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John Pozsgai Finally Held Accountable

On March 8, 2007, the United States District Court for the Eastern District of Pennsylvania held in contempt two defendants that had illegally filled wetlands without a permit and for 17 years have violated the Court's order to restore the wetlands. The defendants, John and Gisella Pozsgai, illegally filled more than five acres of wetlands in Falls Township, Bucks County, Pennsylvania, blatantly refusing to seek the required permits from the Army Corps of Engineers.

Responding to a contempt action filed by the US Attorneys office and supported by the Delaware Riverkeeper Network who had intervened in the action, the Court ordered the defendants to complete remediation of the property within 90 days in accordance with a plan developed in 1996.

" Our wetlands are a precious and vital resource and no one person should be allowed to destroy them (especially illegally) purely for personal gain and get away with it" stated Maya K. van Rossum, the Delaware Riverkeeper. "The Pozsgai's have violated our environmental protection laws, damaged our creeks and community long enough, we are pleased that the courts finally held them accountable" said van Rossum.

The Court held that the Supreme Court's recent decision in *Rapanos v. United States*, 547 U.S. ___, 126 S.Ct. 2208 (2006) does not constitute a change in law for the facts of this case, and in no event absolves the defendants of their contempt of the Court's long-standing order. The Court applied the following test from Justice Kennedy's concurring opinion in determining whether a wetland is protected by the Clean Water Act:

[W]etlands possess the requisite nexus, and thus come within the statutory phrase 'navigable waters' if the wetlands either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.' When, in contrast, wetlands' effects on water quality are speculative or insubstantial, they fall outside the zone of fairly encompassed by the statutory term 'navigable waters.'

"The Delaware Riverkeeper Network is thrilled that these wetlands may finally be restored and applauds the District Court's decision, however, as a factual matter, Justice Kennedy's test allows uncertainty about the value of some wetlands when, in fact, all are significant and worthy of protection under the Clean Water Act, as Congress originally intended and the Corps codified in its regulations," explained van Rossum.

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