investigation to act on it and act accordingly. I  
6 don't know what effect it had on his conviction or on the  
7 investigation leading up to it when it occurred afterwards  
8 and it would certainly be a chilling ruling to limit people's  
9 ability to file a complaint whether they're right or not. If  
10 he's wrong, he's wrong but certainly he had a right to file a  
11 complaint and there's nothing to indicate that it was intended  
12 to obfuscate the situation in any way.

13 As far as the other matter that was referenced by  
14 the Government concerning the Bucks County action, I fail to  
15 see the relevance in this case. It is my understanding it  
16 was not a conviction for that citation in front of that District  
17 Justice in the first place and if the District Attorney  
18 decided that there was no evidence or insufficient evidence to  
19 warrant a further investigation or charges placed on Mr.  
20 Pozsgai, well, again, there was no conviction on that citation  
21 and again I fail to see how that has any relevance to this  
22 case, how a case in front of a District Justice applies here  
23 at all so I would just ask the Court to simply reject that  
24 argument on the grounds it's totally irrelevant and furthermore,  
25 it doesn't constitute obstruction of justice at least as far as

1 the request that was made after this trial and I would in plain  
2 language say that's reaching for the sun, moon and the stars  
3 trying to pull everything down on top of the defendant's head  
4 that they possibly can.

5 THE COURT: Okay. I'll hear the Government in reply  
6 if you wish, Counsel.

7 MR. WEBER: Well, Your Honor, first of all, a person  
8 has a right to file a complaint and a person has a right to  
9 file a complaint with any agency or department or law enforce-  
10 ment group that they desire, however, a person has no right  
11 to file any false complaints and Mr. Pozsgai in both of those  
12 instances knew that the complaints that he was filing with the  
13 law enforcement agencies were false. He knew it when he filed  
14 it with the FBI and Senator John Heinz and the United States  
15 Attorney's Office because his own attorney was present at the  
16 times that he says he was extorted and attempted to be bribed  
17 by the U. S. Army Corps of Engineers, the same individuals  
18 that were involved in this prosecution and for an obstruction  
19 of justice offense to occur whether or not the Government filed  
20 charges, whether they are going to file charges in the future  
21 is not relevant to the adjustment that can be made under the  
22 sentencing guidelines. Whether there are factors that exist  
23 which tend to show that the defendant obstructed justice and  
24 justice has not been finished in this case, Your Honor, justice  
25 will not be finished until the Court imposes sentence and until

1 that time, any efforts that the defendant makes to try to  
2 thwart a thorough and complete investigation in an attempt to  
3 persuade the Court after his conviction that he was bribed  
4 when no such mention was made pretrial, during trial or at any  
5 other time either to this Court or to myself is obviously an  
6 attempt to obstruct justice and try to mitigate this Court's  
7 sentence.

8 THE COURT: If we're finished as to that one -- I  
9 don't mean to cut you off but I'll hear you as to the others,  
10 of course, but there the rule that I'm obligated to enforce  
11 says, "If the defendant willfully impeded or obstructed or  
12 attempted to impede or obstruct the administration of justice  
13 during the investigation or prosecution of the instant offense,  
14 increase the offense level from Chapter 2 by two levels" and  
15 I find that the false complaints which Mr. Pozsgai made follow-  
16 ing the conclusion of this trial cannot be said to have either  
17 obstructed or attempted to obstruct the administration of  
18 justice during the investigation and prosecution of the instant  
19 offense. I read the clause of the sentencing guidelines to  
20 require a willful impeding or obstruction or attempt to obstruct  
21 the administration of justice during the investigation or  
22 prosecution of the particular offense.

23 As to the October 1988 false claims, which he made at  
24 the State level, on the record before me, again, I cannot find  
25 that those willfully impeded or obstructed or attempted to

1 impede or obstruct the administration of justice during the  
2 investigation or prosecution of the particular Federal case  
3 where a jury convicted him, that is, of the instant offense so  
4 for that reason, I decline to increase the offense level by  
5 two levels on the obstruction claim. Essentially I reach the  
6 same result that the Probation Officer did in that regard.

7 Now I'll hear the Government, of course, on the other  
8 points that defense counsel has made with regard to calculation  
9 of the guideline level.

10 MR. WEBER: Your Honor, as to the argument on  
11 2(q)(1), 3(b)(1), which increases the base offense level by six  
12 for ongoing continuous and repetitive discharge or admission  
13 of a pollutant into the environment, this case has to be a  
14 definitive case of repetitive ongoing discharges. He has been  
15 indicted and convicted for continuously and knowingly filling  
16 in wetlands and admitting a pollutant into the environment  
17 for the period July 13th, 1987 through September 3rd, 1988. He  
18 has committed numerous violations on a daily basis between  
19 August 25th, 1988 and September 3rd, 1988 of 32 violations.  
20 If those are not a period of time requisite under the guidelines  
21 to show an ongoing continuous repetitive nature, I don't know  
22 what the guidelines were written for.

23 In the same factual analysis, Your Honor, a Federal  
24 Court in Florida on an individual who was charged with only  
25 four counts of polluting by filling in wetlands the Court there

1 adopted and found as a matter of law that it was an ongoing  
2 repetitive and continuous nature and upheld the plus six and  
3 that was in the case of United States versus O. C. Mills and  
4 his son, Carey Mills, also private landowners that were  
5 charged with four counts of filling in wetlands.

6 2(q)(1).3(b)(1) for the continuous ongoing nature  
7 is not a double penalty but it is a sentence enhancement. It  
8 is an aggravating factor that Congress and the sentencing  
9 Guideline Commission has requested the Court to take into  
10 consideration for an aggravating circumstance before imposing  
11 a sentence. Certainly a person who violates on a one-time,  
12 one-day basis should not necessarily receive the same sentence  
13 as a person that does it for almost one year on a continuous  
14 and daily basis despite notices and warnings that he receives  
15 and despite Court orders that restrain and enjoin him from  
16 doing it.

17 The Government's position is 2(q)(1).3(b)(1) clearly  
18 applies in this case due to the defendant's ongoing continuous  
19 and repetitive violations of the law.

20 THE COURT: What if -- If I may interrupt but what's  
21 the record? It says Subsection (1) assumes a discharge or  
22 admission into the environment resulting in actual environment  
23 contamination. What's the record on that before me, Counsel?

24 MR. WEBER: I don't believe that is stating that  
25 there must be a toxic pollutant discharge but a pollutant of

1 any type that contaminates, that is, dirties or disturbs or  
2 makes different in character the environment as it was prior to  
3 the discharge.

4           The record before you in this case during the trial  
5 showed that there was actual harm to the land caused by the  
6 defendant's repeated and ongoing discharges, that is, residents  
7 from around the area suffered flooding conditions as a result  
8 of the water not being able to be held in that wetlands area.  
9 Their homes were flooded. The land was flooded. The streets  
10 were flooded. Apartments across the street were flooded and  
11 all of that evidence is on the record before the Court. That  
12 is an actual harm. That is the actual contamination. The  
13 testimony from the Army Corps experts, Your Honor, was that  
14 there was approximately six feet of fill placed into the  
15 wetlands. That is contamination, Your Honor.

16           THE COURT: Have you concluded as to that particular  
17 aspect? I didn't mean to cut you short at all.

18           MR. WEBER: Yes, Your Honor.

19           THE COURT: Anything further on that particular  
20 aspect from the defendant?

21           MR. SOWERBUTTS: If I may, Your Honor, first of all,  
22 in regard to the O. C. case, I am familiar with that. It is  
23 my understanding that this case is currently under appeal and  
24 I would respectfully urge the Court to not follow the ruling  
25 in that case and to again give some consideration to my arguments

1 and to what appears to me to be the plain language of Sub-  
2 section 4 and again, I believe that the Government's position  
3 ignores the core, the nub, the heart, whatever word you want  
4 to use, of this offense. Again, it's ludicrous to say it  
5 didn't happen over a number of occasions.

6 THE COURT: The statute says repetitive release of  
7 a pollutant. How many on your version of the facts are there  
8 where he released the fill into the wetlands?

9 MR. SOWERBUTTS: Your Honor, my version of the  
10 facts is what was accepted by the jury.

11 THE COURT: I know. On the record as you read it.  
12 I'm asking you the same question I asked the Government.

13 MR. SOWERBUTTS: On a number of occasions over a  
14 period of months the testimony and the evidence produced  
15 showed fill being brought in and placed on the site.

16 THE COURT: Fair enough. That's my recollection of  
17 the record too.

18 MR. SOWERBUTTS: There's no getting around that.

19 THE COURT: I agree.

20 MR. SOWERBUTTS: The point is you wouldn't have to  
21 get a permit for each time you want to bring fill in. If the  
22 permit process had been followed and we can produce some  
23 evidence to show that initially Mr. Pozsgai initially after  
24 he acquired the property in June of '87 did file the initial  
25 permit application process and did almost take constant process



1 up to and including today to obtain the permit but if he had  
2 obtained the permit, it would have permitted some fill, some  
3 grading and some construction on the site. Obviously it would  
4 have been within parameters maybe very, very strict set by the  
5 Corps of Engineers. There's no getting around that either.

6 THE COURT: I suppose the point of the matter is that  
7 he never got a permit.

8 MR. SOWERBUTTS: That's correct, Your Honor.

9 THE COURT: He kept dumping and dumping and dumping  
10 without a permit, right?

11 MR. SOWERBUTTS: Your Honor, that's true and I want  
12 to go on about that point but before I do, there's another  
13 element that I wanted to point out to you. When you look at  
14 the plain language of (b)(1)(a), it says the offense resulted  
15 in an ongoing repetitive discharge. I believe the Government's  
16 position is inaccurate because it groups all of the counts  
17 together for the purpose of applying (b)(1)(a) but (b)(1)(a)  
18 says "the offense" and that's why I made the argument earlier  
19 that it appears to me that the purpose of the guidelines is to  
20 punish more heavily certain types of contamination, pollution,  
21 discharge, whatever and what we have here are not harmful  
22 substances and what we certainly don't have here is some  
23 pristine wilderness area that's been irreparably harmed and  
24 ruined because of this activity. We have dumping in a dump.  
25 That's what we've got.

1 THE COURT: On your version of the facts, what did  
2 the fill consist of on the record before me I mean?

3 MR. SOWERBUTTS: I believe on the record before you,  
4 and I am without the benefit of the notes of testimony  
5 unfortunately, but I believe that on the record before you  
6 what we have is earth, building debris, topsoil, rubble,  
7 bricks, typically what you refer to as clean fill. There is  
8 no evidence of any toxic pollutants or contaminated pollutants  
9 that caused any irreparable or permanent harm either to the  
10 property or the surrounding neighborhood or the water table  
11 or the stream or the sky or the soil.

12 THE COURT: Well, okay. I don't want -- If there  
13 was something else you wanted to say on (b)(1)(a), I'll be  
14 glad to hear it. I don't mean to be short and I won't be short.

15 MR. SOWERBUTTS: I appreciate that, Your Honor, but  
16 I'll just be repeating myself at that point.

17 THE COURT: It does seem to me on the record before  
18 me that I'm required to start with the base level offense of  
19 six and then if this isn't a repetitive release of a pollutant  
20 into the environment, it's hard to imagine a case which would  
21 be. Just time after time after time he was told by his own  
22 expert as I recall, by the Army Corps of Engineers, by a  
23 restraining order from this Court and he kept releasing the  
24 building debris and the rubble and the fill into the wetlands  
25 and to argue that this isn't an emission or discharge into the.

1 environment resulting in actual environmental contamination  
2 seems to me does violence to those words and doesn't recognize  
3 the value that the legislation seeks to enhance of protecting  
4 the wetlands.. By putting building debris and rubble into a  
5 wetlands property, you're doing a discharge into the environment  
6 which results in actual environmental contamination and it  
7 seems to me that's what the jury found and I independently  
8 in applying these guidelines make the same finding.

9 I agree with the Probation Office that the offense  
10 characteristic under 2(q)1.3(b)(1)(a) must be increased by six  
11 levels.

12 I have to hear the Government on(4)in this and then  
13 I'll give the defense a chance to reply.

14 MR. WEBER: Your Honor, as to 2(q)1.3(b)(4), the  
15 sentencing guidelines provide for an increase of four if the  
16 offense involved discharge without a permit or in violation  
17 of a permit.

18 There are many environmental crimes that are provided  
19 for in Title 33 of the United States Code. Some involve dis-  
20 charge of a pollutant, some involve other matters but for the  
21 crimes that involve discharge of a pollutant into the environ-  
22 ment, the guidelines have saw fit to enhance the penalty that  
23 a Court may consider and impose if those discharges are done  
24 without a permit or in violation of a permit that was issued.

