



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
51 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 20 2012

CERTIFIED MAIL 70101060000217059155  
RETURN RECEIPT REQUESTED

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

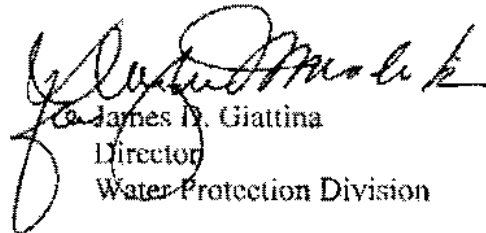
Re: Final Consent Agreement and Final Order, In the Matter of Jeffrey H. Duvall, Duvall Development Company, and Duvall & Son Livestock; Docket No. CWA-04-2010-5505

Dear Mr. Schwartz:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CAFO) in the above-referenced matter, which has been approved by the U.S. Environmental Protection Agency, Region 4 Regional Administrator. Pursuant to Section V of the CAFO, the penalty must be paid within 30 days after the effective date of the CAFO.

If you or your clients have any questions regarding this matter, please contact Mr. Robert Caplan, Senior Attorney, at (404) 562-9520.

Sincerely,

  
James D. Giattina  
Director  
Water Protection Division

Enclosure

cc: Mr. Justin Hammonds  
U.S. Corps of Engineers, Savannah District

Ms. Robin Goodloe  
U.S. Fish & Wildlife Service

Ms. Jennifer H. Welte  
Georgia Environmental Protection Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )

Jeffrey H. Duvall, )  
Duvall Development Co., Inc., and )  
Duvall & Son Livestock, Inc., )

RESPONDENTS. )

ADMINISTRATIVE  
CONSENT AGREEMENT AND  
FINAL PENALTY ORDER

Docket No. CWA-04-2010-5505

HEARING CLERKS

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RECEIVED  
EPA REGION IV

CONSENT AGREEMENT

I. Nature of the Action

1. This is a civil penalty proceeding under Section 309(g)(1) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(1), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999), codified at 40 Code of Federal Regulations (C.F.R.) Part 22.

2. The authority to take action under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator Region 4, who in turn has redelegated this authority to the Director of the Water Protection Division of EPA Region 4 (referred to herein as "Complainant" or "EPA"). The Respondents are Jeffrey H. Duvall, Duvall Development Company, Inc. (sometimes referred to hereafter as "Duvall Development"), and Duvall & Son Livestock, Inc. (sometimes referred to hereafter as "Duvall Livestock"). Complainant and Respondents are collectively referred to herein as "the Parties."

3. On March 12, 2010, Complainant filed an Administrative Complaint against Respondents Jeffrey Duvall and Duvall Development alleging that the Respondents had violated Sections 301 and 404 of the Clean Water Act by discharging fill materials into waters of the United States without a permit. On May 25, 2011, Complainant filed an Amended Administrative Complaint that added two new Respondents, Louis Steve Duvall, Sr., and Duvall & Son Livestock, Inc. On July 13, 2011, Respondent Louis Steve Duvall, Sr., passed away. On December 8, 2011, Complainant filed a Motion to Dismiss the Amended Complaint against Louis Steve Duvall, Sr.

4. The Parties have conferred for the purpose of settlement under 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without taking any evidence or testimony, making any argument, or

adjudicating any issue in this matter, and in accordance with 40 C.F.R. § 22.18(b), this Administrative Consent Agreement and Final Penalty Order ("CAFO"), will conclude this matter.

## **II. Statutory and Regulatory Background**

5. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), 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)]."

6. 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. § 1344], 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.

7. 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 . . ."

8. 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."

9. 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."

10. Federal regulations under 40 C.F.R. § 232.2 define the term "waters of the United States" to include intrastate streams and tributaries of such streams, the use, degradation, or destruction of which would or could affect interstate commerce.

## **III. EPA's Statement of Facts and Allegations of Violations**

11. At all times relevant to this matter, Respondent Duvall Development Company, Inc., a Georgia corporation, has been the owner 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").

12. Beginning in approximately 1991 and continuing to the time of this CAFO, Respondent Duvall Livestock, a Georgia corporation, has operated a cattle business on the Site pursuant to an agreement with Respondent Duvall Development.

13. Jeffrey Duvall has been the Chief Executive Officer, President, Sole Shareholder and Agent of Duvall Development and the Chief Executive Officer and President of Duvall Livestock since 1991, and co-owned Duvall Livestock with Louis Steve Duvall, Sr.

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

15. Commencing in 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 owned by Duvall Development and/or Duvall Livestock, during activities associated with the clearing and leveling of the Site and the installation of 48-inch diameter cement pipes into the streams.

