

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
) AMENDED
Duvall Development Co., Inc.,)
Jeffrey H. Duvall,) ADMINISTRATIVE COMPLAINT
Duvall & Son Livestock, Inc. and) FOR CLASS II PENALTY UNDER
Louis Steve Duvall, Sr.) SECTION 309(g) OF THE CLEAN
) WATER ACT, 33 U.S.C. § 1319(g)
)
) Docket No.: CWA-04-2010-5505
RESPONDENTS.)

**RESPONDENTS' JEFFREY H. DUVAL AND DUVAL DEVELOPMENT CO.,
INC. ANSWER TO AMENDED ADMINISTRATIVE COMPLAINT AND
REQUEST FOR HEARING**

COME NOW, Jeffrey H. Duvall and Duvall Development Co., Inc. (collectively referred to hereinafter as "Respondents"), through his undersigned counsel, and file this Answer and Request for Hearing in the above-referenced matter.

STATEMENT OF LEGAL AUTHORITY AND JURISDICTION

1.

On May 25, 2011, the United States Environmental Protection Agency, Region 4 ("EPA") issued an Amended Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") proposing the assessment of a Class II penalty under section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g) to the Respondents.

2.

Respondents hereby file this Answer to Amended Administrative Complaint and Request for Hearing ("Answer") to contest material facts alleged and the appropriateness of the proposed penalty in the Complaint.

3.

This Answer is filed within thirty (30) days of service of the Amended Complaint.

4.

Accordingly, Respondents have timely filed this action, have standing and have properly pled a cause of action under the applicable procedures.

RESPONSES TO SPECIFIC FACTUAL ALLEGATIONS

Respondents provide responses to each of the specific facts alleged in the Complaint pertaining to Respondents as follows:

5.

Respondents admit that Respondent Duvall Development Co., Inc. has been the owner of the tract of land located adjacent to Old Highway 441, near the City of Clayton, Rabun County, Georgia, as depicted in Exhibits A and B of the Complaint (“the Property”) since January 1992. Respondents admit that Respondent Duvall & Son Livestock, Inc. has operated a business at the Property since January 1992.

6.

Respondents admit that Respondent Jeffrey H. Duvall has been the Chief Executive Officer, President, sole shareholder and Registered Agent of Duvall Development Co., Inc. since January 1992. Respondents admit that Respondent Jeffrey H. Duvall has been the Chief Executive Officer and President of Duvall & Son Livestock, Inc. since January 1992.

7.

Respondents admit that Respondent Duvall Development Co. Inc. is a person within the definition set forth under section 502(5) of the CWA. Respondents admit that Respondent Jeffrey H. Duvall, as a representative of Duvall Development Co., Inc. is a person within the definition set forth under section 502(5) of the CWA.

8.

Respondents admit that, commencing in or about January 2005, Duvall & Son Livestock, Inc. performed certain activities involving the installation of concrete piping in and grading of four improved drainage ditches on the Property. Respondents further admit that the piping remains present where installed at the Property.

9.

Respondents deny Complainant’s allegations regarding the exact extent of the improved drainage ditches impacted by the activities of Duvall & Son Livestock, Inc.

10.

Respondents deny that the activities conducted at the Property resulted in the discharge of pollutants from a point source into navigable waters of the United States without a permit required under Section 404 of the CWA in violation section 301 of the CWA.

11.

Respondents admit that Respondents did not have an individual permit under section 404 of the CWA authorizing these activities. Respondents deny that such an individual permit was required to conduct the activities.

STATEMENT OF LEGAL DEFENSES PRESENTED

12.

The Activities Were Conducted For Duvall & Son Livestock, Inc.

The activities at the Property were conducted by, for and/or on behalf of the entity using the Property, Duvall & Son Livestock, Inc., not the owner of the Property, Duvall Development Company, Inc. No such activity was conducted by Respondent Mr. Jeffrey H. Duvall in his personal capacity; rather any such work performed by Respondent Jeffrey H. Duvall was directed by and attributable to Duvall & Son Livestock, Inc.

13.

The Activities Were Not Conducted In Jurisdictional Waters

Respondents maintain that all of the improved drainage ditches on the Property that were impacted by the activities of Duvall & Son Livestock, Inc. were not navigable waters of the United States under the CWA.

14.

The Activities Did Not Require An Individual Permit Under the CWA

Even if considered jurisdictional, the activities conducted by Duvall & Son Livestock, Inc. did not necessarily require an individual permit under section 404 of the CWA, as such activities could have been authorized under an exemption to permit requirements or under a previously authorized nationwide permit.

15.

The Proposed Penalty Is Unreasonable

Based on the facts and circumstances of this matter, the proposed penalty is excessive, unreasonable and otherwise not in accordance with the EPA Penalty Policy including adjustment factors, especially considering (a) the lack of culpability of the

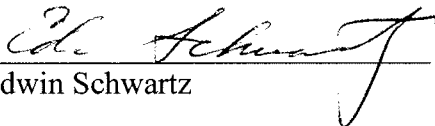
Respondents; (b) the lack of participation of the Respondents; and (c) the limited extent and environmental impacts of the activity. Accordingly, a penalty in the significant amount assessed by the Complainant against Respondents is excessive and unwarranted. Finally, the proposed penalty is not consistent with precedent established by past penalty assessments.

PRAYER FOR RELIEF

WHEREFORE, Respondents pray for the following relief:

- (1) a hearing on the matters addressed in this Amended Answer;
- (2) a declaration that the penalty proposed in the Complaint is invalid for the reasons set forth in this petition; and
- (3) such other relief as the Administrative Law Judge deems appropriate.

Respectfully submitted this 14th day of June 2011.


Edwin Schwartz

Attorney for Respondents Jeffrey H.
Duvall and Duvall Development
Company Inc.

Sweetnam & Schwartz, LLC
Three Ravinia Drive
Suite 1700
Atlanta, Georgia 30346

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have this day served a copy of this AMENDED
ANSWER AND REQUEST FOR HEARING by causing same to be filed with:

Regional Hearing Clerk

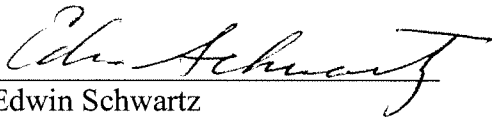
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta Federal Center
Atlanta, Georgia 30303-3104

and by placing a copy of same in the United States mail, postage prepaid, addressed to
the following:

Mr. Robert Caplan
Senior Attorney
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta Federal Center
Atlanta, Georgia 30303-3104

Lawrence Allyn Stockton, Jr.
Stockton & Stockton, LLC
191 South Main Street
P.O. Box 1550
Clayton, Georgia 30525

This the 14th day of June 2011.


Edwin Schwartz

Attorney for Respondents Jeffrey H.
Duvall and Duvall Development
Company Inc.

Sweetnam & Schwartz, LLC
Three Ravinia Drive
Suite 1700
Atlanta, Georgia 30346