



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

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AUG 13 2015

CERTIFIED MAIL 7012 0470 0001 4027 2212  
RETURN RECEIPT REQUESTED

The Honorable Andrew H. Holt and  
Mrs. Eleanore F. Holt  
d/b/a A & E Livestock  
461 Jewell Store Road  
Dresden, Tennessee 38225

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EPA REGION IV  
2015 AUG 13 AM 10:26  
HEAVENLY CRENT

Re: Administrative Complaint and Notice of Proposed Penalty Assessment  
Docket No: CWA-04-2015-4506  
Andrew H. Holt and Eleanore F. Holt d/b/a A & E Livestock  
Dresden, Weakley County, Tennessee

Dear Mr. and Mrs. Holt:

Enclosed is a document entitled Administrative Complaint and Notice of Proposed Penalty Assessment (Complaint) which the U.S. Environmental Protection Agency is issuing pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. 1319(g), to you for violations at your concentrated animal feeding operation facility known as A & E Livestock (Facility). The Complaint alleges that you discharged pollutants from the Facility without a valid National Pollutant Discharge Elimination System (NPDES) permit on three separate occasions on or about February 24 and 25, 2011 and August 6, 2013, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). The Complaint requests that a civil penalty of not more than \$177,500 be assessed for these violations.

This version contains the proper signatures and Certificate of Service, and therefore supersedes the earlier version sent to you, dated August 6, 2015, which was not legally effective.

A copy of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Order, and the Revocation, Termination or Suspension of Permits*, 40 Code of Federal Regulations (C.F.R.) Part 22, published at 64 Fed. Reg. 40,176 (July 23, 1999), which apply to this case, are enclosed for your reference.

Pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.15(c), you may request a hearing regarding any material fact alleged in the Complaint and on the proposed penalty assessment. The procedures for the hearing, if one is requested, are set out at 40 C.F.R. Part 22.

In order to be entitled to a hearing under the CWA, you must file an Answer to the Complaint within thirty (30) days after receipt of this Complaint, as outlined in Section VI of the Complaint. The Answer shall clearly and directly admit, deny or explain each of the factual allegations of the Complaint with regard to which you have any knowledge. If you fail to submit an Answer within thirty (30) days of receipt of this Complaint, and the case is not otherwise disposed of through settlement, you may be found in default. For purposes of this action, default constitutes an admission of all facts alleged in the Complaint and a waiver of your right to a hearing on such factual allegations. In that case, a civil penalty will be assessed against you and will become due and payable without further proceedings after a Final Order of Default is issued pursuant to 40 C.F.R. § 22.17.

In addition, failure to pay the assessed penalty may subject you to a civil action to collect the assessed penalty, plus interest, attorneys' fees, costs and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

You may request an informal meeting with EPA to discuss settlement of this action by contacting Ms. Suzanne Armor, Associate Regional Counsel, at (404) 562-9701. You have the right to be represented by an attorney at any stage of the proceedings, including in any informal discussions with the EPA. Please note that a request for an informal settlement conference does not extend the thirty (30) day period in which to submit an Answer to this Complaint.

If you have any questions, please contact Ms. Armor at (404) 562-9701.

Sincerely,



Denisse D. Diaz, Chief  
NPDES Permitting and Enforcement Branch  
Water Protection Division

Enclosures (2)

cc: Ms. Tisha Calabrese-Benton, Director  
Division of Water Resources  
Tennessee Department of Environment  
and Conservation



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 4  
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61 FORSYTH STREET  
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**AUG 13 2015**

CERTIFIED MAIL 7012 0470 0001 4027 2205  
RETURN RECEIPT REQUESTED

Ms. Tisha Calabrese-Benton, Director  
Division of Water Resources  
Tennessee Department of Environment  
and Conservation  
312 Rosa L. Parks Avenue  
William R. Snodgrass Tennessee Tower  
Nashville, Tennessee 37243