25 Now in this case, the defense argues: Well, since the

1 discharge itself is for polluting without a permit, how can you  
2 add on for doing it without a permit since it's an element of  
3 the offense and the Government's response essentially, Your  
4 Honor, is the same rationale applies to an armed bank robbery  
5 under the guidelines. For a person to be convicted of an armed  
6 bank robbery, there is usually and must be a firearm involved  
7 in that offense, however, under the sentencing guidelines,  
8 there is an enhanced penalty for the use of a firearm during  
9 a crime of violence.

10       The sentencing guidelines see fit to increase punish-  
11 ment when certain aggravating factors are present. In the  
12 environmental law area, they have saw fit to increase the  
13 sentencing range for people who commit environmental crimes  
14 for discharging pollutants without a permit and in this case,  
15 we don't only have one discharge, we have 40 discharges all  
16 without a permit and on the record before this Court, contrary  
17 to the comments made by counsel in court today, there is  
18 absolutely no evidence whatsoever that any efforts were made  
19 ever to obtain a permit or that one was ever issued and again,  
20 Your Honor, if this is not a case where discharging a pollutant  
21 without a permit does not require the enhancement, I don't know  
22 what is.

23       Again, Your Honor, in the case of United States  
24 versus O. C. Mills out of the Northern District of Florida, that  
25 Court found in only four violations that the enhancement applied

1 for the discharge without a permit.

2 THE COURT: I'll hear the defense on that but the  
3 fact -- Even if I assume that he applied for a permit, that  
4 seems to me to make it worse rather than better from your point  
5 of view because it just shows the willfulness of the behavior  
6 to me at least in proceeding to dump six feet of fill or what-  
7 ever it was on the wetlands clearly without a permit and knowing  
8 enough to apply for one.

9 If you wish to respond, I'll be glad to hear you.  
10 I'm just telling you how my mind works so that you can argue with  
11 me if you wish. I'm sure you will.

12 MR. SOWERBUTTS: That's my job today.

13 THE COURT: Of course. I understand.

14 MR. SOWERBUTTS: At first blush again, I have to  
15 agree with what you're saying but upon a careful examination of  
16 the particular facts of this case, I don't think that's true.  
17 First of all, I don't think it's true because I have a photocopy  
18 of the response dated June 1, 1987 that was first given to  
19 Mr. Pozsgai returning his initial application and while at  
20 first blush it may appear to be worse that he knew about it  
21 and then did it anyways, to really understand that, you're  
22 going to have to hear from my client and from one member of my  
23 client's family to understand a little bit more about the  
24 history of this parcel and what he was going through at the  
25 time and why this happened.

1 THE COURT: I'll be glad to.

2 MR. SOWERBUTTS: As we get into it during the hearing.

3 THE COURT: If you want to put it on before I rule on  
4 this, that's fine or do you wish me to rule on this without that  
5 testimony and then present it on the issue of something else?

6 However you wish to proceed is fine with me.

7 MR. SOWERBUTTS: Your Honor, I think really my  
8 arguments deal more with mitigation perhaps than they do with  
9 the applicability of this section.

10 THE COURT: I tend to agree with that. It's hard  
11 for me to see really --

12 Go ahead. I just want you to be comfortable to do it.

13 MR. SOWERBUTTS: I understand Your Honor letting me  
14 do whatever I want: hang myself or help my client. I appreciate  
15 that.

16 As far as the applicability of (b)(4), what was  
17 going through my client's mind at the time this took place I  
18 don't think that really matters as to whether or not (b)(4)(a)  
19 applies. I think the important item to note once again is that  
20 the way that this is drawn up and for the crime that Mr. Pozsgai  
21 was convicted of, I'll just be repeating myself. It seems to  
22 me, Your Honor, clearly to be a double head and it seems beyond  
23 my comprehension that the people who drew up the sentencing  
24 guideline would itemize what offenses apply for the base level  
25 offense and then without any further clarification or speci-

1 fication up it again. That is not logical. I think it's a  
2 general standard whenever we're reading any ordinance or  
3 regulation that it has to be read with an amount of fair sense  
4 and common sense.

5 THE COURT: Okay. I think I understand your argument  
6 in that regard.

7 My reading --

8 Had you concluded?

9 MR. SOWERBUTTS: Yes, Your Honor. I simply wanted to  
10 once again remind the Court as to my alternate argument. If  
11 you're of the opinion that these sections do apply, I believe  
12 the commentary provides for a downward reduction based upon  
13 what happened. I would ask the Court to not look at the  
14 number but on the background and the history of the site and  
15 the conditions of the site before my client purchased it and  
16 what was placed on the property and I believe that both of  
17 those notes would permit a downward reduction based upon an  
18 examination of all those factors.

19 THE COURT: Don't forget it says in either  
20 direction.

21 MR. SOWERBUTTS: I realize that, Your Honor.

22 THE COURT: As best I read the guidelines, it's  
23 designed to cover mishandling of -- it says other environmental  
24 pollutants which as applied to this case would be the trash,  
25 that's the fill, the junk, the building debris, the rubble

1 that Mr. Pozsgai dumped on wetlands which are protected terri-  
2 tory by law and it seems to me that this under the plain  
3 reading of the words involved the discharge without a permit  
4 and that I have to increase it by four levels under Section  
5 2(q)1.3(b)(4).

6           So far as a departure in either direction is concerned,  
7 depending upon the nature and quantity of the substance  
8 involved and the risk associated with the offense, I really  
9 don't see a basis to make a departure in the direction you're  
10 asking me to and it seems to me that the guideline is tailored  
11 to cover the offense which involves a discharge without a  
12 permit and that this is such an offense so I find that the  
13 Probation Officer's calculation in that regard is correct.

14           Was there a dispute in the papers about the  
15 concurrent issue or -- I'm not clear on whether that's still  
16 a viable issue. If you wish to argue it, I don't wish to cut  
17 you off.

18           MR. WEBER: Your Honor, there have been no papers  
19 filed by the defense so I'm not aware of what position they're  
20 taking.

21           THE COURT: You can sort of assume that they disagree  
22 with yours.

23           MR. SOWERBUTTS: I'll state for the record that we  
24 do, Your Honor.

25           THE COURT: Okay. If I understand it correctly then,



1 so far as the applicable guidelines, it's a total offense  
2 level 16, criminal history category 1 and the range that the  
3 guidelines provide is 21 to 27 months with one year supervised  
4 release, a fine of 200,000 to \$2 million plus the cost of  
5 imprisonment, supervision and a special assessment of \$2,000.00.  
6 Is that essentially how it comes out assuming my rulings are  
7 correct?

8 MR. WEBER: Yes, Your Honor.

9 MR. SOWERBUTTS: I've reviewed it and I believe so,  
10 Your Honor. I would like an opportunity before you officially  
11 impose sentence to submit copies of the application that I  
12 referred to so that it is part of the record.

13 THE COURT: I will. I just wanted to straighten  
14 out --

15 If you're still arguing consecutive or concurrent,  
16 I'll hear you if you wish.

17 MR. WEBER: Your Honor, if these involved one or two  
18 or three or four offenses and violations, perhaps the defense  
19 would have a good argument to group them all together, however,  
20 when they span a period of time in excess of a year, when is  
21 the Court going to say: We're not going to give you any more  
22 free bites? We're not going to sentence you for one crime even  
23 though you've committed 40.

24 THE COURT: What you're talking about now is  
25 Section 5(g)1.2, right?

1 MR. WEBER: Yes, and I think in all honesty, Your  
2 Honor, under the guidelines, it's in the discretion of the  
3 Court as to whether they will group all the offenses together  
4 for the purposes of the sentencing or consider them separately  
5 as each separate and distinct acts to be sentenced consecutively.

6 THE COURT: I'll hear the other side on that.

7 MR. SOWERBUTTS: Your Honor, ultimately I guess it's  
8 true that any sentence carries a certain amount of discretion  
9 by the Judge but I believe in this case the sentences should  
10 run, must run concurrently and this must be grouped together.  
11 In various places in the sentencing guidelines there are examples  
12 made of when a mandatory grouping would apply and when it  
13 would not. Rather than go through all those, I'll defer to  
14 the fact that it is within the Court's discretion for the  
15 purpose of this hearing today and again I just have to  
16 reiterate that the central offenses, the failure to get the  
17 permit before all this stuff took place is perhaps what is  
18 annoying and aggravating at least to the Court or the Govern-  
19 ment or the Army Corps of Engineers is the allegations were  
20 made and apparently accepted by the jury and beyond dispute  
21 that on more than one occasion a warning was given not to do  
22 it but again I would ask the Court to consider some evidence  
23 that I wish to present briefly and shortly as to what was  
24 going on when all of this took place and I believe those facts  
25 that I will present to the Court will clearly mitigate what

1 took place. The very fact that a large number of instances  
2 occurred I would urge the Court to not sentence strictly on  
3 that basis without hearing the rest of my testimony first and  
4 the central offense is the failure to get the permit.

5 THE COURT: We don't rush. I know this is important  
6 to your client and yourself and we don't have to feel pressed  
7 about it. I agree that all the counts should be so far as  
8 the sentence of imprisonment be concurrent because they involve  
9 essentially the same harm although it was multiplied by  
10 repetitive polluting conduct and I think the guideline is  
11 adequate to achieve appropriate total punishment without making  
12 the sentences of imprisonment on each of the counts consecutive.

13 Are counsel satisfied that we've now resolved --  
14 that I've now resolved whatever issues there are as to the  
15 guideline calculations or is there anything further in that  
16 regard?

17 MR. WEBER: Nothing from the Government, Your Honor.

18 THE COURT: Okay. Fine. Now I'll let you present  
19 whatever it is you wish at this point, Counsel. Do it in your  
20 own way.

21 MR. SOWERBUTTS: Thank you.

22 Your Honor, first, I'd like you to hear from my  
23 client. This is probably the most important part of this  
24 proceeding.

25 THE COURT: Don't forget -- you're welcome to put your

1 client on -- I'll also give him the right to speak by way of  
2 elocution if he does at that time. If he wishes  
3 to testify now, I'll have to let the Government cross examine.  
4 It's entirely up to you.

5 MR. SOWERBUTTS: May I have a moment, Your Honor?

6 THE COURT: Surely.

7 (Pause)

8 MR. SOWERBUTTS: Your Honor, I would like to call my  
9 client to offer some testimony for you.

10 JOHN POZSGAI, THE DEFENDANT, SWORN

11 DIRECT EXAMINATION

12 BY MR. SOWERBUTTS:

13 John, please remember to keep your voice up so that everyone  
14 can hear you.

15 How old are you?

16 A 57.

17 Q And how long have you been married?

18 A 30 years.

19 Q Where do you live now?

20 A 536 West Bridge Street, Morrisville.

21 Q How long have you lived there, John?

22 A 28 years.

23 Q Where were you born?

24 A Hungary.

25 Q When did you move to the United States?

- 1 A 1956.
- 2 Q Have you lived in the Morrisville area your entire life?
- 3 A All my entire life, yes.
- 4 Q Your home is located across the street from the property  
5 that's involved in this case, is that right?
- 6 A Yes, sir.
- 7 Q You now have the property and were aware of the property  
8 long before 1987 when you purchased the property, is that  
9 correct?
- 10 A Yes, sir.
- 11 Q Did you purchase the property in 1987?
- 12 A Yes, sir.
- 13 Q Prior to 1987, did you know the owner of the property?
- 14 A I know the owner of it and I know the caretaker of it.
- 15 Q And did you ever use the property before you bought it  
16 in 1987?
- 17 A I did.
- 18 Q Did other people in the area use the property also?
- 19 A Yes, sir. Dozens of people used the property.
- 20 Q What was everybody using it for?
- 21 A Dumping site.
- 22 Q What business or profession are you in, John?
- 23 A Truck repair business.
- 24 Q Is this something you've done your entire adult life?
- 25 A All my life.

- 1 Q When and where did you learn how to do this?
- 2 A I learned the business in Europe, in Hungary.
- 3 Q Before you came to the United States?
- 4 A Before I moved to the United States.
- 5 Q And when you moved to the United States, did you
- 6 immediately try to find work in that field again?
- 7 A Yes. I worked for the International Harvester Company in
- 8 Trenton, New Jersey.
- 9 Q Then what did you do after you finished working for them?
- 10 A After they went out of business like 10 years ago, then I
- 11 got in business for myself in that same address.
- 12 Q Where you're living now?
- 13 A Where I'm living at.
- 14 Q What kind of work do you do now?
- 15 A Truck repair work.
- 16 Q What did you have when you started your business?
- 17 A I haven't had nothing when I started it.
- 18 Q What do you have now?
- 19 A Well, we own a small property across the street and I do
- 20 have a backyard garage and that's where I do work.
- 21 Q Was this property involved in this case important to you
- 22 for some reason?
- 23 A Yes.
- 24 Q Why was it important?
- 25 A I bought this property because I wanted to build a newer

1 building where I could increase my business.

