

# My Regulatory Nightmare

by *Stephen Lathrop*

I am an independent homebuilder in Granite City, Illinois. If I told you that while building a housing development, I created a dangerous and mosquito-infested dump, ripped up a pristine pond, and created severe flooding for my neighbors, you would rightly be outraged—perhaps enough to call for government regulators to throw the book at me.

Hold that thought. . .

It is true that I did set out with a plan to build houses on some land in my hometown. But in the process of doing so, I removed a mosquito-infested dump from my neighborhood, created a peaceful pond my neighbors could enjoy, and drafted rock-solid plans that would alleviate many of my neighbors' chronic flooding problems that have plagued their property for decades.

In spite of all the side benefits of my work, I am still having the book thrown at me by government bureaucrats.

The red tape and regulatory intransigence have shut down my effort to build affordable homes. It has me, my wife, Ruth, and our two daughters teetering on the brink of financial ruin. And, with government officials seemingly blocking my every avenue, I wonder in this post-9/11 world what it really means to be an American.

My story started more than a decade ago. In 1990 I bought the dump at the end of my

street. Since the 1950s the dump has been filled by a 500-foot-long pile of concrete road slabs, bricks, concrete from demolished buildings, old sewer manholes, and other refuse. In addition to all the rubble, the dump had been overtaken by weeds, mosquitoes, snakes, and rats. Most of my neighbors considered it a peril to their children, and little more than a hangout for thieves and vandals.

The dump also was a chief cause of a 40-year flooding problem in my neighborhood. In the process of developing home sites, I saw an opportunity to clean the dump and create a lake to serve as a storm reservoir.

My plan was to build new homes around the lake in this bedroom community just nine miles from St. Louis's Gateway Arch. Along with turning the neighborhood dump into a lake, my plans included the creation of wildlife habitat. Numerous trees were to be left in place, and inside the lake would be an island for endangered waterfowl.

I was sure I had stumbled across my American dream—until U.S. government officials turned it into my American nightmare.

I cleaned up most of the dump and was eagerly embarking on my plan to spruce up the neighborhood when the U.S. Army Corps of Engineers stepped in. Based on observations of cattails growing through the concrete and rubble at the dump, the Corps ordered me to halt activity or face fines of up to \$25,000 per day. The unsightly mountain

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*Stephen Lathrop's e-mail address is [swlathrop@hotmail.com](mailto:swlathrop@hotmail.com).*

of concrete slabs, bricks, and refuse was a wetland.

But even the Environmental Protection Agency (EPA) labeled the dump a “non-functioning” wetland. This raised a question: How can it be a “wetland” if it is non-functioning? In my opinion, it was the bureaucrats who were “non-functioning.”

The Army Corps knew all about the dump and how my plan would help alleviate the town’s storm-water flooding problems. Because of the wetlands vegetation growing in the concrete slabs, however, Corps officials told me they had no choice. They not only ordered me to stop work, but they also ordered me to fill in the reservoir I created and restore the dump to its original state.

Knowing I risked going to prison for 21 months as a “wetland violator,” I refused to comply with the Corps’ directives. In return, the federal regulators wouldn’t allow me to fill in a dangerous temporary construction ditch or smooth the dirt so I could cut the weeds on my property. During the hot, humid summers in the St. Louis area, the weeds grew out of control and several times caught fire, endangering my home and those of my neighbors.

## Prison and Financial Ruin

Still with the threat of prison hanging over my head and the specter of financial ruin knocking on our door, for the next four years my family and I stood our ground. I decided to take a proactive path by submitting several freedom-of-information requests to the Army Corps to find out what was in the file regarding my project.

You’ll never guess what I found.

When the Army Corps stomped on my project in 1990, they were also taking a new look at three studies they conducted on my neighborhood during the 1980s. According to documents that I hold dear, these Army Corps studies reported average home damages in my neighborhood of more than \$315,000 annually due to floods.

Digging a little deeper, I also found a \$90,000 study from 1972 that recommended a storm reservoir or lake to alleviate

the flooding problem. The government’s solution—very similar to the one I already put into action—was projected to cost taxpayers millions of dollars. Flood-wise, the results would have been identical to my plan.

There were at least two government-studied solutions to the flooding problem, both costing more than \$4 million. The top-per—I would have built the flood-control structures for free.

My family’s most terrifying run-in with our government came in May 1994, when we were served with a “voluntary settlement agreement.” That document proposed that I leave the reservoir, never mow within 35 feet of it, and excavate all or part of the adjacent nine lots into a swamp.

I immediately called the Army Corps’ chief of enforcement. My question cut to the chase. If Corps officials knew something should have been done about the flooding, why did they not support my project? I also informed the Corps of my intention to build a home for my family on the flood-control lake I planned.

The reply I received will forever burn in my mind. The Corps official coldly told me: “You can think about building on your property and you can think about putting food on your family’s table—but, you know, ‘Daddy’s in jail’ makes for a bad show-and-tell [presentation for your little daughter].”

Ruth and I were terrified, but we stood our ground.