16. Respondents impacted approximately 1,500 linear feet of four unnamed tributaries to Stekoa Creek, a navigable water of the United States, by placing portions of the streams into the concrete pipes.

17. The discharged dredged and/or fill material, including rocks, soils, sediments and pipes deposited at the Site, are "pollutants" as defined under Section 502(6) of the CWA.

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

19. Respondents' placement of the dredged and/or fill material at the Site constitutes a "discharge of pollutants" as defined under Section 502(12) of the CWA.

20. 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. EPA alleges that each discharge by Respondents of pollutants into navigable waters without a 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).

21. EPA alleges that 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. Consent Agreement**

22. For the purposes of this CAFO, Respondents admit the jurisdictional allegations set out above but neither admit nor deny the factual allegations set out above.

23. Respondents hereby waive their rights to contest the allegations set out above and their rights to appeal the Final Order accompanying this CAFO.

24. Respondents consent to the assessment of and agree to pay the administrative penalty as set forth in this CAFO.

25. The Parties agree to settle this matter by their execution of this CAFO. The Complainant finds that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CWA.

#### V. Final Penalty Order

26. Pursuant to Section 309(g)(2)(b) of the CWA, 33 U.S.C. § 1319(g)(2)(b), and considering the factors as set forth in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Complainant has determined that **THIRTY THOUSAND DOLLARS** (\$30,000) is an appropriate civil penalty to settle this action.

27. Within thirty (30) days after the effective date of this CAFO, Respondents shall pay the penalty by forwarding a cashier's or certified check, payable to the order of "Treasurer, United States of America" to one of the following addresses:

For payment submitted by mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

For payment submitted by any overnight mail service (Fed Ex, UPS, DHL, etc.):

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

The check shall reference on its face the name of Respondents and the Docket Number of this CAFO.

28. At the time of payment, Respondents shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Office of Environmental Accountability  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

Ms. Mary E. Halback  
Wetlands Enforcement Section  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

29. Civil penalty payments under this CAFO are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law. Any attempt by Respondents to deduct the penalty payment shall constitute a violation of this CAFO.

30. Under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondents to pay the penalty assessed by the CAFO in full by its due date may subject the Respondents to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CAFO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CAFO shall not be subject to review.

31. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of United States to seek any other remedies or sanctions available by virtue of Respondents' violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any federal or state statute, regulation or permit.

## **VI. Reservations of Rights and Effect of Settlement**

32. This CAFO constitutes a settlement by the parties of all claims for civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g)(1), with respect to only those violations alleged in this CAFO and in the Amended Complaint. Compliance with this CAFO shall resolve the allegations of violations contained in this CAFO and the Amended Complaint. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents, or other liability resulting from violations that were not alleged in this CAFO or the Amended Complaint. Other than as expressed in this document, Complainant does not waive any right to bring an enforcement action against Respondents for violation of any

federal or State statute, regulation or permit, to initiate an action for injunctive relief pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), for imminent and substantial endangerment, or to pursue criminal enforcement.

33. This CAFO shall not relieve Respondents of their obligations to comply with all applicable provisions of federal, State, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CAFO shall not be a defense to any actions subsequently commenced by Complainant under federal laws and regulations administered by the EPA.

34. The obligations of the Respondents under this CAFO are joint and several.

35. The parties acknowledge and agree that this CAFO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which requires EPA to provide a copy of the proposed CAFO to any person who submitted comments to EPA in response to the public notice regarding the Amended Complaint, and provides commenters the right to petition to set aside the CAFO on the basis that material evidence was not considered.

36. Under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

#### **VII. Authorizations and General Provisions**

37. Each undersigned representative of the Parties to this CAFO certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

38. This CAFO applies to and is binding upon Respondents and any officers, directors, employees, agents, successors and assigns of the Respondents.

39. Any change in the legal status of Respondents including, but not limited to, any transfer of assets of real or personal property, shall not alter Respondents' responsibilities under this CAFO.

40. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO.


41. This CAFO in no way affects the rights of the Complainant as against any person or entity not a party to this CAFO.

#### **IX. Effective Date**

42. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

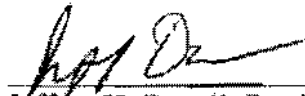
**AGREED AND CONSENTED TO:**

**FOR RESPONDENT, JEFFREY H. DUVALL:**

  
\_\_\_\_\_  
Jeffrey H. Duvall


Date: 12-22-2011

**FOR RESPONDENT, DUVALL DEVELOPMENT CO., INC.:**

  
\_\_\_\_\_  
Jeffrey H. Duvall, President and CEO  
Duvall Development Co., Inc.