2 Q As far as your business goes, John, over the years have  
3 you had a successful business with a lot of extra profits?

4 A I didn't have no extra profit but made a living.

5 Q Did you have money saved up for a pension and retirement?

6 A No.

7 Q Could you expand your business at your current location?

8 A Yes, I could.

9 Q Could you expand your business with this property?

10 A Yes, I could.

11 Q But were there any restrictions as to where you are now  
12 at your present address?

13 A Well, it's a residential area and it's small property  
14 and I cannot get big enough trucks in there to make a decent  
15 job out of it.

16 Q Was it easy for you to get the property?

17 A Well, it wasn't easy. I had to borrow money to buy it.

18 Q When you borrowed the money, you took out a mortgage, is  
19 that right?

20 A Yes, I did.

21 Q Did you mortgage the property in question?

22 A I mortgaged the current property to borrow money on it to  
23 buy this piece of land.

24 Q Your house and your business where you are now is also  
25 mortgaged, is that right?

1 A That's right.

2 Q As well as the property that you purchased too?

3 A That's mortgaged too.

4 Q It's fair to say your plans were very important as to  
5 what you were going to do with this property?

6 A Yes, sir.

7 Q John, when is the first that you learned that there were  
8 permits and processes that were involved in dumping, grading  
9 and filling this property?

10 A I've known this at about the time when I purchased it,  
11 June '87.

12 Q Before that time, again, you had put things on the property  
13 before?

14 A About 20 years -- Since I'm living across the street,  
15 I've been using that property with the permission of a prior  
16 owner and the caretaker.

17 Q As did other people in the neighborhood?

18 A As everybody else did it.

19 Q Before June of 1987, do you remember whether or not any-  
20 body ever told you to stop that or not to do that?

21 A I cannot recall that.

22 Q Did anybody tell you don't do this?

23 A After we purchased it, they did.

24 Q But before you purchased it, did anybody tell you not to  
25 do it?



1 A I don't recall that.

2 Q Does that mean no?

3 A Means no.

4 Q Did you take any steps to try to get a permit?

5 A Yes, I did.

6 Q What did you do, John?

7 A I went up to the Army Corps of Engineers in the Customs  
8 Building in Philadelphia here and I met Mr. Hasell (ph) and  
9 I met an engineer named Marty Miller.

10 Q When was that? Do you remember?

11 A It was probably about two years ago.

12 Q Are you exact about the date?

13 A I don't have a date.

14 Q Okay.

15 MR. SOWERBUTTS: Your Honor, if I may, I'd like to  
16 have this marked D-1.

17 THE COURT: Just mark it however you'd like.

18 (Counsel did so.)

19 BY MR. SOWERBUTTS:

20 Q John, I'd like to show you what I've had marked as D-1.

21 Do you recognize this?

22 A Yes, sir.

23 Q Can you tell us what this is and how you came to have this?

24 A Yes. I recognize it. I went up to the Army Corps of  
25 Engineers to apply for a permit application and I was handed

1 this with Mr. Frank Cianfrani to have a right to conduct work  
2 in land and also I have a right to obtain a permit.

3 Q Did you file an application back then two years ago?

4 A I did.

5 Q What happened to that? Do you know?

6 A We submitted it to the Harrisburg office and there was a  
7 long wait to fill these papers out. We didn't know how to fill  
8 it out and took it to the Engineers and about five or six  
9 months later they mailed it back to us. They told us to have  
10 another one filled out.

11 Q Do you remember who the first engineer was that you were  
12 dealing with?

13 A Ezra Gallup (ph).

14 Q Did you ever contact any other engineers to try to help  
15 you?

16 A I did contact maybe two or three more engineers and they  
17 all didn't understand how to fill it out and they all rejected  
18 it. They says they don't understand how to fill these papers  
19 out.

20 Q Was this something that was going on over a period of  
21 many months when you were contacting these people?

22 A Going on and on and I tried to see at least half a dozen  
23 different people and I ended up with seeing a professor from  
24 Rutgers University. He's a soil scientist and finally me and  
25 him sat down and we filled out a second application which one

1 was correct and they accepted it and --

2 Q John, let me stop you right there.

3 (Documents were marked for identification and  
4 shown to Mr. Weber.)

5 MR. WEBER: I apologize for the delay, Your Honor,  
6 but I haven't had an opportunity to look at these documents.

7 MR. SOWERBUTTS: I apologize to Your Honor. That  
8 wasn't intentional.

9 THE COURT: That's all right.

10 Would you like to take a short break while you look  
11 over the documents? Maybe you can look over the whole batch  
12 if you don't mind and then we don't have to all sit here. Show  
13 him whatever the exhibits are so that -- and let Mrs. Purnell  
14 know when you're ready.

15 (Court was thereupon recessed at 3:05 p.m.

16 After the recess, the following proceedings  
17 were held commencing at 3:15 p.m. with the  
18 witness resuming the stand.)

19 MR. SOWERBUTTS: Your Honor, may I continue?

20 THE COURT: Sure.

21 MR. SOWERBUTTS: Thank you.

22 Your Honor, for the record, I have shown what I have  
23 collectively marked as D-2-A, B, C and D to the Government and  
24 they've had an opportunity to examine them.

25 MR. WEBER: That's correct, Your Honor.

1 BY MR. SOWERBUTTS:

2 Q John, first, I would like to show you what I have marked  
3 as D-2-A which is an exhibit composed of six pages titled  
4 "Joint Permit Application". Do you recognize this?

5 A Yes, sir.

6 Q Can you tell us what this is?

7 A This application is to be filled out and submitted to the  
8 Office of the Commonwealth of Pennsylvania, Department of  
9 Environmental Resources, Bureau Dam and Waterway Management.

10 Q What's the purpose of this application as you understand  
11 it?

12 A This application was filled out so we could work on the  
13 land.

14 Q When did you fill this particular application out?

15 A This was filled out -- There should be a date on it. I  
16 have a date here -- 2/28/89.

17 Q Did someone help you prepare this?

18 A The Professor Kirkham from Rutgers University.

19 Q I'd also like to show you what I have marked as D-2-B  
20 dated April 3, 1989 which is an exhibit composed of approximately  
21 10 pages with a cover letter of the same date from Wendell C.  
22 Kirkham, K-i-r-k-h-a-m. Can you tell us what this exhibit is?

23 A This exhibit contains a completion of full area of land  
24 and what's contained and what the conditions are and that's a  
25 complete report from the property that's in question right now.

1 Q Was that report filed with or as part of the application?

2 A That's part of an application and it's filed with it.

3 Q Is it your understanding that this report was necessary  
4 as part of the application process?

5 A Yes, sir, it is.

6 Q And is this report what you contacted the other engineers  
7 and the other soil scientists that you testified about?

8 A This report they never had one of these before.

9 Q Were those other people that you contacted able to help  
10 you?

11 A Other people didn't have no idea, they had no understand-  
12 ing how to make one of this because this was just one of a kind  
13 has been submitted.

14 Q John, I also want to show you what I've marked as D-2-C  
15 and D-2-D which is a two-page letter dated July 11th, 1989  
16 from Wendell Kirkham. Do you recognize this letter also?

17 A Yes, sir. This letter was necessary to add to the permit  
18 application by the Department of Environmental Resources,  
19 Bureau Dam Waterway and they also needed this report and he  
20 prepared this report.

21 Q Is it your understanding the application process is  
22 complete?

23 A It is complete a hundred percently.

24 Q And it's your understanding that there is some sort of  
25 advertisement has to be taking place now?

1 A It has to be advertised in the Pennsylvania Bulletin for  
2 30 days and I submitted that myself to the gentleman, Mr.  
3 Rick Shanell (ph), in Harrisburg and he said as soon as the  
4 advertisement be finished, we should receive the permit.

5 Q Do you think you're going to get the permit?

6 A He told me I will have a -- I'm going to have a permit.

7 Q Is that your understanding?

8 A That's my understanding.

9 Q John, from June of 1987 to April of 1989 -- February of  
10 1989 just to go back over one point, did you talk to a number  
11 of people to try to find somebody to help you finish the appli-  
12 cation process?

13 A Yes, I did.

14 Q How many altogether?

15 A Oh, about at least half a dozen.

16 Q John, is it safe to say you needed the permit application?

17 A Yes, I did. I needed it.

18 Q John, why did you proceed when you didn't have a permit?

19 A Well, I thought I would lose this property to be -- if  
20 we cannot use it. This is all my life. I want to build a  
21 garage and if we cannot pay a mortgage, if we have no use for  
22 it, we will lose the property, we lose the house we are mortgag-  
23 ing so I was hoping a permit would come one day but every  
24 engineer I went they didn't have no knowledge how to fill it  
25 out until I met with Professor Kirkham. It's so complicated

1 to fill it out they don't know how to do it and Mr. Gallup had  
2 it sitting in his office six months and six months later he  
3 told me, "I don't know how to do it." "Sir", I said, "why didn't  
4 you tell me the first day?" He said, "I don't know how to do  
5 it" and that's how I met with Professor Kirkham the second  
6 time and finally he know how to fill it out.

7 Q John, have you ever been arrested before prior to this  
8 offense?

9 A No.

10 Q Have you ever been convicted of anything other than a  
11 traffic ticket prior to this offense?

12 A No, sir.

13 Q Do you have respect for the law?

14 A I do.

15 Q Was this a mistake?

16 A This was a big mistake.

17 Q Why?

18 A I didn't know better.

19 Q Well, you knew you needed the permit.

20 A I do need a permit and it was a big mistake, a big tragedy.

21 Q John, I want to talk to you about the property. You said  
22 you lived across the street for the whole time that you've been  
23 at your current address for 22 years, is that right?

24 A Yes.

25 Q What is surrounding the property? What properties touch

1 on the property in question?

2 A Well, the south side is a junkyard with a road that was  
3 already built on now. The lower side is a freeway, four-lane  
4 highway. The State built it. The front side is West Bridge  
5 Street and adjacent to the properties is a tire shop, Jules'  
6 Tire. Three quarters a way down a little bit way down some  
7 wood area, I own it.

8 Q John, did you do anything to remove debris or trash off  
9 this property when you first bought it?

10 A Yes, I did.

11 Q What did you do?

12 A We had to remove 5,000 junk tires from a stream thrown in  
13 by Jules' Tires blocking up the water flow.

14 Q Were there tires on other property as well?

15 A Tires were all over the property and we removed almost all  
16 of it.

17 Q Any other debris?

18 A Scrap metal; we took scrap metal off of it.

19 Q John, do you know if anybody ever filed any -- Strike that.

20 Do you know if any actions were ever taken against  
21 the people who placed the tires on the property in the first  
22 place?

23 A We did file but I never heard.

24 Q When you say that you filed --

25 A I filed --



1 Q Are you talking about a civil suit -- Do you know if any  
2 Government agency has ever taken action against the people who  
3 placed the tires on the property?

4 A As far as I have right now, I don't think so. We filed  
5 a complaint. It's in the other lawyer's office but he told me  
6 wait until I heard from him. It's been filed, a complaint  
7 against the tire company.

8 Q The point is, John, you took the tires out, is that right?

9 A I took it out. We took it out.

10 Q John, do you know what material was placed on the property?  
11 What was put on this property? What was dumped on the property?

12 A Since I own it, topsoil and broken up bricks, broken up  
13 concrete.

14 Q Were there ever any chemicals or anything that was con-  
15 taminated with chemicals put on the property?

16 A No, sir.

17 Q Any pesticides?

18 A No, sir.

19 Q Anything toxic at all that you're aware of?

20 A Not that I'm aware of.

21 MR. SOWERBUTTS: I have nothing further, Your Honor.

22 CROSS EXAMINATION

23 BY MR. WEBER:

24 Q Mr. Pozsgai, you said that you used that property before  
25 you actually bought it, is that right?

1 A Yes, sir.

2 Q And you used that property as a dumpsite, isn't that  
3 right?

4 A 22 years -- Every year when we had something, we asked  
5 the owner and we dump on it.

6 Q It's your testimony that the owner gave you permission to  
7 dump on it?

8 A The caretaker and the owner.

9 Q Do you know the owner's name?

10 A Dr. Kursalli (ph).

11 Q And he gave you permission to dump on his property?

12 A The caretaker. The caretaker lives two doors from me:  
13 Mr. West, we got to dump, and he said: Go right ahead. We  
14 need firewood. He said: Go right ahead.

15 Q The caretaker gave you permission?

16 A Yes.

17 Q Did the Doctor give you permission?

18 A The Doctor had contact with the caretaker.

19 Q You testified you were never told before you purchased  
20 this property that it was wetlands, is that right?

21 A This question I don't understand.

22 Q When your lawyer was asking you questions just a few  
23 moments ago, he asked you before you purchased the property  
24 did you know that you needed a permit; that it was wetlands.

