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June 23, 2011

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

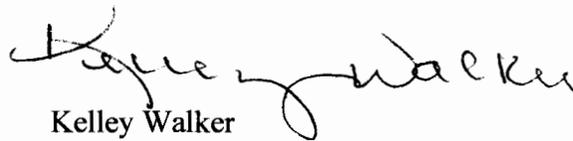
*Re: Duvall Development Co., Inc., Jeffrey H. Duvall, Duvall & Son Livestock, Inc.
And Louis Steve Duvall, Sr.*

Dear Regional Hearing Clerk:

Enclosed please find the original Respondents' Louis Steve Duvall and Duvall & Son Livestock, Inc. Answer to Amended Administrative Complaint and Request For Hearing in regards to the above referenced matter..

Should you have any questions or concerns, please feel free to contact this office at any time.

Sincerely,



Kelley Walker
Legal Assistant

ltr/kcw

Enclosures:

cc: File
Robert Caplan
Edwin Schwartz

2011 JUN 24 PM 3:19
HEARING CLERK
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**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.)

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**RESPONDENTS' LOUIS STEVE DUVALL AND DUVALL & SON LIVESTOCK,
INC. ANSWER TO AMENDED ADMINISTRATIVE COMPLAINT AND
REQUEST FOR HEARING**

COME NOW, Louis Steve Duvall ("Steve Duvall") and Duvall & Son Livestock, Inc. (collectively referred to hereinafter as "Respondents"), through his undersigned counsel, and file this Answer to Amended Complaint 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 & Son Livestock, Inc. has operated a business on the 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.

6.

Respondents admit that Respondent Steve Duvall has been the Chief Financial Officer of Duvall & Son Livestock, Inc. since January 1992.

7.

Respondents admit that Respondent Duvall & Son Livestock, Inc. is a person within the definition set forth under section 502(5) of the CWA. Respondents admit that Respondent Steve Duvall, as a representative of Duvall & Son Livestock, 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 and 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. No such activity was conducted by Respondent Steve Duvall in his personal capacity; rather any such work performed by Respondent Steve Duvall was directed by and attributable to Duvall & Son Livestock, Inc.

13.

The Activities Were Not Conducted In Jurisdictional Waters

Respondents maintain that 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 Respondent Steve Duvall individually; and

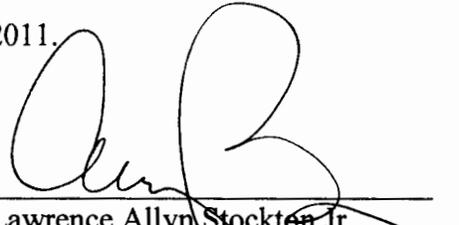
(c) the limited extent and environmental impacts of the activity. Accordingly, a penalty in the significant amount assessed by the Complainant is excessive and unwarranted. Finally, the proposed penalty is not consistent with precedent established by past penalty assessments.

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 22nd day of June 2011.



Lawrence Allyn Stockton Jr.
Georgia Bar #682909
Attorney for Respondents Louis
Steve Duvall and Duvall & Son
Livestock, Inc.

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

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

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

This the 22nd day of June 2011.


Lawrence Allyn Stockton Jr.
Attorney for Respondents Louis
Steve Duvall and Duvall & Son
Livestock, Inc.

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