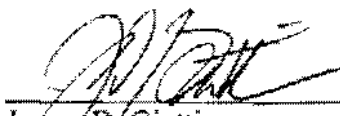
Date: 12-22-2011

**FOR RESPONDENT, DUVALL & SON LIVESTOCK, INC.:**

  
\_\_\_\_\_  
Jeffrey H. Duvall, President and CEO  
Duvall & Son Livestock, Inc.

Date: 12-22-2011

**FOR COMPLAINANT, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

  
\_\_\_\_\_  
James D. Giattina  
Director  
Water Protection Division

Date: 1/4/12



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 ) ADMINISTRATIVE  
Jeffrey H. Duvall, ) CONSENT AGREEMENT AND  
Duvall Development Co., Inc., and ) FINAL PENALTY ORDER  
Duvall & Son Livestock, Inc., )  
 )  
RESPONDENTS. ) Docket No. CWA-04-2010-5505  
\_\_\_\_\_ )

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the forgoing Administrative Consent Agreement and Final Penalty Order is hereby approved and incorporated by reference into this Final Order. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondents are hereby ordered to comply with the terms of the foregoing Administrative Consent Agreement and Final Penalty Order.

U.S. ENVIRONMENTAL PROTECTION AGENCY



*for*  
Gwendolyn Keyes Fleming  
Regional Administrator  
U.S. EPA, Region 4

Date: 3-13-2012

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Administrative Consent Agreement and Final Penalty Order in the matter of **Jeffrey H. Duvall, Duvall Development Co., Inc., and Duvall & Son Livestock, Inc., Docket No. CWA-04-2010-5505**, on the parties listed below in the manner indicated:

Judge Barbara A. Gunning (Via pouch mail)  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

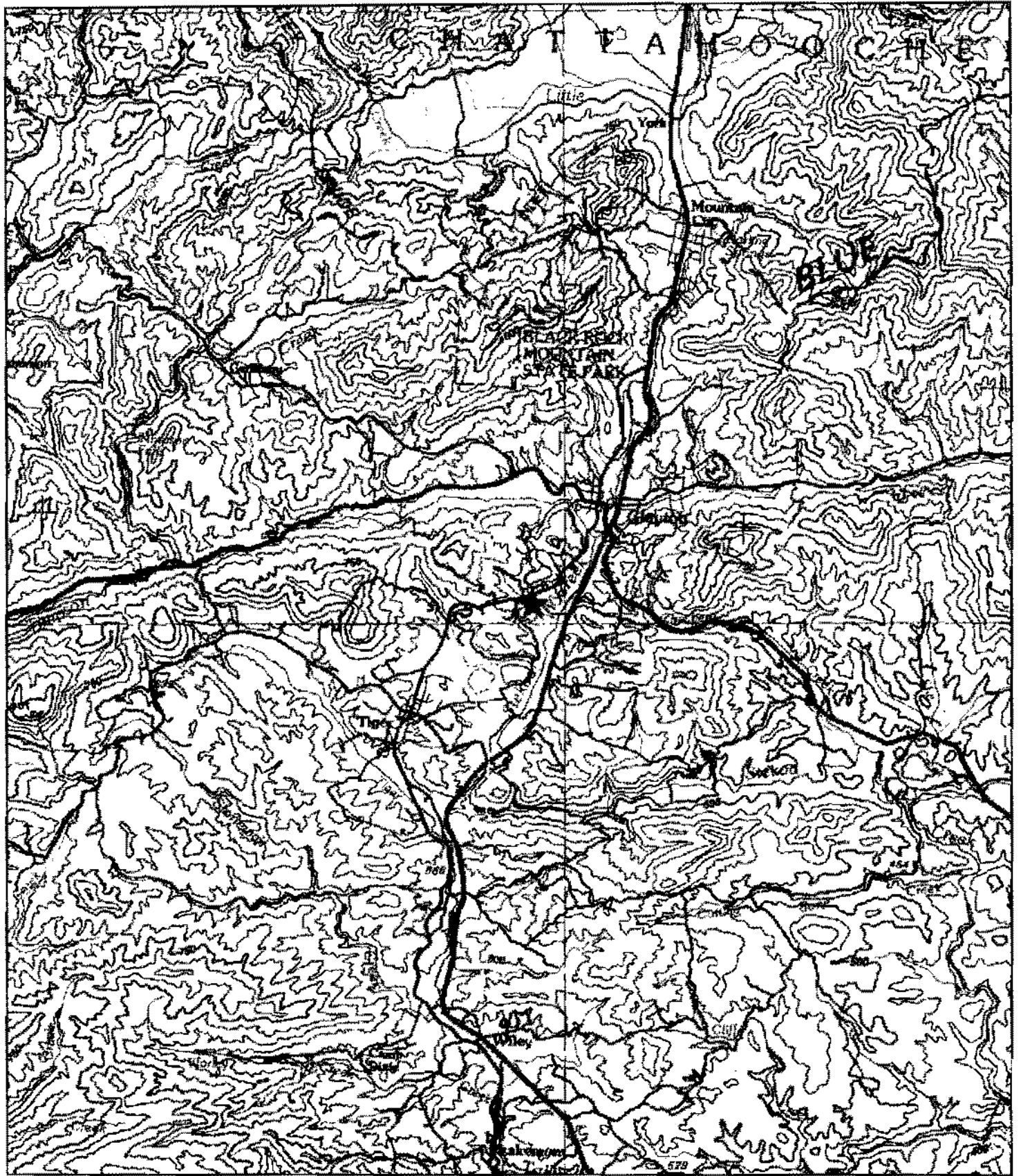
Robert Caplan, Esq. (By hand-delivery)  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Edwin Schwartz, Esq. (By Certified Mail, Return Receipt Requested)  
Sweetnam & Schwartz, LLC  
Three Ravina Drive  
Suite 1700  
Atlanta, Georgia 30346