25 MR. SOWERBUTTS: I'm going to object because I don't

1 think that was exactly my question.

2 MR. WEBER: I could have the question read back, Your  
3 Honor, if it's necessary.

4 THE COURT: I guess you'll have to rely on the feeble  
5 memory of the fact finder.

6 MR. SOWERBUTTS: Anything but feeble, Judge. I'll  
7 let you decide.

8 THE COURT: Okay.

9 BY MR. WEBER:

10 Q Do you recall that question from your lawyer?

11 A I still don't understand. If you would tell me --

12 Q Let me ask you a question. Did you know that that property  
13 that you were buying contained wetlands and you needed a permit?  
14 Did you know that before you bought the property?

15 A I had no idea.

16 Q No idea at all?

17 A No idea what is a wetland, what is a dry land.

18 Q Before you bought that property, you went to a realtor,  
19 didn't you?

20 A Yes.

21 Q And that realtor was Doug Mason, right?

22 A Yes, sir.

23 Q And Mr. Mason went to that property with you, didn't he,  
24 showed you the property?

25 A No.

1 Q He never went to the property?

2 A Never went to the property.

3 Q Did Mr. Mason tell you that there was very little you  
4 could do with the property because it was wetlands and you need  
5 a permit to do that?

6 A I don't recall that.

7 Q You don't recall that?

8 A I don't recall that.

9 Q Do you also not recall that on April 29th, 1987 Inspector  
10 Martin Miller from the Army Corps of Engineers told you that  
11 it was wetlands and that if you were planning to purchase it,  
12 you need a permit before you were able to build or fill in that  
13 property? Do you remember that?

14 A I met Martin Miller but he came over there. He just looked  
15 around. He said he wanted to look around.

16 Q Do you remember when he looked around on April 29th, 1987,  
17 you told Mr. Miller -- Inspector Miller that you were not the  
18 owner of the property but were planning to purchase it and that  
19 you intended to place enough fill on it in order to construct  
20 a garage? Do you remember telling him that?

21 A After this time, I don't recall if it was Martin Miller or  
22 somebody else to tell you the truth.

23 Q You told somebody else that?

24 A I don't recall that either.

25 Q And on May 14th, 1987, Inspector Miller went back to your

1 property and told you again that the property was wetlands  
2 and that you have to obtain a permit before doing any filling  
3 and that he had noticed additional fill that was placed on that  
4 property? Do you remember that meeting?

5 A So much transpired I don't recall.

6 Q There were a lot of different meetings, weren't there, and  
7 you didn't buy that property until June 19th, 1987, isn't that  
8 right?

9 A That's the time of the settlement.

10 Q That's the time of the settlement; that's the date you  
11 became the owner, is that right?

12 A Yes.

13 Q You don't recall the April 29th and May 14th meetings  
14 with Inspector Miller?

15 MR. SOWERBUTTS: Your Honor, I'm going to object as  
16 to relevancy.

17 MR. WEBER: Relevancy?

18 MR. SOWERBUTTS: Yes, Your Honor. The point has  
19 already been established that he knew he needed the permit.  
20 Whether it's April or June, I don't see the point. He admitted  
21 it was a mistake to proceed without the permit and he's  
22 admitted that he applied for a permit in the first place.

23 THE COURT: Overruled.

24 BY MR. WEBER:

25 Q Now your lawyer has shown you a copy of a letter from the.

1 U. S. Army Corps of Engineers dated June 1st, 1987. That's  
2 before you bought the property on the 19th, is that right, yes  
3 or no?

4 A Yes, sir.

5 Q And you received this letter, is that right?

6 A I went over and picked it up.

7 Q You picked it up in person?

8 A Yes, sir.

9 Q And this letter told you that they were returning your  
10 application for a permit to work in the waters of the United  
11 States, isn't that right?

12 A Yes, sir.

13 Q So that even before June 1st, 1987, you knew that you  
14 needed a permit because you had put in an application and it  
15 was rejected, isn't that right?

16 A That's right.

17 Q Now you testified that you had no convictions for any  
18 crime other than traffic tickets, isn't that right?

19 A Yes.

20 Q In fact, you've been convicted of multiple zoning viola-  
21 tions in Morrisville and Falls County -- Township, isn't that  
22 right?

23 A They were dropped. They withdrew those charges.

24 Q And you appealed it and weren't you convicted in front of  
25 Judge Rufe in the Bucks County Court of Common Pleas and Judge

1 Sokolove?

2 A Yes but they withdrew the charges.

3 Q After the appeal was denied to you -- After the appeals  
4 were denied you, they withdrew?

5 A Yes. That was in the newspaper.

6 Q You said you have respect for the law?

7 A Yes, sir.

8 Q Do you show respect for the law when a United States Army  
9 Corps of Engineers tell you you must have a permit and you  
10 completely disregard it? Is that respect for the law?

11 A I didn't understand you, follow your question but I'd  
12 like to understand it.

13 Q Do you think it's respect for the law when a Federal  
14 Court Judge orders you not to place any fill or allow any fill  
15 to be placed on your property and after that Court orders you  
16 not to do it, you do it 32 times? Is that your respect for the  
17 law?

18 A I know that was a big mistake. I respect the law. I  
19 realize it was a big mistake.

20 Q The joint application that you've testified about,  
21 D-2-A, you didn't file that until after you were convicted in  
22 this case, isn't that right?

23 A I filed one before but that wasn't as good as this one  
24 so they sent it back to us. They told us to fill it out  
25 properly then I went back there. Apparently this one is the

1 proper one.

2 MR. WEBER: I have noother questions.

3 MR. SOWERBUTTS: I have nothing further, Your Honor.

4 THE COURT: Thank you, sir.

5 (Witness excused.)

6 MR. SOWERBUTTS: Your Honor, I have one other witness  
7 I would like to call, Victoria Pozsgai.

8 THE COURT: Sure. Counsel, did you wish me to look  
9 at those papers or --

10 MR. SOWERBUTTS: Yes, Your Honor. I'll move them into  
11 admission now.

12 THE COURT: Okay.

13 VICTORIA POSZGAI, DEFENDANT'S WITNESS SWORN

14 DIRECT EXAMINATION

15 BY MR. SOWERBUTTS:

16 Q Victoria, where do you live?

17 A I live at 536 West Bridge Street, Morrisville.

18 Q Who do you live with?

19 A I live with my parents.

20 Q Have you lived there your entire life?

21 A Yes, I have.

22 Q What is your relationship with your parents? Is it a  
23 close relationship?

24 A It's a very close relationship, very good.

25 Q Have you had an opportunity to discuss the events that



1 bring your father into the courtroom today with your mother and  
2 father?

3 A Yes, I have.

4 Q Were you living at home when all this took place between  
5 1987 and today's date?

6 A Yes, I have.

7 Q Before I ask you any questions about your father, first  
8 I'd like to ask you a question about your mother. What is the  
9 current health condition of your mother?

10 A Poor, fair.

11 Q Why is it poor?

12 A She has a heart condition.

13 Q Has she been in the hospital for it?

14 A Yes, she has.

15 Q Within the last year, how many times has she been inpatient  
16 at the hospital?

17 A Twice and several times in emergency.

18 Q How long has your mother had this heart condition?

19 A About 10 years, 8 to 10 years.

20 Q Does your mother work?

21 A No.

22 Q Who supports your mother?

23 A My father.

24 Q Were you in the courtroom when your father described his  
25 business and how he built it up?

1 A Yes.

2 Q Is that true?

3 A Yes, it is.

4 Q Did he have anything when he started?

5 A No, he did not.

6 Q Are you familiar with the requirements, the financial  
7 requirements that your father had to undertake when he purchased  
8 this property?

9 A Yes.

10 Q Is your house mortgaged?

11 A Yes.

12 Q Is the property mortgaged?

13 A Yes.

14 Q Does your father have any large sums of money saved up in  
15 the bank for pension or retirement or any other purpose?

16 A No. This was it, the property.

17 Q Did your father have plans to expand his business and  
18 hopefully make enough money to do these things?

19 A Yes.

20 Q Did you go through college?

21 A Yes, I did.

22 Q Do you have any brothers and sisters?

23 A I have one sister.

24 Q Who paid for your college education?

25 A My father paid for both of our college educations.

1 Q Were you present in the courtroom when your father  
2 described the property and what surrounds the property?

3 A Yes.

4 Q Is that accurate?

5 A Yes.

6 Q Did you have a chance to discuss with your father what  
7 happened and what his attitude is about his involvement in this  
8 offense?

9 A Yes.

10 Q What is your impression of how your father views this?

11 A It's a big mistake, a big problem. We never ever foreseen  
12 what was going to happen.

13 Q Is your father afraid of losing the property?

14 A Yes.

15 Q Have you ever seen your father do anything like this  
16 before?

17 A Never. He's a very hard worker. That's all he knows to do  
18 seven days a week.

19 Q How did he bring you up? Did he bring you up to have  
20 respect for the law?

21 A Absolutely.

22 Q Are you proud of your father for what he's done?

23 A I'm very proud of my father.

24 Q How about these offenses? How do you feel about what he  
25 did?

1 A Upset, very upset. It's a misfortunate --

2 Q What effect will it have on your family if the Court  
3 imposes the sentence that is indicated in the guidelines?

4 A It will destroy us if that means anything to anybody.

5 Q Your father also provided some testimony about ongoing  
6 efforts to obtain the necessary assistance to complete the  
7 permit application.

8 A Yes. We've continually been trying to work on getting  
9 the permit and getting the proper engineer and to getting  
10 somebody to work with us and to help us through this to see  
11 if we could clear everything up.

12 Q In fact, did you go with your father on a number of  
13 different meetings and help your father make phone calls and  
14 whatnot?

15 A Yes, we have. We've tried everything and everybody and  
16 we've finally came to Dr. Kirkham and he's very good and he's  
17 one of the best and he has done this before. Most people  
18 have actually never done this whole process of filling out an  
19 application all the way through. It usually takes a lot of  
20 different people and a lot of different experts.

21 MR. SOWERBUTTS: I have nothing further, Your Honor.

22 MR. WEBER: I have no questions for the defendant's  
23 daughter.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 MR. SOWERBUTTS: Your Honor, we have no other  
2 witnesses or evidence to present. I have moved for the admission  
3 of my documents.

4 THE COURT: I've reviewed them.

5 MR. WEBER: No objection.

6 THE COURT: Is there anything further from the  
7 Government?

8 MR. WEBER: The Government has no other evidence to  
9 present, Your Honor.

10 THE COURT: Okay.

11 Do counsel wish to be heard further or --

12 MR. SOWERBUTTS: Yes, Your Honor, I would appreciate  
13 an opportunity to make some closing remarks.

14 THE COURT: Go ahead.

15 MR. SOWERBUTTS: Your Honor, I don't have a big show.  
16 I'm going to try to keep my arguments plain and hopefully  
17 meaningful and hopefully you will accept them as meaningful.

18 There are three main issues that I'd like to address  
19 in my closing remarks. I'd like to address the harm and I would  
20 like to address my client and his family and I would like to  
21 once again address the guidelines.

22 At first blush, this appears to be a huge case. There  
23 are a lot of individual counts involved. We know that. Mr.  
24 Pozsgai knows that. But the harm that was caused here, Your  
25 Honor, is what I'm going to ask you to focus on and again, I'm

1 going to ask you to specifically recognize that in this case  
2 the property, the land was not some untouched, unspoiled area.  
3 I'm not suggesting that it was totally without value but the  
4 harm to the land itself here is not great because long before  
5 June of 1987, for 20-some years before 1987, the same type of  
6 conduct and activity took place over this property. There is  
7 no proof of any soil contamination, any water contamination and  
8 apart from the flooding condition that was referenced by the  
9 Government, there is no other harm to the surrounding neighbor-  
10 hood and there's no indication that that flooding condition  
11 exists today.

12 The central fault of my client is that he knew he  
13 needed the permit but he did it anyways. If he had gotten the  
14 permit, if he had done two years ago what he was finally able  
15 to do, hopefully what he's finally able to do today, he probably  
16 would have been permitted to do some fill and grading and con-  
17 struction of the garage which was his only goal from Day 1.

