

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

IN THE MATTER OF:)

Duvall Development Co., Inc.)
and Jeffrey H. Duvall.)

ADMINISTRATIVE COMPLAINT
FOR CLASS II PENALTY UNDER
SECTION 309(g) OF THE CLEAN
WATER ACT, 33 U.S.C. § 1319(g)

RESPONDENTS.)

Docket No.: CWA-04-2010-5505

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ANSWER AND REQUEST FOR HEARING

COME NOW, Duvall Development Co., Inc. and Jeffrey H. Duvall (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 March 12, 2010, the United States Environmental Protection Agency, Region 4 ("EPA") issued an Administrative Complaint ("Complaint") for 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 and Request for Hearing to contest material facts alleged and the appropriateness of the proposed penalty in the Complaint.

3.

This Answer and Request for Hearing is filed within thirty (30) days of service of the 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 as follows:

5.

Respondents admit that, at all times relevant to this Complaint, Respondent Duvall Development Co., Inc. has been the owner and operator 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"). Respondents admit that, at all times relevant to this Complaint, Respondent Jeffrey H. Duvall has been the Chief Executive Officer and President of Duvall Development Co., Inc.

6.

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

7.

Respondents admit that certain activities were performed on the Property; that some of the activities occurred on or about January 2005; that the activities were conducted by and on behalf of Duvall Development Co., Inc.; that the activities consisted of the installation of 48 inch concrete pipe; and that the piping was installed in improved drainage ditches on the Property.

8.

Respondents have no knowledge of the exact extent of the improved drainage ditches impacted by the activities of the Respondents on behalf of Duvall Development Co., Inc. Respondents deny that the improved drainage ditches were navigable waters of the United States.

9.

Respondents admit that Duvall Development Co., Inc. 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

The Activities Were Conducted For Duvall Development Co., Inc.

10.

The activities at the Property were conducted for Duvall Development Co., Inc. for the benefit of the leasee of the Property, Duvall and Son Livestock Co., Inc. As such, the participation of Mr. Jeffrey H. Duvall was on behalf of Duvall Development Co., Inc. No such activity was conducted by Mr. Jeffrey H. Duvall in his personal capacity. Mr. Jeffrey H. Duvall is not personally liable for any violation of the CWA that may have been committed by the activities attributable to Duvall Development Co., Inc.

The Activities Were Not Conducted In Jurisdictional Waters

11.

Respondents maintain that the improved drainage ditches on the Property that were impacted by the activities of the Respondents on behalf of Duvall Development Co., Inc. would not properly have been considered jurisdictional waters of the United States.

12.

The Activities Did Not Require An Individual Permit Under the CWA

Even if considered jurisdictional, the activities conducted by the Respondents on behalf of Duvall Development Co., Inc. did not require an individual permit under section 404 of the CWA; instead, such activities were authorized under agricultural and other related exemptions to permit requirements or under authorized nationwide permits.

13.

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. The scope and environmental impacts of the activity conducted by Respondents on behalf of Duvall Development Co., Inc. do not warrant such a significant penalty. 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 full and timely hearing on the matters addressed in this 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 9th day of April, 2010.


Edwin Schwartz
Attorney for Respondents

Sweetnam & Schwartz, LLC
Three Ravinia Drive
Suite 1700
Atlanta, Georgia 30346
770-594-8272

CERTIFICATE OF SERVICE

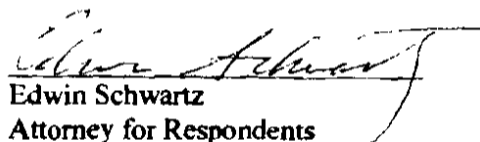
THIS IS TO CERTIFY that I have this day served a copy of this ANSWER AND REQUEST FOR HEARING by facsimile and by placing a copy of the same in the United States mail, postage prepaid, and addressed to the following:

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

This the 9th day of April, 2010.


Edwin Schwartz
Attorney for Respondents

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Suite 1700
Atlanta, Georgia 30346
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