Re: Administrative Complaint and Notice of Proposed Penalty Assessment  
Docket No: CWA-04-2015-4506  
Andrew H. Holt and Eleanore F. Holt d/b/a A & E Livestock  
Dresden, Weakley County, Tennessee

Dear Ms. Calabrese-Benton:

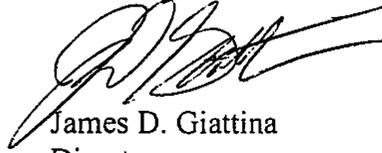
Enclosed is a copy of the Administrative Complaint and Notice of Proposed Penalty Assessment (Complaint) which the U.S. Environmental Protection Agency is issuing pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. 1319(g), to Andrew H. Holt and Eleanore F. Holt, for alleged CWA violations at their concentrated animal feeding operation facility known as A & E Livestock. In the Complaint, the EPA proposes to assess Class II administrative penalties of not more than \$177,500 for three instances of unauthorized discharge of pollutants from the Holts' facility, occurring on or about February 24 and 25, 2011 and August 6, 2013.

This version contains the proper signatures and Certificate of Service, and therefore supersedes the earlier version sent to you, dated August 6, 2015, which was not legally effective.

Because the violations occurred in the State of Tennessee, the EPA is offering to you an opportunity to confer regarding the proposed assessment. If you wish to request a conference, or if you have any comments or questions regarding the matter, you may call me at (404) 562-9470.

or your staff may call Mr. Michael Hom at (404) 562-9748. A request for a conference may be in-person or by telephone and may cover any matters relevant to the proposed assessment.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Giattina', with a long horizontal flourish extending to the right.

James D. Giattina  
Director  
Water Protection Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

<b>IN THE MATTER OF:</b>	)	DOCKET NO: CWA-04-2015-4506
	)	
ANDREW H. HOLT and	)	Proceeding under Section 309(g) of the
ELEANORE F. HOLT,	)	Clean Water Act, 33 U.S.C. § 1319(g)
d/b/a A & E LIVESTOCK,	)	
DRESDEN, TENNESSEE	)	
	)	
RESPONDENTS.	)	
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**ADMINISTRATIVE COMPLAINT  
AND NOTICE OF PROPOSED PENALTY ASSESSMENT**

**I. NATURE OF THE ACTION**

1. This Administrative Complaint (Complaint) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) pursuant to Section 309(g)(1) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1). The Administrator has delegated this authority to the Regional Administrator of EPA Region 4, who in turn has delegated it to the Director of the Water Protection Division of EPA Region 4 (Complainant).

2. Complainant hereby requests the assessment of a civil penalty against Andrew H. Holt and Eleanore F. Holt, d/b/a A & E Livestock (Respondents<sup>1</sup>), and provides notice of Respondents' opportunity to request a hearing on the proposed penalty assessment pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 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), published at 64 Fed. Reg. 40,176 (July 23, 1999), for the unauthorized discharge of pollutants in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**II. STATUTORY AND REGULATORY BACKGROUND**

3. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's water. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

4. In order to accomplish the objective of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states that is unlawful for any person to discharge any pollutant except as in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.

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<sup>11</sup> The term "Respondents" is used throughout this Complaint because Mr. and Mrs. Holt are co-owners of the Facility; however, Mr. Holt has been primarily responsible for the concentrated animal feeding operation and contact with TDEC, TDA, and the EPA.

5. A “discharge of a pollutant” as defined at Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12)(A), is any addition of any pollutant to navigable waters from any point source.

6. The term “pollutant” means, *inter alia*, dredged spoil, solid waste, sewage, garbage, sewage sludge, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

7. A “concentrated animal feeding operation” or “CAFO” is a “point source” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

8. A “concentrated animal feeding operation” or “CAFO” means an animal feeding operation that is defined as a Large CAFO or as a Medium CAFO. 40 C.F.R. § 122.23(b)(2).

9. An “animal feeding operation” means a lot or facility (other than an aquatic animal production facility) where: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and (ii) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 C.F.R. § 122.23(b)(1).