18 As far as my client himself, Your Honor, again while  
19 at first blush an argument can be made that we're dealing with  
20 an individual who just ignored everybody, that ignores the fact  
21 that there were a great many pressures that were present in his  
22 life at that time and those pressures in my mind are clearly  
23 of the mitigating variety and take this case out of the category  
24 of an evil person who has spent his entire life breaking the law  
25 and committing wrongs against other people. We're not dealing with

1 that in this case. We're dealing with a man who has built his  
2 practice up from nothing, provided for his family, provided for  
3 his children's college education and has nothing today other  
4 than his business and to whom this property and the opportunity  
5 to build this garage and expand his business was everything.  
6 He hasn't used that as an excuse today. He never has with me  
7 but that's my job to point out today that if there was ever  
8 a pressure for somebody to step over the line, where he's never  
9 done it before, there was one in this case. He didn't just have  
10 the property mortgaged. He had his house and business mortgaged.  
11 Time was going by. He had mortgage payments to make. Every-  
12 thing was going under.

13 I don't see how this case can properly be reviewed  
14 without taking into account those specific facts which are a  
15 partial explanation for his behavior. There is nothing here to  
16 suggest that he is the type of man that will continuously in  
17 the future violate the law again. There's just nothing here  
18 to indicate that and in terms of preventing other harms to  
19 society, there's nothing to indicate that he needs to be taught  
20 a severe lesson either and to stack this case up against other  
21 environmental cases around the nation, how many of those other  
22 cases involved a dump site where there's been dumping going on  
23 for 20 years surrounded by commercial users and a super highway?  
24 You can't stand here and argue that there's some environmental  
25 violation has taken place. The law says you do the permit first.

1 He didn't do it. That is the core of the case and I would urge  
2 you to examine what he did wrong in light of the pressures and  
3 the circumstances in his life and, furthermore, Your Honor, I  
4 would ask you as every attorney always has to consider what the  
5 effects are going to be on the family. The sentencing guide-  
6 lines do not forbid you to do that. The commentary says  
7 ordinarily it is not relevant. This is not an ordinary case.  
8 The whole family, his wife -- even the daughter that lives at  
9 home -- she can't support herself. She can't go out on her own.  
10 You heard Mr. Pozsgai's testimony that he's been getting by;  
11 he's been making a living not making a lot of money. Without  
12 the ability to continue with that, there will be other people  
13 affected and this is not an ordinary case and, therefore, I  
14 believe the guidelines permit you to take that into account and  
15 you should. Some credit should be given to this man for the  
16 other 60 years of his life.

17 Finally, Your Honor, as far as the sentencing guide-  
18 lines themselves go, Section 5(k)(2)(o) does permit and does  
19 address the issue of grounds for departure. That's on Page --

20 THE COURT: Give me just a moment.

21 MR. SOWERBUTTS: Yes, Your Honor.

22 THE COURT: What page is that again?

23 MR. SOWERBUTTS: 5.36, Your Honor.

24 THE COURT: Yes. I have it now. Yes.

25 MR. SOWERBUTTS: Adjustments from a sentencing guide-



1 line are not strictly prohibited. Just as certain there are  
2 limitations placed on departures and adjustments. I would  
3 argue, I have to argue from all the facts that have been  
4 presented here today that there are grounds for departure.  
5 When you examine the specific parts of the offense and you  
6 boil it down to its nub and you look at why things happen and  
7 when you look at what will happen if this man goes to jail, I  
8 believe that there are grounds for departure that are per-  
9 mitted by the guidelines themselves.

10 Your Honor, I'm going to conclude with a strong  
11 request respectfully to consider an alternate from the guide-  
12 lines. I'm going to conclude with a request, a very strong  
13 request to consider departing in this case for the reasons  
14 I specified and to consider placing my client on an extended  
15 period of probation with a long period of community service  
16 involving work with some environmental cause or concern of  
17 which there are many in the area. It will serve the purpose,  
18 it will serve a constructive purpose rather than a destructive  
19 purpose such a sentence and while there are instances where  
20 punishment for punishment's sake is appropriate, I don't think  
21 that's appropriate in this case and I think that such a  
22 sentence would not only serve the need to make certain that my  
23 client does not repeat offenses in the future but it will also  
24 serve to deter others because of a substantial requirement to  
25 serve the very cause that the Government has alleged to protect

1 in this case, namely, the protection of the environment but  
2 as I've said, Your Honor, I don't think that we can equate this  
3 property with some beautiful wilderness area and I think that  
4 has to be taken into account, that specific fact and  
5 specifically what we're dealing with in this case.

6 That's all I have, Your Honor.

7 THE COURT: Thank you.

8 MR. WEBER: Your Honor, this property might not be a  
9 national forest preserve but it is a wetlands and wetlands are  
10 Federally protected and this property is important and the  
11 sentence that this Court gives is going to have an impact far  
12 beyond John Pozsgai because this is only the second case in  
13 the country for criminal prosecution of wetlands for filling  
14 in wetlands without a permit. The only other case thus far  
15 has been the case of United States versus Mills in the Northern  
16 District of Florida for which Mr. Mills and his son, private  
17 landowners, were convicted of the same types of offense as  
18 John Pozsgai. They were convicted of four counts and were  
19 sentenced to the minimum 21 months of incarceration.

20 This defendant, Your Honor, has committed not 1, 2,  
21 3 or 4. This is not a mistake or an accident or negligence on  
22 his part. These are willful and deliberate violations,  
23 violations that occurred for over a one-year period of time.  
24 The jury has convicted him of 40 counts of violating the Federal  
25 Clean Water Act. The damage that was done to these 14 acres of

1 wetlands located in lower Bucks County is important because  
2 even these wetlands, these 14 acres in Morrisville, Pennsylvania  
3 served to provide water quality control, flood control,  
4 habitat for wildlife and just natural beauty and there was  
5 testimony at the trial that one of the neighbors brought his  
6 children through there to observe the habitat and the  
7 vegetation. Now he can take his children through six feet of  
8 soil, concrete, rubble, dirt and scrap metal that's on the  
9 property. Now these people have had to suffer from the lack  
10 of flood control in that area which is a residential area with  
11 residential areas of apartment buildings and single family  
12 homes that have suffered actual harm as a result of the filling  
13 in this wetlands. Their properties were destroyed by rain  
14 waters because of the lack of flood control on these 14 acres.  
15 Mr. Pozsgai destroyed by filling in up to six feet of fill at  
16 least five of those acres. He further disturbed by clearing  
17 and grading three other acres so we have eight out of fourteen  
18 acres of wetlands that have been destroyed or disturbed by  
19 this defendant. Every acre of wetlands is to be preserved.

20 The importance of this case also was realized by  
21 the present administration. President Bush has declared that  
22 even he is ready to proceed with a no net loss policy on wet-  
23 lands by forcing land owners to relocate or restore such  
24 environmental sites when they're threatened by construction or  
25 disturbance. The U. S. Army Corps of Engineers has provided

1 and created a wetlands restoration proposal for the property  
2 owned by the defendant. The Government has submitted the wet-  
3 lands restoration proposal to the Court and defense counsel  
4 by letter of June 8th, 1989 and the Government asks that any  
5 sentence that the Court impose include a specific and express  
6 condition that this defendant abide by and complete satisfact-  
7 orily the wetlands restoration proposal submitted by the U. S.  
8 Army Corps of Engineers.

9           The Government asks that the Court impose the maximum  
10 guideline range in this case of 27 months incarceration because  
11 the people that are going to be watching what happens to wet-  
12 lands violators are not necessarily the individual land owners  
13 that want to build a small garage to increase their business  
14 but the developers who are looking to develop and create  
15 communities throughout the country and it's the developers  
16 who are going to want to start building on wetlands and preserved  
17 property and if they can see that the Courts are not served,  
18 that the Courts are not being stringent enough on environmental  
19 crime, then they will accept as the cost of doing business to  
20 violate Federal laws concerning the environment. It would  
21 be merely an expense to a developer of a residential community  
22 to violate the Clean Water Act by building on the wetlands if  
23 merely a fine or even a short prison sentence is going to be  
24 imposed because the money that the developers can make far  
25 outweigh and far exceed those minor penalties. A message must

1 be sent to the private land owners, the corporations, the  
2 developers of this country that at this time the Courts are  
3 going to be serious, the Government is going to be serious  
4 about destruction of the natural environment and particularly  
5 wetlands.

6           The Court has seen the demeanor of the defendant  
7 through his testimony in court today which corroborates the  
8 Government's position throughout the trial and today that the  
9 defendant is basically without a lack of remorse; that he knew  
10 what he was doing; he knew what he was doing before he purchased  
11 the property and, in fact, the testimony at trial was he got  
12 a reduced price because he was told that he could not use the  
13 property without a permit and yet despite the prior warnings,  
14 despite the subsequent warnings and despite the Court order,  
15 Mr. Pozsgai was going to do on his property whatever he wanted.  
16 His feeling was: I don't care about the law. I'll disregard  
17 what anybody tells me. It's now my property and I'll do with  
18 it whatever I want. The Court can't tolerate that type of  
19 attitude, that cavalier disregard for the law, Your Honor, and  
20 the Government asks that the Court impose a sentence of  
21 incarceration of 27 months, the mandatory minimum fine in this  
22 case of \$200,000.00 and order the defendant to comply with the  
23 wetlands restoration plan submitted by the Army Corps of Engi-  
24 neers.

25           MR. SOWERBUTTS: May I be permitted a brief rebuttal,

1 Your Honor?

2 THE COURT: Sure.

3 MR. SOWERBUTTS: Your Honor, I am glad that the  
4 Government has brought up the issue of the developers at this  
5 time. I think that is an important issue. Why hasn't the  
6 Government taken on the big guys? Why are they trying to make  
7 this man a scapegoat? I think that argument ignores the whole  
8 purpose of the Courts and the whole system of justice. You're  
9 supposed to take the individual factors into account and not  
10 sentence somebody because you don't want to take on somebody  
11 else that has more resources that can battle you back and  
12 scare them out of doing it. That's not the purpose of him  
13 being in here today. The Government has a whole vast array  
14 of penalties and mechanisms that they can go after people that  
15 do real harm to the environment. I think it is shocking that  
16 there's only been a couple of cases and look who it is: an  
17 old man and his son down in Florida and my client. That  
18 speaks a lot about the Government's intentions when it comes  
19 to protecting the environment; lip service only and who did  
20 they go after? Someone like this. I urge you to reject that,  
21 Your Honor, for your purposes. If they want to send a message  
22 out, let them do something about it. Let them go after the  
23 people who have the money and resources that it takes to make  
24 a difference and not use a case like this or a case involving  
25 an old man and his son down in Florida as an excuse. I ask you

1 to reject that as a sentence in this case.

2           Furthermore, Your Honor, as far as the issue of  
3 remorse in this case, I think we have demonstrated to you some  
4 of the factors that were going through my client's mind when  
5 this took place. Those factors are undisputed today and I  
6 believe that my client was sincere when he was on the stand.  
7 I believe he's been sincere with me in all the times I've had  
8 with him. Obviously that's up to you to decide but I think that  
9 it is a false argument to suggest that he has no concern about  
10 what happens and I think it's a false concern to suggest that  
11 this man is just an evil lawbreaker. You don't go through some  
12 60 years of life if you are so again I would ask you to give  
13 serious consideration to the arguments I made relative to an  
14 alternate disposition in this case and take into account the  
15 factors I suggested and as far as the property itself, you can  
16 look at any of the reports I submitted today, testimony at  
17 trial. There's a long history of urban development and alteration  
18 of the landscape in this case and that's all I have, Your Honor.

19           THE COURT: Okay. On the issue grounds for departure  
20 under Section 5(k)(2), I cannot on the record before me find an  
21 aggravating or mitigating circumstance of a kind or to a degree  
22 not adequately taken into consideration by the Sentencing  
23 Commission in formulating the guidelines. On the contrary, the  
24 Sentencing Commission appears to have considered the various  
25 elements that are involved in the offense of which Mr. Pozsgai

1 has been convicted by the jury and formulated a particular  
2 degree of sanction for each of those elements.

3 Mr. Pozsgai, if you wish to make a statement on your  
4 own behalf or present any information in mitigation of punish-  
5 ment, I will hear you at this time.

6 MR. SOWERBUTTS: Your Honor, may I have just a moment?

7 THE COURT: Of course.

8 (Pause)

9 MR. SOWERBUTTS: Your Honor, my client does wish to  
10 address the Court.

11 THE COURT: Certainly.

12 THE DEFENDANT: Your Honor, I'm sorry what happened  
13 and I could not do better. I could not live with that and I  
14 hope you understand I did some wrong and I regret that and I'd  
15 like to have an understanding, a break so I don't have to serve  
16 time because of my family, my family who will starve if I do  
17 time and we lose everything.

18 MR. SOWERBUTTS: I have nothing further, Your Honor.

19 THE COURT: Okay. It's hard to visualize a more  
20 stubborn violator of the laws that were designed to protect the  
21 environment. I think the sentence has to take into account not  
22 only punishment for that high degree of willfulness but also  
23 serve as a deterrent to others who will doubtless be tempted by  
24 economic pressures which many people, I suppose most people share  
25 to violate those laws and the deterrence has to be that if they



1 play the lottery of the criminal justice system and are caught  
2 that the costs will be high.