## Corps Threat

One week later, I received a certified letter from an Army Corps colonel stating that if I refused to sign the “voluntary settlement agreement” within ten days, I would be referred to the EPA for the imposition of fines of up to \$25,000 per day—without a court hearing or trial.

The Army Corps also communicated with one of my state’s U.S. senators at the time, contending that the agency was “not debating the application of engineering principles” nor my “efforts to clean up the property.” However, the Corps’ letter did question my

intent of building homes and making a profit even if my neighbors benefited. To this day, I wonder why the Corps was opposed to my development proposal, when it knew all about the longstanding flood problem I was resolving.

In summary, I was threatened with jail and fines for turning a dump into a lake and resolving a 40-year flooding problem. In the process of building houses, I was doing, at no cost to the taxpayer, what two expensive government studies had recommended—digging a lake or reservoir to control flooding.

After my tussle with the Army Corps and having been referred to the EPA for legal action, it turned out the EPA was too embarrassed to prosecute me. Its wetlands regulatory chief told me the lake I had already dug should have been sufficient mitigation, or tradeoff, for the brick, rubble, and concrete-filled dump I cleaned up. He also told me I would have to find a way for the Army Corps of Engineers to “save face.”

So I came up with what I believed was a perfect new proposal to clear my name, let the Army Corps save face, and put the entire controversy to rest. I showed the EPA chief my plan for a second housing development that was designed around a second, 17-acre man-made reservoir on the farm adjacent to my original lake. My proposal was to connect both reservoirs by a large pipe to permanently resolve my neighborhood’s flooding problem. The EPA chief agreed this plan would satisfy the Army Corps by creating a new lake that would, as he said, make up for my “original sin” of cleaning up the dump.

Thus I now had my course set, and I wasted little time in gathering capital. After a couple of years of hard work and saving, I had enough money to finance an offer for the farm adjacent to my property and to pay for the necessary preliminary work.

Things looked bright. Then, again, I stepped the Army Corps.

In October 1999, Corps regulators had told me my plan looked acceptable, but that I would need a wetlands permit since my new reservoir would “fill in” six acres of “actively farmed wetland.” I submitted my wetland permit application in February

2000 and was told it would be completed by April of that year.

At the same time, a new Army Corps study on my neighborhood’s flooding was submitted, and it suggested—believe it or not—a flood-control reservoir on the same farmland included in my proposals. It was eerily identical to my plan—same farm, same “farmed wetland,” same connecting pipe to my original lake. The main difference—the Army Corps’ plan would cost taxpayers more than \$1.1 million in excavation costs alone. This figure did not include money for land purchase, engineering, landscaping, or other costs.

The Army Corps kept promising, but never issued my permit. I was slowly approaching financial ruin. I begged the regulators to let me do for free what their expensive studies recommended.

On July 25, 2000, I met with Army Corps regulators to discuss the permit and request a release of my property. That was when the Army Corps regulatory chief made an astonishing revelation. After ten years of stopping my work and threatening me with prison, fines, and financial ruin, the Corps complaint with my original dump-to-reservoir cleanup project was that I had not made my original lake big enough. Amazingly, the bureaucrats’ decision took so long that they forgot they were the ones who stopped me from making my original lake big enough in the first place.

After that revelation, the Army Corps assured me the permit for my new lake project would be completed by October 1, 2000. In reality, however, by that date my permit had not even seen bureaucratic ink.

In November 2000, the full scope of the Army Corps’ misrepresentations came into focus. That was when I learned what I now believe the regulators knew all along: I did not need a wetlands permit to complete my proposal because the six acres of “farmed wetlands” included in my plan had been farmed for decades and were therefore exempt from wetland regulations and permits.

In fact, of the 80 acres I was trying to develop, the Army Corps had jurisdiction



*Stephen Lathrop surveys his nightmare zone.*

over only a one-acre stand of trees, which I was leaving next to my new lake, and the half-acre farm pond, which I left in two back yards. I found out that if I did not disturb the trees or the farm pond, no permit was needed.

By the time this information came to light, after years of bureaucratic harassment and misrepresentation, it was too late. Even though no permit was needed, my family was financially ruined, my credit destroyed

by the delays. To date, more than 20 banks and financial institutions have refused to finance my project, even though I have hundreds of thousands of dollars in pre-sales contracts.

To make matters worse, last summer West Nile virus came to my neighborhood, and the Corps of Engineers still would not allow me to smooth out a number of bulldozer ruts and potholes that are now full of stagnant water, weeds, and mosquitoes.

My family and I have decided to hang tough and take the last possible step we can take. We are telling our story to the public to show how our own government has treated us.

I suspect vindictiveness was the reason the government regulators withheld vital information from me. I stood up to them and embarrassed them, and now my family and I are paying the price. I gave them an opportunity to back down, but they took my good will and shoved it back into my face.

For more than a decade the regulatory division of the Army Corps of Engineers has shackled me inside a financial prison. I wonder how many other people have faced this kind of bureaucratic arrogance and intimidation. How many Americans have simply rolled over and let the federal bureaucracy have its way with their lives, their life savings, and their livelihoods? □



*The author was threatened with jail and fines for turning a dump into a lake.*