



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 12 2010

CERTIFIED MAIL 70071490000101187196
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Mr. Jeff Duvall
20 Ice Plant Road
Clayton, Georgia 30525

RE: Administrative Complaint
Docket No. CWA-04-2010-5505

HEARING CLAIM

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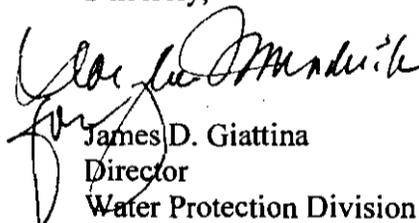
Dear Mr. Duvall:

Enclosed please find an Administrative Complaint, Docket No. CWA-04-2010-5505, which the U.S. Environmental Protection Agency (EPA) has filed. This Administrative Complaint was issued under the authority vested in the Administrator of the EPA as set forth in Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g).

The regulations that set out the administrative enforcement procedures – the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits” – are located at 40 C.F.R. Part 22, which is also attached to the Administrative Complaint.

If you have any comments or questions regarding this matter, please contact Ms. Mara Lindsley of my staff at (404) 562-9296, or your attorney may contact Mr. Robert Caplan, Associate Regional Counsel, at (404) 562-9520.

Sincerely,


James D. Giattina
Director
Water Protection Division

Enclosure

cc: U.S. Corps of Engineers, Savannah District
Georgia Environmental Protection Division

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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IN THE MATTER OF:)
)
Duvall Development Co., Inc.,) ADMINISTRATIVE COMPLAINT
and Jeffrey H. Duvall,) FOR CLASS II PENALTY
) UNDER SECTION 309(g)
) OF THE CLEAN WATER ACT,
RESPONDENTS.) 33 U.S.C. § 1319(g)
) Docket No.: CWA-04-2010-5505

ADMINISTRATIVE COMPLAINT

I. Statutory Authority

1. This is an Administrative Complaint (“Complaint”) issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22, the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits.” A copy of the Consolidated Rules is attached to this Complaint as Exhibit “C.” The Administrator has delegated this authority to the Regional Administrator of EPA, Region 4, who has duly redelegated this authority to the Director of the Water Protection Division, Region 4, who hereby issues this Complaint and Notice.

2. This Complaint is issued to Duvall Development Company, Inc., (Duvall Development) and Jeffrey H. Duvall, (Jeffrey Duvall) hereinafter sometimes collectively referred to as Respondents.

II. Statutory and Regulatory Background

3. Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), states “[w]henever, on the basis of any information available - the Administrator finds that any person has violated [section 301 of the CWA, 33 U.S.C. § 1311], . . . the Administrator . . . may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under [33 U.S.C. § 1319(g)(2)(B)].”

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states “[e]xcept as in compliance with . . . [Section 404 of the CWA, 33 U.S.C. § 1314], the discharge of any [dredged or fill material] by any person shall be unlawful.” Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (COE), to issue permits for the discharge of dredged or fill material into navigable waters.

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a “discharge of pollutants” as “[a]ny addition of any pollutant to navigable waters from any point source”

6. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure . . . from which pollutants are or may be discharged.”

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “[t]he waters of the United States, including the territorial seas.”

8. Federal regulations under 40 C.F.R. § 232.2 define the term “waters of the United States” to include “streams.”

III. Allegations

9. Respondent Duvall Development Co., Inc., at all times relevant to this Complaint, was the owner and operator of a tract of land located adjacent to Old 441, near the city of Clayton, Rabun County, Georgia, near latitude 34°51'50.602"N, longitude 83°24'51.1183"W (the Site) (Exhibits A and B). Respondent Jeffrey Duvall, at all times relevant to this Complaint, was the Chief Executive Officer and President of Duvall Development.

10. Respondents are persons within the definition set forth under section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. Commencing on or about approximately January 2005, to the present, Respondents, or those acting on behalf of Respondents, discharged dredged and/or fill material into four tributaries flowing across the Site using earth moving machinery, during unauthorized activities associated with the clearing and leveling of the Site and the installation of 48 inch diameter cement pipes.

12. Respondents impacted approximately 1,500 linear feet of four unnamed tributaries to Stekoa Creek, a navigable water of the United States.

13. The discharged dredged and/or fill material, including earthen material deposited at the Site, are “pollutants” as defined under the CWA § 502(6).

14. The earth moving machinery employed by Respondents to deposit the dredged and/or fill material at the Site are “point sources” as defined under the CWA § 502(14).

15. Respondents’ placement of the dredged and/or fill material at the Site constitutes a “discharge of pollutants” as defined under the CWA § 502(12).

16. At no time during the discharge of dredged and/or fill material at the Site from approximately January 2005, to the present, did Respondents possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed by Respondents. Each discharge by Respondents of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

17. Each day the material discharged by Respondents remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

IV. Notice

18. As required under the CWA § 309(g), EPA has consulted with the Georgia Department of Environmental Protection regarding this proposed action by mailing a copy of this document to the appropriate official of the State of Georgia and offering an opportunity for the State to consult with EPA on the proposed penalty assessment. EPA, within 30 days following proof of service of the complaint on Respondents, shall publish a public notice on the EPA website at the following internet address: <http://www.epa.gov/region4/water/wpeb> regarding this proposed action.