3       The defendant is committed to the custody of the  
4 Attorney General, Bureau of Prisons to be imprisoned for a term  
5 of three years on each of Counts 1 through 14 and 27 months on  
6 each of Counts 16 through 41 all to be served concurrently.  
7 Sentence of imprisonment on Count 15 is suspended. Upon release  
8 from imprisonment, the defendant shall be on supervised release  
9 for a term of one year on each of Counts 16 through 41 con-  
10 currently. On Count 15 on which I suspended sentence, defendant  
11 is placed on probation for a term of five years. The term of  
12 probation shall commence when defendant has completed his term  
13 of imprisonment. It is a condition of probation that the  
14 defendant comply with the restoration plan consistent with the  
15 Army Corps of Engineers Wetlands Restoration Guidelines on such  
16 terms as the Probation Department determines he is able. The  
17 defendant shall pay to the United States the sum of  
18 \$202,000.00 consisting of a fine of \$200,000.00 and a special  
19 assessment of \$2,000.00.

20       What I'm doing by way of fine is imposing a fine of  
21 \$5,000.00 on each of Counts 1 through 41 and a special assess-  
22 ment of \$50.00 on each of Counts 1 through 41.

23       It is a condition of probation that he pay the fine  
24 and the special assessment on such terms as the Probation  
25 Office determines he is able and as a technical matter, Counts

1 33 and 34 are treated as a single count for purposes of this  
2 judgment and I'm imposing sentence on Counts 16 to 41 under the  
3 Sentencing Reform Act of 1984 and sentence on Counts 1 through  
4 15 are imposed under the law that was in effect prior to the  
5 Sentencing Reform Act of 1984, that is, 33 United States Code  
6 Section 1319(c)(2)(a).

7 Mr. Pozsgai, you have the right to appeal within 10  
8 days the sentence of this Court. If you are unable to pay the  
9 costs of an appeal, you have the right to apply for leave to  
10 appeal in forma pauperis. If you request, the Clerk of this  
11 Court will prepare and file forthwith a notice of appeal on  
12 your behalf.

13 Do you understand your right to appeal?

14 THE DEFENDANT: Yes.

15 THE COURT: Yes, Counsel.

16 MR. SOWERBUTTS: Your Honor, one final matter. I  
17 believe I have sufficient grounds for an appeal relative to  
18 my interpretation of the commentaries and the applicability of  
19 various parts of the sentencing guideline. With all due  
20 respect, I feel that I may have success on one of those grounds  
21 and accordingly, I must ask the Court if the Court would con-  
22 sider delaying the imposition of sentence while I file that  
23 appeal and while the appeal on that issue is pending.

24 THE COURT: You're going to file an appeal on your  
25 client's behalf?

1 client's behalf?

2 MR. SOWERBUTTS: I am, Your Honor, relative to the  
3 interpretation of the relevant parts of the sentencing guide-  
4 lines based upon the research and the investigation done which  
5 hasn't included contact with some of the people who have had  
6 input to the Sentencing Commission. I believe that I have  
7 grounds to file an appeal and I would ask the Court if you would  
8 consider delaying the imposition of sentence while that is  
9 pending. That will be filed forthwith.

10 THE COURT: Okay.

11 MR. WEBER: Your Honor, the Government objects.  
12 Under 3141(b), there is no substantial question of law of fact  
13 that is likely to result in a reversal of the trial and order  
14 for a new trial and as defense counsel has stated, his grounds  
15 for appeal would be the sentencing guidelines and the  
16 applicability and the interpretation which this Court has  
17 given to them. It would not result in a sentence that does  
18 not include a term of imprisonment or a reduced sentence to  
19 a term of imprisonment less than the total time served since  
20 Counts 1 through 15 the Court imposed three years incarceration  
21 pre-guideline so that might not be the subject of the appeal  
22 and, therefore, under 3141(b), the Court must incarcerate the  
23 defendant today. The sentencing was originally scheduled in  
24 this case back on April 14th and for various reasons was con-  
25 tinued until this date so the defendant has had approximately

1 three months from the date of the original sentencing to get  
2 his affairs and business and family matters in order.

3 THE COURT: What's the response to that? He says you  
4 have to show me a substantial question of law or fact likely to  
5 result in reversal which is what I believe the statute says.

6 MR. SOWERBUTTS: Your Honor, in some of the prior  
7 motions that I have filed with the Court, I have referenced  
8 the fact specifically for this reason that we do intend to  
9 pursue an appeal from the trial based primarily or in part on  
10 the ineffectiveness of trial counsel. My inability to properly  
11 file that motion prior to today rests upon the fact that my  
12 client is without the necessary resources to get the notes of  
13 testimony from the trial so I do not file a motion that is  
14 false or inaccurate or misleading and the time has been well  
15 spent over the last three months trying to come up with a way  
16 to do that and with more time, I'm confident that I will and  
17 based upon my investigations to date -- I'm not going to go  
18 into that; I don't think I have to for the purpose of this  
19 hearing -- I believe that I have identified two potential  
20 grounds where I have strong arguments relative to the ineffect-  
21 iveness of counsel during trial. Again, I have specifically  
22 referenced the intention to file that appeal in the prior  
23 petitions filed with the Court to preserve the issue to this  
24 date.

25 THE COURT: I'm not sure I follow you. Ineffectiveness

1 of trial counsel in what regard are you talking about?

2 MR. SOWERBUTTS: Well, Your Honor, again, without  
3 the notes that I need, I am hesitant to state either in a  
4 petition or open court which way I feel it was ineffective.  
5 I don't feel that would be appropriate. I have identified  
6 two areas that I have strong arguments and I simply can't be  
7 more specific than that.

8 THE COURT: I didn't mean to pressure you. I thought  
9 you meant to identify to me.

10 MR. SOWERBUTTS: One of the issues which I can relate  
11 to the Court deals with the manner in which the evidence was  
12 presented to the jury and to the Court during the trial over  
13 the wetlands issue and whether or not this is in fact a wetlands.  
14 That's obviously at the core of the case and I have information  
15 that I believe if I had an opportunity to present might lead to  
16 a different verdict and I believe that some of this information  
17 was available during trial and was not presented. That is one  
18 of the grounds. There are other grounds as well. Ultimately  
19 whether or not I'm upheld I don't know but out of all the  
20 possible boilerplate motions that you can typically file asking  
21 for a new trial, all I can tell you is I think I have two.  
22 Whether or not it's borne out, I can't guess obviously. All I  
23 can do is just be honest with you and tell you what our plans  
24 are.

25 THE COURT: But -- Is there something else you wanted

1 to say?

2 MR. SOWERBUTTS: The other, of course, applicable  
3 issue is how the restoration plan fits in here and how it's  
4 going to be done with him sitting in jail. The sentencing  
5 guidelines doesn't address that and they also don't address if  
6 he gets a permit how that's going to fit in with the restoration  
7 plan also.

8 THE COURT: As you probably know, trial counsel did  
9 file motions raising the sufficiency of the evidence at trial.

10 MR. SOWERBUTTS: I am aware of that, Your Honor.

11 THE COURT: Is that the basis on which you would  
12 request bail pending appeal, those motions? I don't know  
13 whether you're saying those motions give you an issue or  
14 whether you're saying that there's something else that you  
15 haven't explained to me that gives you an issue.

16 MR. SOWERBUTTS: Yes, Your Honor, there is another  
17 issue that I have not explained to the Court that I do not  
18 feel would be appropriate to state on the record until I've  
19 had a chance to review the notes of testimony so I won't and  
20 I have purposely omitted any reference to my other grounds  
21 until I'm able to fully explore it. Based upon the information  
22 I have now, I believe I have an alternate ground for requesting  
23 a trial. It again deals with ineffective assistance of counsel  
24 If that is sufficient to allow bail pending my appeals, I hope  
25 it is. If it is not, obviously that is your ruling to make.

1 I'm not trying to prevent something here. That's simply all  
2 I can tell you at this time.

3 THE COURT: What about the contention about the  
4 sufficiency of evidence which counsel made after the trial? I  
5 thought quite effectively.

6 MR. WEBER: You were the trial Judge in this case and  
7 I was trial counsel for the Government and I believe that  
8 trial counsel for the defendant, Henry Loeb, was very effective.

9 THE COURT: I can't imagine a more effective  
0 presentation than the one that he made. I thought if Mr.  
1 Pozsgai testified at the trial as he testified here, it would  
2 have made it worse rather than better for Mr. Pozsgai in terms  
3 of the jury's verdict although I don't think the jury had any  
4 difficulty with the verdict the way the case was tried. It  
5 seemed to me it was tried very skillfully and the motions that  
6 trial counsel filed after the trial were very well done, highly  
7 professional.

8 MR. WEBER: The Government concurs, Your Honor, and  
9 based on the record before you and the statements of counsel,  
10 there's no basis for bail pending appeal.

11 THE COURT: I disagree with you. I think I'll allow  
12 bail pending appeal not on the sentencing guideline issue  
13 obviously because I think the Government is correct in its  
14 position there but I'll allow bail pending appeal on the basis  
15 of the motions that the trial counsel filed with regard to the

1 sufficiency of the evidence and I'll enter an order explaining  
2 my reasons.

3 MR. WEBER: Your Honor, the Government requests at  
4 this time that the bail be increased to \$50,000.00 10% from the  
5 10,000 10% that it presently is.

6 THE COURT: What is it now?

7 MR. WEBER: 10,000 10%.

8 THE COURT: \$10,000 --

9 MR. WEBER: Or 10% so he has posted a thousand dollars,  
10 Your Honor. The Government asks now since he's been convicted  
11 and is facing three years incarceration that it be increased  
12 to 50,000 or 10%.

13 THE COURT: That would mean \$5,000.00? --

14 MR. WEBER: Correct, Your Honor.

15 THE COURT: I'll hear the other side on that.

16 MR. SOWERBUTTS: Your Honor, first of all, let me  
17 point out the fact that there's never been any indication that  
18 my client will not appear or will not present himself, never;  
19 and secondly, as the presentence report that you have clearly  
20 indicates, my client has no assets.

21 THE COURT: Can he raise the additional -- it would  
22 be an additional \$4,000.00 as I understand the Government's  
23 position to keep himself out of jail?

24 MR. SOWERBUTTS: No, Your Honor. We haven't been able  
25 to get the 2500 bucks we need for the notes of testimony. We



1 certainly aren't going to be able to get the four grand for  
2 bail. The notes of testimony are critical that counsel needs.  
3 If we had the money, we would have the notes and that is  
4 critical. It's going to take me more time to come up with it.  
5 He doesn't have the resources to pay the increased bail and I  
6 don't think there's any reason for it either.

7 THE COURT: Is there any -- Let me ask the Govern-  
8 ment. Is there any reason to think that Mr. Pozsgai is likely  
9 to --

10 Well, let me ask you. I think you have the burden  
11 not the Government. You have the burden of demonstrating by  
12 clear and convincing evidence that he is not likely to flee or  
13 pose a danger to the safety of any other person or the community  
14 if he's released on bail. It's your burden at this stage. I  
15 was in error in looking to the Government for that.

16 MR. SOWERBUTTS: Yes, Your Honor. To clarify further,  
17 you've heard the testimony about his ties to the community where  
18 he has lived for 22 years. You've heard his testimony that he  
19 lives with his wife who's very ill and needs his care and  
20 support. You've heard his testimony that everything that he  
21 owns or possesses is tied up in his property. He has very  
22 strong ties to where he is. Where else is he going to go?

23 THE COURT: I don't know.

24 MR. SOWERBUTTS: There is nothing to indicate that  
25 he has any place else to go because you heard he was originally

1 from Hungary. There's nothing in his background to suggest  
2 that he's ever missed a court appointment or missed a bail  
3 requirement at any time in the past. In fact, his conduct in  
4 this case indicates that he has complied with all the bail  
5 requirements and bail conditions. Furthermore, he's been  
6 aware of the sentence that the Court could impose today for  
7 months and yet he's still here today. There's certainly no  
8 shock to my client that that sentence was imposed. He was  
9 aware of this for some time that this was a possibility yet he  
10 appeared today. I believe that those factors, Your Honor,  
11 strongly indicate that he is not an individual likely to  
12 violate the conditions of his bail and fail to appear for  
13 sentencing -- for imposition of sentence at a later date.

14 THE COURT: I'll hear the other side on that if you  
15 wish to be heard, Counsel.

16 MR. WEBER: Yes, Your Honor. The defendant is now  
17 facing a certainty of three years incarceration and a sub-  
18 stantial fine and a substantial obligation to restore the  
19 wetlands that he destroyed. He was not facing those obligations  
20 prior to today and that changes the circumstances and in  
21 addition, Your Honor, an appeal as the Court knows can take  
22 several months and years and then for a defendant to have to  
23 surrender after an enormous period of time has elapsed is more  
24 difficult for an individual and his family situation than if  
25 he were to surrender now.

