

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

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

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AMENDED ADMINISTRATIVE COMPLAINT

I. Statutory Authority

1. This is an Amended Administrative Complaint ("Amended Complaint") issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or "Complainant") 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." The Administrator has delegated this authority to the Regional Administrator of the EPA, Region 4, who has duly redelegated this authority to the Director of the Water Protection Division, Region 4.

2. This Amended Complaint is issued pursuant to the April 20, 2011, Order of Administrative Law Judge Gunning granting Complainant's Motion for Leave to Amend the Complaint.

3. This Amended Complaint is issued to Duvall Development Company, Inc. ("Duvall Development"), Jeffrey H. Duvall, ("Jeffrey Duvall"), Duvall & Son Livestock, Inc. ("Duvall Livestock"), and Louis Steve Duvall, Sr. ("Steve Duvall"), hereinafter also collectively referred to as Respondents.

II. Statutory and Regulatory Background

4. 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)]."

5. 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, to issue permits for the discharge of dredged or fill material into navigable waters.

6. 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”

7. 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.”

8. 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.”

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

III. Allegations

10. Respondent Duvall Development, at all times relevant to this Amended Complaint, was 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)(Exhibits A and B).

11. Respondent Duvall Livestock, at all times relevant to this Amended Complaint, operated a business on the Site.

12. Respondent Jeffrey Duvall, at all times relevant to this Amended Complaint, was the Chief Executive Officer, President, Sole Shareholder and Agent of Duvall Development and the Chief Executive Officer and President of Duvall Livestock.

13. Respondent Steve Duvall, at all times relevant to this Amended Complaint, was the Chief Financial Officer of Duvall Livestock.

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

15. Commencing on or about approximately January 2005, to the present, Respondents, or those acting on behalf of, and at the direction 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 unauthorized activities associated with the clearing and leveling of the Site and the installation of 48-inch diameter cement pipes.

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

17. The discharged dredged and/or fill material, including earthen material 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. 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).

21. 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. Respondents are jointly and severally liable for violations of Section 301 of the CWA as set forth above.

IV. Notice

22. As required by 40 C.F.R. § 22.38(b), Complainant has consulted with the State of Georgia regarding this proposed action by mailing a copy of this Amended Complaint to the Georgia Department of Environmental Protection and offering an opportunity to consult with Complainant on the proposed penalty assessment.

V. Penalty

23. 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 Sections 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 Sections 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 (December 11, 2008), the penalties are \$16,000 per day up to a maximum of \$177,500. Based upon the facts alleged in this Amended 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, Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to Respondents for violations alleged in this Complaint. The Complainant proposes that Respondents pay a penalty in an amount of up to \$177,500 for the violations stated in this Complaint.

VI. Hearing

24. Pursuant to 40 C.F.R. § 22.14(c), Respondents must file a written Answer to this Amended Complaint within 20 days of service of this Amended Complaint with the:

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

25. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Amended Complaint with respect to which Respondents have any knowledge, or clearly state that Respondents have no knowledge as to particular factual allegations in the Amended Complaint. The Answer also must state the circumstances or arguments that are alleged to constitute grounds of defense, and the facts which Respondents intend to place at issue.

26. Failure to deny any of the factual allegations in this Amended Complaint constitutes admission of the undenied allegations.

27. A copy of the 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 the EPA in this matter and is authorized to receive service for the EPA in this proceeding. He may be telephoned at (404) 562-9520.

28. In their Answer to the original Complaint, Respondents Jeffrey Duvall and Duvall Development requested a hearing. Pursuant to an Order issued by Administrative Law

Judge Gunning, dated April 20, 2011, a hearing has been scheduled in this matter for August 23 - 26, 2011, in Atlanta, Georgia. If Respondents Duvall Livestock and Steve Duvall are also seeking a hearing, they must include a request for hearing in their Answer to this Amended Complaint. The hearing 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 20 calendar days of receipt of this Amended 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 Amended Complaint and a waiver of Respondents' right in this case to a hearing under the CWA, pursuant to 40 C.F.R. § 22.17. The civil penalty proposed in this Amended 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).

VII. Settlement Conference

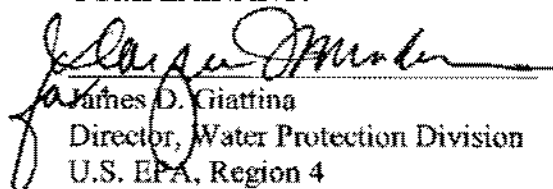
29. Although a hearing has been scheduled in this matter, Respondents may request an informal settlement conference by contacting the EPA's counsel, Mr. Caplan, at the address and/or phone number provided in paragraph 27 above.