V. Penalty

19. Based on the above Findings of Violation and under Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), the Administrator may assess a civil penalty of up to \$11,000 per violation per day, not to exceed a maximum of \$137,500, for violations of Section 301(a) and 404 of the CWA, 33 U.S.C. § 1311(a) and 1344. Consistent with the 2004 Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121 (Feb. 13, 2004), based on the above Findings of Violation and under Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), the Administrator may assess a civil penalty of up to \$11,000 per violation per day, not to exceed a maximum of \$157,500, for violations of Section 301(a) and 404 of the CWA, 33 U.S.C. § 1311(a) and 1344 that occurred after March 15, 2004 through January 12, 2009. For violations occurring after January 12, 2009, under the 2008 Civil Monetary Penalty Adjustment Rule, 73 Fed. Reg. 75340 (Dec. 11, 2008), the penalties are \$16,000 per day up to a maximum of \$177,500. Based upon the facts alleged in this Complaint, and based upon the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondents' ability to pay, prior history of such violations, and such other matters as justice may require, EPA Region 4 hereby proposes to issue a Final Order Assessing Administrative Penalties to Respondents for violations alleged in this Complaint. This Complainant proposes that Respondents pay a penalty in an amount of up to \$177,500 for the violations stated in this Complaint.

VI. Hearing

20. As provided under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), Respondents have the right to request a hearing to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. If Respondents wish to avoid being found in default, Respondents must file a written Answer to this Complaint and a Request for Hearing within 30 days of service of this Complaint with the:

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

21. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondents have any knowledge, or clearly state that Respondents have no knowledge as to particular factual allegations in the Complaint. The Answer also must state:

- a. the circumstances or arguments that are alleged to constitute grounds of defense, and
- b. the facts which Respondents intend to place at issue.

22. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. A copy of Respondents' Answer and any subsequent documents that Respondents file in this action should be sent to:

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

Mr. Caplan represents EPA in this matter and is authorized to receive service for EPA in this proceeding. He may be telephoned at (404) 562-9520.

23. Any hearing that Respondents request regarding this Complaint will be held and conducted in accordance with the provisions of 40 C.F.R. Part 22. If Respondents fail to file a written Answer within 30 calendar days of receipt of this Complaint, a Default Order may be issued against Respondents by the Regional Administrator. Issuance of a Default Order will

constitute a binding admission of all allegations made in the Complaint and a waiver of Respondent's right in this case to a hearing under the CWA, pursuant to 40 C.F.R. § 22.17. The civil penalty proposed in this Complaint will then become due and payable without further proceedings 60 days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. § 22.31. Respondents' failure to fully pay the proposed penalty, as assessed by the Final Order, by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty under section 309(g)(9)(B) of the CWA, 33 U.S.C. § 1319(g)(9)(B).

24. Should Respondents request a hearing on the proposed penalty amount, members of the public who have exercised their right to comment, and to whom EPA is obligated to give notice of this proposed action, will have a right under section 309(g)(4)(B), 33 U.S.C. § 1319(g)(4)(B), to present evidence on the appropriateness of the penalty assessment. If Respondents do not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who commented on this proposal during the 30-day period following Respondents' receipt of this document will have an additional 30 days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. EPA will grant the petition and hold the hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

VII. Settlement Conference

25. Whether or not Respondents request a hearing, an informal conference may be requested in order to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, please contact:

Ms. Mara Lindsley
Wetlands Enforcement Section, 15th Floor
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta Federal Center
Atlanta, Georgia 30303-3104

She may be telephoned at (404) 562-9296.

26. Respondents' request for an informal settlement conference does not extend the 30-day period during which a written Answer and Request for Hearing must be submitted. Respondents may pursue the informal conference procedure, however, simultaneously with the adjudicatory hearing procedure. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. EPA, however, will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such

conference will be embodied in a Final Order. Respondents' consent to a Final Order will constitute a waiver of the right to request a hearing on any matter stipulated to therein.

27. Neither assessment nor payment of an administrative civil penalty under this section of the CWA will affect Respondents' continuing obligation to comply with the CWA, or any other Federal, State or local law or regulation.

28. Any settlement reached as a result of the informal conference will be finalized by the issuance of a written Consent Agreement and Final Order approved by U.S. E.P.A. Region 4.



James D. Giattina
Director
Water Protection Division

Date: MAR 1 2 1990

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Administrative Complaint in the matter of: **Docket No. CWA-04-2010-5505** on the parties listed below in the manner indicated:

EPA Internal Mail:

Mara Lindsley
U.S. EPA, Region 4
Wetlands Enforcement Program
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

By hand-delivery:

Robert Caplan
Senior Attorney
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

By Certified mail,
return receipt requested:

Jeffrey H. Duvall, President & CEO
Duvall Development Co., Inc.
20 Ice Plant Road
Clayton, Georgia 30525

Dated: MAR 12 2010



Mary E. Halback
Environmental Protection Specialist
U. S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9978

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