Dated: 3-20-12



Patricia Bullock  
Regional Hearing Clerk  
U. S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9511



Duvall

0 0.3 0.6 1.2 Miles  
|-----|-----|-----|-----|

Exhibit A

 EPA United States Environmental Protection Agency



Red dashed segments denote Discharge Areas



Duvall

0 125 250 500 Feet

Exhibit B

 EPA United States Environmental Protection Agency

the Resource Conservation and Recovery Act. Notwithstanding the Consolidated Rules of Practice, these supplemental rules shall govern with respect to the termination of such permits.

(b) In any proceeding to terminate a permit for cause under § 122.64 or § 270.43 of this chapter during the term of the permit:

(1) The complaint shall, in addition to the requirements of § 22.14(b), contain any additional information specified in § 124.9 of this chapter;

(2) The Director (as defined in § 124.2 of this chapter) shall provide public notice of the complaint in accordance with § 124.10 of this chapter, and allow for public comment in accordance with § 124.11 of this chapter; and

(3) The Presiding Officer shall admit into evidence the contents of the Administrative Record described in § 124.9 of this chapter, and any public comments received.

[65 FR 30904, May 15, 2000]

**§ 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings for the assessment of any civil penalty under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act (33 U.S.C. 1319(g) and 1321(b)(6)(B)(ii)), and under section 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300h-2(c)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Public notice.* (1) *General.* Complainant shall notify the public before assessing a civil penalty. Such notice shall be provided within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty. The notice period begins upon first publication of notice.

(2) *Type and content of public notice.* The complainant shall provide public notice of the complaint (or the pro-

posed consent agreement if § 22.13(b) is applicable) by a method reasonably calculated to provide notice, and shall also provide notice directly to any person who requests such notice. The notice shall include:

(i) The docket number of the proceeding;

(ii) The name and address of the complainant and respondent, and the person from whom information on the proceeding may be obtained, and the address of the Regional Hearing Clerk to whom appropriate comments shall be directed;

(iii) The location of the site or facility from which the violations are alleged, and any applicable permit number;

(iv) A description of the violation alleged and the relief sought; and

(v) A notice that persons shall submit comments to the Regional Hearing Clerk, and the deadline for such submissions.

(c) *Comment by a person who is not a party.* The following provisions apply in regard to comment by a person not a party to a proceeding:

(1) *Participation in proceeding.* (i) Any person wishing to participate in the proceedings must notify the Regional Hearing Clerk in writing within the public notice period under paragraph (b)(1) of this section. The person must provide his name, complete mailing address, and state that he wishes to participate in the proceeding.

(ii) The Presiding Officer shall provide notice of any hearing on the merits to any person who has met the requirements of paragraph (c)(1)(i) of this section at least 20 days prior to the scheduled hearing.

(iii) A commenter may present written comments for the record at any time prior to the close of the record.

(iv) A commenter wishing to present evidence at a hearing on the merits shall notify, in writing, the Presiding Officer and the parties of its intent at least 10 days prior to the scheduled hearing. This notice must include a copy of any document to be introduced, a description of the evidence to be presented, and the identity of any witness (and qualifications if an expert), and the subject matter of the testimony.