1 THE COURT: He says he doesn't have the additional  
2 \$4,000.00.

3 MR. WEBER: Your Honor, he has a business that's been  
4 operating. His son, who testified at trial, runs that business  
5 and conducts that business with him. He also has a piece of  
6 real estate that's a wetlands that has some value.

7 THE COURT: He says that's mortgaged.

8 MR. WEBER: It's mortgaged but it has some value.

9 MR. SOWERBUTTS: It probably has --

10 THE COURT: It shows here he has a net cash flow of  
11 \$197.00 a month. I don't know. I'll continue the present bail.

12 MR. SOWERBUTTS: Thank you, Your Honor.

13 THE PROBATION OFFICER: Are you staying the imposition  
14 of this sentence pending the outcome of his appeal?

15 MR. WEBER: Or are you allowing voluntary surrender,  
16 Your Honor?

17 THE COURT: I'm continuing his release pending appeal  
18 and if the appeal affirms the conviction, I will allow a voluntary  
19 surrender at that time. So far as the rest of the judgment, I  
20 will stay that pending appeal.

21 THE PROBATION OFFICER: We don't need to process him  
22 today for all these things?

23 THE COURT: That's right.

24 MR. WEBER: Your Honor, I'd ask the Court not to stay  
25 the conditions of the sentence concerning the condition of the

1 wetlands. I'd ask that the Court ask him to begin the sentence  
2 on the wetlands restoration.

3 THE COURT: I'll hear counsel.

4 MR. SOWERBUTTS: There's obviously a permit applica-  
5 tion in the works. to permit the construction of the garage  
6 on the wetlands site and I did not go deeply into the issue  
7 of the restoration plan. With the testimony about 22 years  
8 of dumping, what exactly is it that he's going to restore? Well,  
9 I think it would be inappropriate at least until the issue of  
10 the permit is resolved to require any work on the restoration  
11 because there's an obvious conflict here. There's a conflict  
12 within the Government itself since they're a joint participant  
13 in the application process.

14 THE COURT: Well, I really feel more comfortable in  
15 the order which is presently in existence that -- and which  
16 continues as a condition of Mr. Pozsgai's release until he goes  
17 to jail and that is that the defendant is specifically ordered  
18 not to discharge any pollutants, any fill materials or conduct  
19 any land clearing or excavating activities on the subject  
20 wetlands site nor is he to allow any other person to do so and,  
21 further, he is to take such reasonable affirmative action to  
22 prevent such activities from occurring by other persons on the  
23 subject wetlands unless and until he first obtains all of the  
24 required Federal, State and local permits or upon further order of  
25 the Court and he shall not in any manner sell, transfer, lease,

1 encumber, dispose, damage or destroy any part of the subject  
2 wetlands site and shall preserve the status quo unless he  
3 obtains the prior permission of the Court to do otherwise.

4 Frankly, with Mr. Pozsgai, I'd just as soon keep  
5 that as a condition of his release and then when he goes to  
6 jail to serve his sentence when he gets out of jail, he may  
7 be in a clearer frame of mind to do what's necessary to  
8 restore the damage which he's done to the wetlands and to his  
9 community.

10 MR. SOWERBUTTS: Yes, Your Honor.

11 MR. WEBER: Your Honor, I would just ask the Court to  
12 specifically advise Mr. Pozsgai that the mere fact that he has  
13 submitted an application for a permit does not mean that a  
14 permit has been issued yet and until a permit is issued, not  
15 the application submitted, he's not to conduct any of those  
16 activities.

17 MR. SOWERBUTTS: Your Honor, that is totally  
18 unnecessary.

19 THE COURT: If Mr. Pozsgai doesn't understand that  
20 at this stage of the proceeding where he's going to have to sit  
21 in jail for the time that I've specified and pay \$202,000.00 to  
22 the Government, I don't think any form of words that I could  
23 use will do the trick. I think the action that I took is the  
24 only thing that I can effectively communicate to Mr. Pozsgai  
25 because apparently he doesn't understand anything else and he

1 and others who may be in his position have to understand that  
2 if they build on wetlands without a Government permit, they  
3 will go to jail and that's where Mr. Pozsgai is going to go as  
4 soon as the Court of Appeals has ruled on this case in all  
5 likelihood but I'll file the order explaining why I'm allowing  
6 him to have meaningful appellate rights before he has to go to  
7 jail.

8 MR. WEBER: Very well, Your Honor.

9 MR. SOWERBUTTS: Thank you, Your Honor.

10 (Court was thereupon recessed at 4:30 p.m.)

11 - - - -  
12 To the best of my ability,  
13 I ☒ certify that the foregoing is  
14 a correct transcript from the record of  
15 proceedings in the above-entitled matter.

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
Florence Jones  
Court Reporter/Transcriber

7/20/89  
Date

# MERCATUS CENTER

---

GEORGE MASON UNIVERSITY

## REGULATORY STUDIES PROGRAM

Comments on:

*Proposal to Issue and Modify Nationwide Permits*

Submitted to:

*United States Army Corps of Engineers*

November 30, 1998

*"A wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government."*

*Thomas Jefferson, from his "First Annual Message," 1801*

**RSP 1998-3**

MERCATUS CENTER  
REGULATORY STUDIES PROGRAM

*Public Interest Comment Series:*

**Wetland Permits**

Agency:	U.S. Army Corps of Engineers
Rulemaking:	Proposal to Issue and Modify Nationwide Permits <i>Federal Register</i> Vol. 63, No. 198, October 14, 1998
Stated Purpose:	"To further ensure that the proposed nationwide permits published in the July 1, 1998 <i>Federal Register</i> would only authorize activities that have minimal adverse environmental effects on the aquatic environment."
Submitted November 30, 1998	RSP 1998-3

**Summary of RSP Comment:**

The key tests of whether a government action is likely to make American citizens better off are:

- whether it is designed to correct a significant market imperfection and
- whether its projected benefits are likely to exceed its projected costs.

The Corps' proposal does not specifically address either of these issues. The Corps is proposing to reduce the applicability and usefulness of its nationwide permit (NWP) system without presenting any information on the need for the proposed changes or the expected benefits or costs of the changes.

Historically, 90 percent of the activities permitted under Section 404 have been authorized through NWPs. However, under the Corps' proposal, large amounts of land would be excluded from NWPs, including wetlands "associated with" 40 percent of the nation's waters, and the 7 percent of the nation's land that is in the 100-year floodplain.

The costs associated with the increase in case-by-case permitting will be borne by Americans as taxpayers and consumers, as the proposal will increase bureaucracy, increase the time it takes to get NWP approval, and increase property costs (increasing the cost of living for American families).

Since voluntary, incentive-based programs have been more effective at restoring wetlands than the Corps' Section 404 program, approaches that rely on private property rights and state and local authorities are more likely to improve both wetlands and the welfare of the average citizen than the Corps' proposal.



## Comments on the Army Corps of Engineers'

**Proposal to Issue and Modify Nationwide Permits<sup>1</sup>**

---

The Regulatory Studies Program (RSP) at the Mercatus Center, George Mason University is dedicated to advancing knowledge of regulations and their social consequences. As part of its mission, RSP produces careful and independent analysis of agency rulemaking proposals from the perspective of the public interest. Thus, the program's comments on the Army Corps of Engineers' (the Corps') October 14, 1998 Proposal to Issue and Modify Nationwide Permits do not represent the views of any particular affected party or interest group, but are designed to reflect the interests of the average citizen.

The key tests of whether a government action is likely to make the average citizen better off are (1) whether it is designed to correct a significant market imperfection and (2) whether its projected benefits are likely to exceed its projected costs. A key failing of the Corps' proposal is that it does not specifically address either of these questions. As discussed below, the Corps is proposing to reduce the applicability and usefulness of its nationwide permit (NWP) system without presenting any information on the need for the proposed changes or the expected benefits or costs of the changes. Approaches that rely on private property rights and state and local authorities will improve the welfare of the average citizen more than the Corps' proposal.

**The Corps' Proposal to Issue and Modify Nationwide Permits**

Section 404 of the Clean Water Act of 1972 prohibits dredging or filling navigable waters of the United States without an Army Corps of Engineers permit. Over the last 25 years, the interpretation of navigable waters evolved first to include wetlands adjacent to navigable waters, and subsequently to include all wetlands. To manage its increased jurisdiction, the Corps has developed a system of NWPs that allow certain activities in certain environments without time-consuming case-by-case permit reviews. In December 1996 the Corps proposed to phase out one of these, NWP 26. NWP 26 grants automatic permits for activities in isolated waters and waters above the "headwaters" point on streams that result in minimal losses of wetlands.<sup>2</sup> In July 1998, it proposed to replace NWP 26 with several new and modified NWPs, all of which are activity-specific.

The October proposal<sup>3</sup> makes further changes to the July 1998 notice. This notice announces the Corps' decision to withdraw NWP B, which was proposed in July to

<sup>1</sup> Prepared by Susan E. Dudley, Visiting Research Fellow, Regulatory Studies Program of the Mercatus Center at George Mason University.

<sup>2</sup> Activities resulting in losses of less than one acre required no review by the Corps, while activities involving between one and ten acres were deemed to have a permit if within 30 days of notification, the Corps did not object.

<sup>3</sup> *Federal Register* Vol. 63, No. 198: 55095-55099 (October 14, 1998).

authorize discharges associated with construction of master planned developments affecting up to ten acres of non-tidal wetlands. It also proposes to prohibit the use of NWPs: for wetlands in the 100-year flood plain, for areas designated as critical resource waters, and for wetlands “identified with” waters and aquifers that have been identified by States as “impaired.”

This most recent proposal appears to reduce significantly the applicability and usefulness of the Corps’ NWP program. Approximately 90 percent of activities permitted under the Corps’ Section 404 program are authorized through NWPs.<sup>4</sup> The proposed modifications therefore pose serious challenges to the Corps’ ability to function efficiently.

#### **Federal Role in Wetlands Protection**

As OMB’s Economic Analysis Guidelines<sup>5</sup> or “Best Practices” state, “to establish the need for the proposed action, the analysis should discuss whether the problem constitutes a significant market failure.” In neither this proposal nor the July proposal does the Corps stop to ask the primary question: what market failure or systemic problem is its permit program designed to remedy? While Section 404 of the Clean Water Act of 1972 prohibits dredging or filling navigable waters of the United States without a Corps permit, understanding the fundamental reason for federal involvement is essential to the design of appropriate policy.

Navigable waters and, arguably, wetlands are public goods—they provide social benefits greater than the benefits obtained by the owner. As LaFountain<sup>6</sup> points out,

[t]his does not imply that wetlands are not subject to market pressures, however. It simply means that the landowner cannot realize all the benefits from wetlands, and that the public benefit of maintaining property in this undeveloped state is greater than that realized by the landowner. Thus, absent a mechanism to make a payment from the public to the landowner, the amount of wetlands held by private landowners will be less than the amount desired by the public.

In other words, the systemic problem is that property rights are not specified fully, and the property owner cannot internalize the full social benefits of a wetland (or the social costs of dredging or filling a wetland). The evolution of the Corps’ permitting program, and the recent changes to NWPs in particular, have attempted to address this problem by regulating certain activities in navigable waters and adjacent lands. This approach, however, further exacerbates the problem of inadequately defined property rights. Regulations that attenuate land use options take away private property rights and thereby reduce private incentives to use land in ways that improve social welfare. As a result, the Corps’ program to protect wetlands has not been as effective as those approaches that

<sup>4</sup> NWPs cover a smaller fraction of the acreage permitted by the Corps, roughly one-third.

<sup>5</sup> “Economic Analysis of Federal Regulations Under Executive Order 12866,” U.S. Office of Management and Budget, January, 1996

<sup>6</sup> Courtney LaFountain, Center for the Study of American Business, Policy Brief #164, January 1996.

define private rights and rely on private incentives to internalize the external social benefits of protection.

Several authors have compared the effectiveness of the Corps' Section 404 program to public and private incentive-based programs for wetland restoration.<sup>7</sup> The voluntary, incentive-based programs of the Interior Department's Fish and Wildlife Service (the Partners for Wildlife Program and the North American Waterfowl Management Plan), and the Department of Agriculture's Wetland Reserve Program, along with State, local and private efforts, such as those of Ducks Unlimited and other conservation groups, have been largely responsible for stemming the loss of wetlands since the mid-1980s. The Administration's Clean Water Action Plan recognizes the role these incentive-based programs have played, and will continue to play, in wetland conservation and restoration.<sup>8</sup> Tolman uses federally reported data to show that the U.S. has achieved the stated goal of "no net loss" of wetlands. However, he observes that:

The data suggests that the U.S. would still be experiencing "no net loss" of wetlands even if the 404 program disappeared. In fact, if the funds used to run the Corps of Engineers regulatory program were diverted to voluntary incentive programs, the rate of gain would likely be even greater.<sup>9</sup>

The reasons for the ineffectiveness of the Corps' program, particularly when compared to the effectiveness of incentive-based programs, are clear.

