



Violate the Clean Water Act ... Wait It Out ... & Make Big Bucks! At Least That Is What the U.S. Army Corps Seems To Be Saying

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By Maya van Rossum

On June 19, 1987, John Pozsgai bought 14 acres of land in Falls Township, Pennsylvania.¹ He bought the parcel after obtaining a \$32,000 discount on the original asking price because the site was significantly dominated by wetlands—a fact that he was informed of by both the U.S. Army Corps of Engineers and three separate engineers that he hired himself—and, as such, was unbuildable without acquiring the necessary permits from the Army Corps.² After leveraging the presence of wetlands to get the property for cheap, Pozsgai quickly took steps to have the wetlands illegally filled so he could advance construction and operation on what was planned to be an expansion of his truck repair business.³

The U.S. Army Corps was alerted to the illegal fill activities and took steps to enforce the Clean Water Act and require the wetlands be restored.⁴ While Pozsgai failed to undertake the wetlands restoration he was responsible for, two other 3rd parties involved in the illegal conduct fulfilled their legal obligation and restored small wetland portions they were responsible for.⁵ So you can imagine my shock when I received a call in my office at the Delaware Riverkeeper Network that led me to drive immediately over to the Pozsgai site to witness and take pictures – John Pozsgai was actually re-filling in the wetlands that had been restored by others! It was all caught on camera and shared with the U.S. Army Corps.⁶ As a result, the wetlands Pozsgai had filled were left unremediated. The wetlands that had been filled and restored – were devastated a second time by John Pozsgai’s illegal acts.

¹ *U.S. v. Pozsgai*, 999 F.2d 719, 721 (3rd Cir. 1993).

² *Id.* at 722.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 724, fn. 4.

⁶ *Id.* at 723.

Ever since, the status of the site has stagnated. The once beautiful wetlands that marked the entry way into Morrisville, Pennsylvania, home and habitat to plants, animals, and birds, has sat for decades as an ugly scar, of illegal fill and trucks with no one being held accountable.

Now, having failed to secure wetlands restoration by the Pozsgais; and having failed to advance an alternative path to restore the site without the Pozsgais financially benefiting from their illegal activity; the U.S. Army Corps has decided to join forces with the Pozsgais to maintain the status quo of devastation, to legalize it and allow it to expand through site development. On March 15, the U.S. Army Corps announced to a federal judge its support for a proposal that allows the Pozsgais to sell the Site for over \$2 million to a neighboring business operation. In exchange for protecting some adjacent non-wetland property which, by my assessment, would be difficult to develop for a myriad of reasons anyway, the new owner would be allowed to leave the illegally-filled wetlands as is and use the space for its own construction and business endeavors.⁷ While relatively small restoration measures would be applied to the few wetlands left on the site – those not filled – all reasonable recommendations advanced by the Delaware Riverkeeper Network and our community to provide some level of site and community healing were rejected out of hand.⁸ As a result of the rejection of community input, there would be no obligation to restore any portion of the wetlands lost, to restore wetlands elsewhere as compensation for the lost wetlands so at least region-wide there would not be a net loss of wetlands; there would be no obligation to use native species or conduct a site clean-up of trash and rotting tires, or to put up educational signage about the site and the importance of wetlands protection for people, healthy waterways and nature. Rejected too was a request for buffers to provide some semblance of protection to the few remaining wetlands on the site.⁹ Almost every community idea proffered? REJECTED! Why was community input rejected? Because it would cost the buyer money.

The loss of the wetlands has not been innocuous. Wetlands play a critical role in the water cycle, reducing runoff that causes flooding and cleansing pollution; it provides essential habitat which in this region is valuable given all of the development and major roadways.

The U.S. Army Corps noted that the soil on site, known as hydric soil, takes 100 years or more to develop.¹⁰ Hundreds of years of natural process and critical nature were erased by the Pozsgais in a matter of months because they felt they were entitled to do so, regardless of what the law said, the community needed, or that they had gotten money for the wetlands already in the form of a discounted property price.

If a federal judge decides to go along with the U.S. Army Corp and the Pozsgai plan for the site, the Pozsgais' years of belligerent nose-thumbing at the rule of law will have paid off. Not only will they get away with not having to pay the money needed to restore the wetlands, but they will receive over \$2

⁷ See, <https://www.justice.gov/enrd/consent-decree/file/1544066/download>.

⁸ See, [https://www.delawareriverkeeper.org/sites/default/files/Documents/DRN Comment on Proposed Consent Decree Pozsgai %282022-11-21%29.pdf](https://www.delawareriverkeeper.org/sites/default/files/Documents/DRN%20Comment%20on%20Proposed%20Consent%20Decree%20Pozsgai%202022-11-21%29.pdf).

⁹ *Id.* at 4.

¹⁰ *Pozsgai*, 999 F.2d at 722.

million as a reward for their illegal acts.¹¹ The community will lose and the Pozsgais will win because the US Army Corps has decided it doesn't matter - it doesn't matter that over four acres of wetlands will remain filled and be developed in violation of the law; and the person responsible for it all will benefit handsomely.

Wetlands provide critical habitat for plants and animals; they cleanse the water we drink and help ensure our rivers and streams continue to flow, even when it has rained for a while. Wetlands help to absorb rain water and as a result protect our communities from rising flood waters and devastating damage. Wetlands are a critical part of helping to avert climate catastrophe, storing significant levels of carbon in their plant life and soils. And yet, since the industrial revolution, more than 85% of the world's wetlands have been destroyed due to human activity.¹² Wetlands are priceless ecosystems. And yet we are allowing them to disappear before our very eyes. Recognizing the critical importance of wetlands here in the U.S., we have put in place state and federal laws and programs to protect them. The U.S. Army Corps was designated a critical steward for protection of our wetlands, in order to benefit people and nature. Today, with the Pozsgais, the U.S. Army Corps is setting dangerous and devastating precedent. Today, they are announcing that as long as you are belligerent enough, for long enough, and disregard your legal and moral responsibilities to your community, you will be rewarded with multi-million-dollar payouts and a clean slate. That is just not okay.

People, nature, and future generations are the big losers when our wetlands are destroyed. The rule of law is also a big loser when people are rewarded for their knowing and callous violations. The U.S Army Corps of Engineers has betrayed the public trust. Let's hope the judge rejects this unholy bargain of disregard and devastation, and reminds the U.S. Army Corps of the solemn duties and responsibilities entrusted to them under the Clean Water Act 50 years ago to protect our nation's waterways and wetlands for the benefit of all people, communities and nature.

¹¹ Hearing held before Judge Anita B. Brody, March 15, 2023, UNITED STATES OF AMERICA et al v. POZSGAI et al HEARING ON MOTION

¹² See, <https://www.cnn.com/2020/09/09/world/wwf-report-species-decline-climate-scni-intl-scli/index.html>.