10. A “Medium CAFO” includes any animal feeding operation with: (i) 750 to 2,499 swine each weighing 55 pounds or more; and (ii) where pollutants are either discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device, or pollutants are discharged directly into waters of the United States which originate outside or and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation. 40 C.F.R. § 122.23(b)(6).

11. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including manure, litter and/or process wastewater discharge from CAFOs, into navigable waters subject to specific terms and conditions.

12. The EPA has granted the State of Tennessee, through the Department of Environment and Conservation (TDEC), approval to issue NPDES permits pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

13. Section 402(a) of the CWA, 33 U.S.C. § 1342, sets forth requirements for the issuance of NPDES permits for the discharge of pollutants. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), requires, in part, that a discharge of pollutants to navigable waters must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

14. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the EPA promulgated regulations setting forth the NPDES permit requirements for CAFOs at 40 Code of Federal Regulation (C.F.R.) Parts 122 and 412. See 77 Fed. Reg. 44,494 (July 30, 2012); 73 Fed. Reg. 70,418 (Nov. 20, 2008) (known as the “Consolidated CAFO Regulations,” and available at [http://water.epa.gov/polwaste/npdes/afo/upload/cafo\\_final\\_rule2008\\_comp.pdf](http://water.epa.gov/polwaste/npdes/afo/upload/cafo_final_rule2008_comp.pdf)).

15. The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural stormwater discharge. 40 C.F.R. § 122.23(e).

16. 40 C.F.R. § 122.23(d)(1) prohibits discharge by a CAFO unless the discharge is authorized by an NPDES Permit.

17. “Process wastewater” means water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits or other animal feeding operations facilities; direct contact swimming, washing, or spray cooling of animals; or dust control; as well as any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding. 40 C.F.R. § 122.23(b)(8).

18. TDEC issued a General NPDES Permit for Concentrated Animal Feeding Operations, Permit No. TNA000164 (“2004 CAFO General Permit”), in accordance with the Tennessee Water Quality Control Act of 1977, Tenn. Code Ann. 69-3-101 et seq., and the CWA, which was effective on August 7, 2004 and expired on August 5, 2009.

19. To obtain coverage under the 2004 CAFO General Permit, an applicant was required to submit a Notice of Intent (NOI) along with a closure/rehabilitation plan for any waste storage structures at the facility and either a comprehensive or site-specific NMP to the Tennessee Department of Agriculture (TDA). Following review by the TDA, the NOI would be forwarded to TDEC.

20. In relevant part, the 2004 CAFO General Permit prohibited all wastewater discharges from a CAFO to waters of the State of Tennessee, except when either chronic or catastrophic rainfall events caused an overflow of process wastewater from a facility properly designed, constructed, maintained, and operated to contain: (i) all process wastewater resulting from the operation of the CAFO, plus; (ii) all runoff from a 25-year, 24-hour rainfall event for an existing CAFO. See Part II of 2004 CAFO General Permit.

21. Pursuant to the 2004 CAFO General Permit, permittees may have maintained coverage under the expired 2004 CAFO General Permit by re-submitting a completed NOI prior the expiration date of August 5, 2009. See Part IV.F of 2004 CAFO General Permit.

22. TDEC issued a State Operating Permit for Class II Concentrated Animal Feeding Operations, Permit No. SOPCD0000 (“2010 CAFO General Permit”), in accordance with the Tennessee Water Quality Control Act of 1977, Tenn. Code Ann. 69-3-108, which was effective on November 1, 2010 and expires on October 31, 2015.

23. To obtain coverage under the 2010 CAFO General Permit, an applicant is required to submit a Notice of Intent (NOI), a closure/rehabilitation plan for any waste storage structures at the facility, and a site-specific NMP that meets the requirements of TDEC Rule 1200-4-5-.14 to both TDA and TDEC. The application will be reviewed by TDA and, upon approval, TDA will notify TDEC.