**Land-use restrictions reduce private incentives to protect and manage wetlands.** "Filled" land may sometimes be more valuable to the owners than wetlands. The permit program aggravates this underlying problem by reducing the private value of wetlands to landowners. Land use restrictions provide no incentives to property owners to devise creative solutions to manage and protect wetland resources. Instead, private owners are pitted against Corps' permit-writers because the nature of land-use restrictions creates an inherent conflict. This conflict leads to deadweight losses for society, as resources are expended to fight and enforce Corps permitting requirements.

The costs of permitting are borne by the property owners (and the users of the land, including families who purchase or rent residences in affected areas) while the benefits are enjoyed broadly. It should not be surprising that voluntary, incentive-based programs that attempt to internalize the external benefits of wetlands protection by compensating property owners who undertake restoration efforts, are more effective at achieving their goals. In contrast to the conflict inherent in the Corps' permit program, which imposes costs on property owners, these incentive-based programs foster cooperation by internalizing with the property owner the benefits of wetland preservation.

<sup>7</sup> See, for example, LaFountain *op. cit.*, and Tolman, Jonathan. "Swamped: How America Achieved 'No Net Loss'," Environmental Studies Program, Competitive Enterprise Institute. April 1997 ISSN#1085-9047.

<sup>8</sup> U.S. Environmental Protection Agency and U.S. Department of Agriculture. *Clean Water Action Plan: Restoring and Protecting America's Waters*. February 1998. (EPA-840-R-98-001)

<sup>9</sup> Tolman, *ibid.*

**The federal government is unlikely to set socially optimal goals for wetland use and protection.** Absent a significant market failure, markets allocate scarce resources to their highest and best use, maximizing social welfare. When not left to the market however, determining the socially optimal quantity and quality of a public good, such as wetlands, requires careful balancing of competing goals and recognition of the opportunity costs of different actions. The Corps makes no attempt in its recent proposals to examine the social costs and benefits of its actions to determine what level of wetlands protection would maximize net benefits. In fact, it does not present any analysis or information on the extent to which land in the U.S. would be affected by the proposed modifications, to say nothing of the benefits or costs associated with the more restrictive activity-specific permit requirements.

The social costs of the proposal could be significant. The Corps permitting process is already widely recognized as being slow and expensive. The increased burden on the Corps will either require more resources (increasing tax-payer costs) or longer delays. The delays themselves have opportunity costs, which are real costs to American consumers; they reduce the availability and increase the ultimate costs of residential housing and non-residential activities. Furthermore, there may be significant costs both to the Corps and property owners associated with enforcing the new permitting requirements. These costs are incremental to the direct costs of obtaining individual permits.

As suggested below, the Corps should conduct an analysis of the extent of acreage affected by its proposed revisions, as well as the benefits and costs expected from the modifications. However, even a careful analysis at the national level will obfuscate important information regarding the benefits and costs that accrue to local populations affected by wetlands. The Corps should also examine alternative approaches to protecting valuable wetlands, including those that rely on private incentives and state and local controls. Under other sections of the Clean Water Act, and through local land use authorities, State and local governments already consider the potential impacts of projects on impaired and critical resource waters. Wetlands have largely intra-state effects, so state and local authorities are in the best position to resolve any issues that cannot be resolved between private parties. For example, the Clean Water Action Plan presents a case study of California grape growers who voluntarily created a no-crop buffer zone along streams based on an economic model developed by a local agency.<sup>10</sup>

For wetlands that cross state boundaries, Anderson and Hill note:

an authority larger than a single state may be necessary to apportion water among the states and to determine water quality policy. This authority does not have to be the national government, however. Interstate commissions should clarify private rights to water quality and quantity,

---

<sup>10</sup> *Op. cit.* p. 53.

encourage water transfers across state borders, and establish water quality standards where appropriate.<sup>11</sup>

#### **Expected Effects of Proposed Modifications**

The modifications proposed in the October notice restrict the applicability of NWPs. As a result, they further reduce property owners' ability and incentives to manage and protect wetlands privately and to protect surrounding property from degradation and flooding. Since Corps regulations have not been shown to be effective at protecting wetlands from loss, particularly when compared to voluntary efforts, this new proposal is unlikely to lead to a net increase in wetlands or an improvement in water quality.

The Corps does not provide estimates of the extent to which these modifications will expand its caseload, nor the resources that would be needed to conduct case-by-case reviews for activities that have heretofore been excluded. Nor does the Corps make clear how these modifications will affect existing property owners. Retroactive designation as a wetland requiring a Corps permit could impose significant burdens on unsuspecting property-owners.<sup>12</sup> These costs will be borne by Americans as taxpayers and consumers as the proposal will increase bureaucracy, increase the time it takes to get NWP approval, and increase property costs (increasing the cost of living for American families). These social costs will be diverted from more valued uses, such as actually restoring, enhancing or protecting valuable wetlands, or protecting the health and welfare of American citizens in other ways.

Before proposing potentially significant modifications to the NWP program, the Corps should understand the burden the increased case-by-case review will have on its own resources, as well as the increased delays and costs that will be borne by landowners. In addition, the Corps should articulate and quantify the benefits expected from reducing reliance on NWPs. It must address the question of what negative impacts have been attributed to NWPs, and how those impacts would be avoided with the proposed modifications.

**The withdrawal of NWP-B.** The Corps' goal of "encouraging development that is planned and designed for the long-term protection of the nation's valuable aquatic resources" is a good one. However, by taking private property rights from property

<sup>11</sup> Anderson Terry L. and Peter J. Hill "Environmental Federalism: Thinking Smaller" in PERC Policy Series, Jane C. Shaw, ed. Issue Number PS-8 (December 1996)

<sup>12</sup> Defenders of Property Rights, a nonprofit national legal foundation dedicated to protecting property rights, represented a retired couple in Arrowhead Lakes, Pennsylvania, who suddenly received a cease and desist order from the Corps, informing them that their land was now legally a wetland. The Corps ordered the couple to dig up their entire yard outside a five-foot perimeter surrounding the house and driveway and to create new wetlands two times the size of the house at another location. Under threat of civil fines and/or criminal prosecution, the couple was given only 60 days to submit a plan to carry out these orders, which would entail the expense of hiring an environmental consultant and uprooting their landscaped yard to make way for reseeding of government-approved native plants and trees. Defenders of Property Rights obtained an after-the-fact permit allowing the couple to keep both their house and landscaping.

owners, the Corps is moving in the wrong direction. The Corps justifies its withdrawal of the proposed NWP-B based on insufficient information about the potential consequences. This is ironic because the recent proposals represent major changes to the Section 404 program which are likely to affect large amounts of land in the U.S.; yet they are made without any analysis of their potential effects.

Rather than lengthy, burdensome permit applications that will increase the cost of living for all Americans, the Corps could achieve its goals more effectively by returning property rights that have been taken away. By allowing planned developments in defined locations to proceed without a cumbersome review (as envisioned by NWP-B), the Corps would give State and local governments the flexibility to work with private parties to devise mutually satisfactory management plans that meet social goals. Clearly defined property rights will provide the best incentives to ensure the optimum level of wetland protection and environmental quality.

**Exclusion of NWPs in the 100-yr floodplain.** The Corps justifies its proposed exclusion of the use of replacement NWPs for above grade wetland fills in the 100-year floodplain by “[t]he potential risks to life and property, as well as the economic implications for homeowners, business, and state and local governments...”<sup>13</sup> The Corps presents no discussion of the extent of the U.S. that is in the 100-year flood plain, nor does it articulate why any of these identified risks represent externalities that require a federal solution. It does suggest that the Federal Emergency Management Agency’s (FEMA) concerns about development within the 100-year floodplain are driving the proposed exclusion. FEMA’s comments on the Corps’ July proposal express “serious concerns related to the impact of the proposed NWP on floodplains in general and on costs borne by the National Flood Insurance Program and disaster assistance specifically.”<sup>14</sup> While FEMA’s concerns may be legitimate, the primary cause of uneconomic development in floodplains is federal flood insurance, which subsidizes and encourages such development. Government scrutiny of private activities on private lands will only compound the market distortions created by FEMA’s flood insurance.<sup>15</sup>

To the extent that development, even with proper insurance incentives, would increase the likelihood of flooding damage in nearby areas, private and local solutions would be able to reach more effective and lower cost solutions better than case-by-case review by the Corps. For example, a developer might agree to purchase flood insurance or even build retaining structures for potentially affected parties. If private solutions are judged to be insufficient, or difficult to reach under the current definitions of property rights, state and local governments are in a better position to protect local interests and optimize social goals than the federal government.

<sup>13</sup> 63 FR 198:55097.

<sup>14</sup> Comments from James L. Witt, Director, Federal Emergency Management Agency, to David Olson, Headquarters, U.S. Army Corps of Engineers (September 10, 1998).

<sup>15</sup> Because federal insurance rates do not reflect actuarial risks, they tend to subsidize structures in high-risk locations.

While the Corps does not present any information on the number of acres in the United States that are in the 100-year floodplain, and therefore ineligible for NWP under the proposal, FEMA suggests that 160 million acres of the nation are “flood prone.”<sup>16</sup> This is roughly eight percent of the nation’s land. At a minimum, before proceeding with an action that could have a major impact on the Corps’ ability to process permits in a timely fashion within a reasonable budget, the Corps should present accurate information on the extent of land affected by the proposal. The Corps should also present for public discussion estimates of the increased Corps budget requirements, increased permitting delays, and expected benefits of the proposed floodplain exclusion.

**Exclusion of NWPs for designated “critical resource waters” or “impaired waters.”** The Corps proposes to “exclude the use of NWPs in certain State or Federally designated critical resource waters and their adjacent wetlands” and to “limit the use of NWPs in wetlands identified with waters and aquifers that have been identified by the States as impaired.” The terms “critical resource waters” and “impaired waters” are only vaguely defined (the Corps requests comment on how to define them), and potentially broadly inclusive (the proposal suggests that 40 percent of the Nation’s surveyed waters might be impaired). The Corps presents no justification for a federal role in protecting these water bodies and the wetlands associated with them. Restrictions on filling and development in and around such areas should clearly be left to local and state land use decisions. Furthermore, under Section 401 of the Clean Water Act, States already consider the potential effects of projects on impaired rivers. States are also required under the antidegradation provisions of the Clean Water Act to consider impacts on State-designated Outstanding Natural Resource Waters.

### Conclusions

The Corps’ recent rulemakings reveal a trend away from generic nationwide permits for certain activities and circumstances, and toward more case-by-case approval of individual activities. This approach will increase the costs of the Section 404 program to American citizens, both as taxpayers and consumers, and it is not likely to increase the benefits American citizens derive from wetlands.

The Corps does not provide estimates of the extent to which these modifications will expand its caseload, nor the resources that would be needed to conduct case-by-case reviews for activities that have heretofore been excluded. Nevertheless, available data suggest that the costs will be significant. Historically, 90 percent of the activities permitted under Section 404 have been authorized through NWPs. However, under the Corps’ proposal, large amounts of land would be excluded from NWPs, including wetlands “associated with” 40 percent of the nation’s waters, and the 160 million acres (7 percent) of the nation’s land that is in the 100-year floodplain.

The costs associated with the increase in case-by-case permitting will be borne by Americans as taxpayers and consumers, as the proposal will increase bureaucracy,

<sup>16</sup> Flood Resistant Design Construction Publications (<http://www.fema.gov/fema/nfippub.htm>).

increase the time it takes to get NWP approval, and increase property costs (increasing the cost of living for American families). These social costs will be diverted from more valued uses, such as actually restoring, enhancing or protecting valuable wetlands, or protecting the health and welfare of American citizens in other ways. Moreover, federal data indicate that (1) despite lengthy reviews, the Corps disapproves less than one percent of the permits it processes and (2) voluntary incentive-based programs have been more effective at restoring wetlands than the Corps' Section 404 program. Thus, expanding the case-by-case review process to include more areas is unlikely to increase the quantity of the nation's wetlands, nor improve their condition.

Rather than centralizing control over privately owned, local resources, the Corps should endeavor to enhance private incentives to manage wetlands, and leave the resolution of specific intra-state issues to state and local government authorities. A greater reliance on generic nationwide permits would leave important decisions regarding activities in and around wetlands to parties that are best able to address them – property owners and state and local decision-makers.