30. Respondents' request for an informal settlement conference does not extend the 20-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. The EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. The 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.

31. Neither assessment nor payment of an administrative civil penalty under Section 309(g)(2) of the CWA will affect Respondents' continuing obligation to comply with the CWA, or any other federal, State or local law or regulation.

32. 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 the EPA.

COMPLAINANT:


James D. Giattina
Director, Water Protection Division
U.S. EPA, Region 4

Date: MAY 25 2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one copy of the foregoing Amended Administrative Complaint styled In the Matter of: Duvall Development Co., Inc., Jeffrey H. Duvall, Duvall & Son Livestock, Inc., and Louis Steve Duvall, Sr., **Docket No. CWA-04-2010-5505**, was filed on May 25, 2011, with the Region 4 Regional Hearing Clerk, and that I have served a true and correct copy of the same on Judge Barbara Gunning and the attorneys for 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

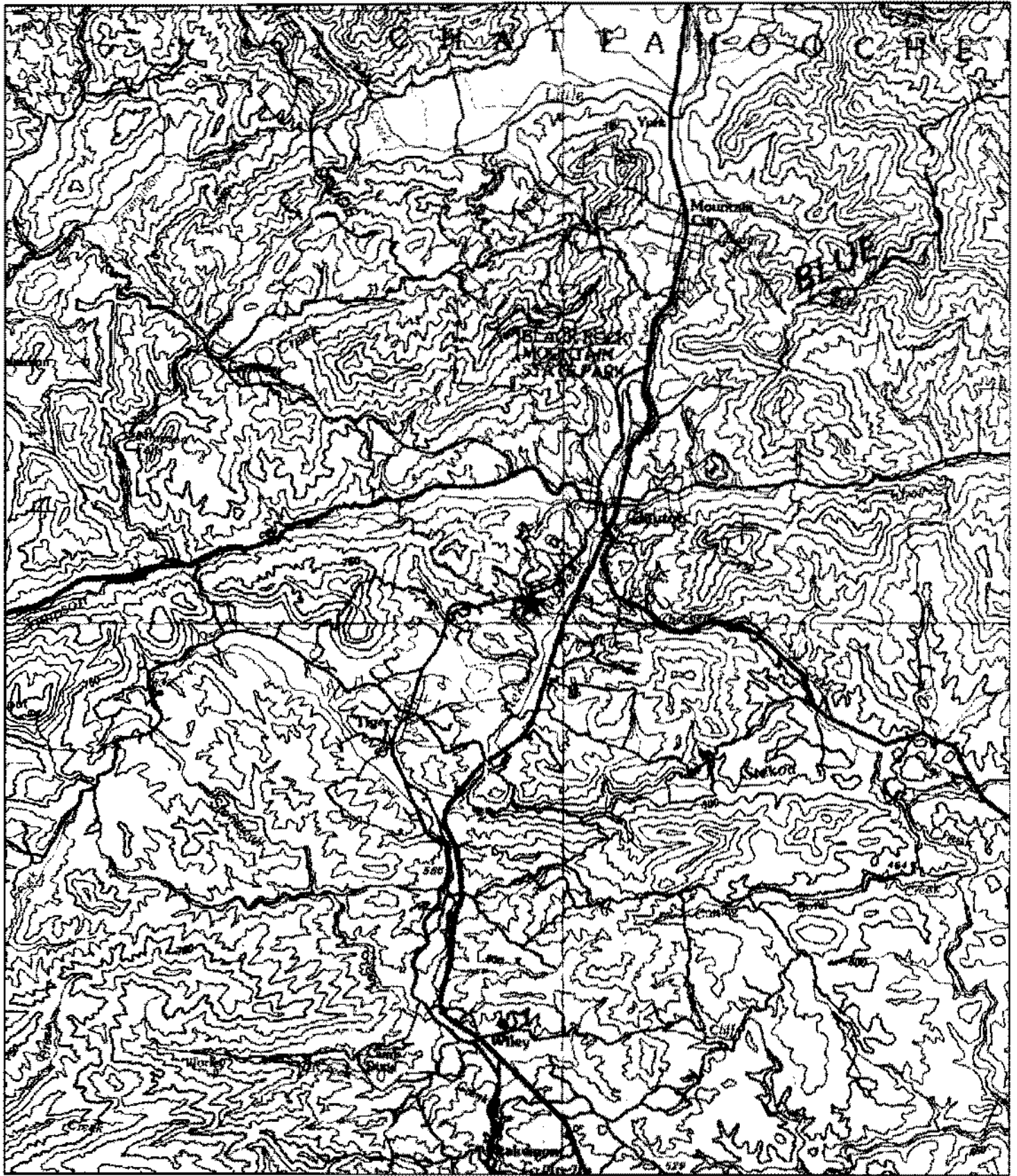
Robert Caplan (Via EPA's Internal Mail)
Senior Attorney
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

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

C. Allyn Stockton, Jr., Esq. (Via Certified Mail, Return Receipt Requested)
Stockton & Stockton
P.O. Box 1550
Clayton, Georgia 30525

Dated: May 25, 2011

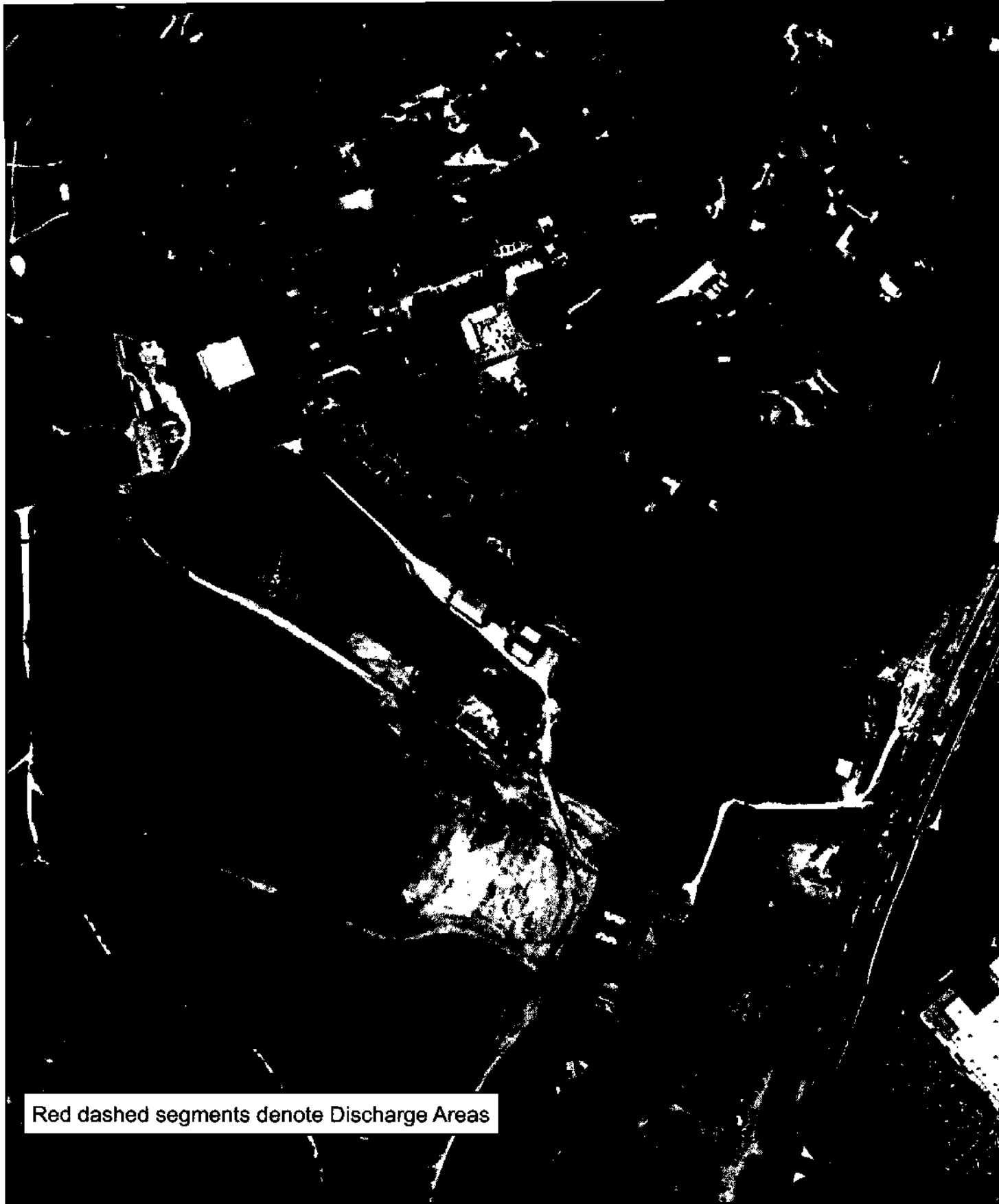

Mary E. Halback
Environmental Protection Specialist
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303



Duvall

Exhibit A





Red dashed segments denote Discharge Areas



Duvall

0 125 250 500 Feet

Exhibit B

 **EPA** United States Environmental Protection Agency