24. In relevant part, the 2010 CAFO General Permit prohibited all wastewater discharges from a CAFO to waters of the State of Tennessee, except when either chronic or catastrophic rainfall events caused an overflow of process wastewater from a facility properly designed, constructed, maintained, and operated to contain: (i) all process wastewater resulting from the operation of the CAFO, plus; (ii) all runoff from a 25-year, 24-hour rainfall event for an existing CAFO. See Part II of 2004 CAFO General Permit.

### III. ALLEGATIONS

25. At all times relevant to this action, Respondents owned and/or operated a concentrated animal feeding operation known as A & E Livestock located at 357 Woodruff Road, Dresden, Weakley County, Tennessee (“Facility”).

26. Respondents are “persons” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

27. At times relevant to this action, the Facility operated as a swine “grower” facility for Tosh Farms. The average weight of swine at the Facility was 150 pounds.

28. The Respondents began operation of the Facility on or around April 19, 2005.

29. At times relevant to this action, the Facility consisted of a CAFO and approximately 27 acres of cropland and timber, and contained two barns, Barn No. 1 and Barn No. 2, with a combined capacity of 1,460 swine<sup>2</sup>; one shallow pit underneath Barn No. 1; and two wastewater lagoons, Lagoon No. 1 and Lagoon No. 2.

30. The shallow pit has a storage capacity of approximately 167,155 gallons.

31. Lagoon No. 1 has a storage capacity of approximately 2,729,068 gallons.

32. Lagoon No. 2 has a storage capacity of approximately 628,404 gallons.

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<sup>2</sup> The Respondents have alleged that, beginning in or around September 2014, the Facility contained only one barn, Barn No. 1, with a capacity of 960 swine.

33. The Facility contains 16 fields, denoted as: D1; D2; D3; H1; H2; H3; H4; H5; H6; J1; J2a; J2b; J3; J4; J5; and RD1.

34. Two forks of an unnamed tributary to Mud Creek are located either on or abutting the Facility: the northern fork of the unnamed tributary to Mud Creek bisects the Facility property and travels in a westerly direction, directly abutting all or a portion of Fields D3, J1, J2a, and J2b, and adjacent to Fields D1, D2, and H6; and the southern fork of the unnamed tributary to Mud Creek travels in a southern direction, adjacent to Field RD1.

35. The unnamed tributary flows directly into Mud Creek, which flows into the Obion River and thence into the Mississippi River, a traditionally navigable water of the United States.

36. Mud Creek is classified for the following uses: fish and aquatic life; recreation; livestock, watering and wildlife; and irrigation. See Tenn. Comp. R. & Regs. 0400-40-04-.03.

37. Pursuant to Tenn. Comp. R. & Regs. 0400-40-03-.03(3)(a), waters classified for fish and aquatic life use shall have a dissolved oxygen concentration of not less than 5.0 milligrams per liter (mg/L).

38. At times relevant to this action, the Respondents stabled or confined and fed or maintained up to 1,460 swine weighing an average of more than 55 pounds for a total of 45 days or more in any 12-month period at the Facility.

39. While the animals are present, Respondent does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season over any portion of the Facility.

40. As a general practice, the Respondents land-applied process wastewater from the Facility's two wastewater lagoons to the Facility's various fields via a "big gun" irrigation system at a rate of ½-inch per acre in order to maintain sufficient volume in the lagoons to accommodate the Facility's process wastewater and runoff from a 25-year, 24-hour rainfall event.

41. On various occasions as detailed below, the Respondents used pumping equipment to discharge process wastewater from the Facility's lagoons into waters of the United States.

42. The pumping equipment used by the Respondents to discharge process wastewater from lagoons into waters of the United States is a man-made device.

43. At times relevant to this action, therefore, the Facility was a Medium CAFO as defined at 40 C.F.R. § 122.23(b).

44. The 25-year, 24-hour rainfall event for Dresden, Tennessee is 6.5 inches. See 14 Nat'l Atmospheric and Oceanic Admin. Atlas, vol. 2, ver. 3, Dresden, Tennessee, "Point

Precipitation Frequency Estimates,” available at [http://hdsc.nws.noaa.gov/hdsc/pfds/pfds\\_map\\_cont.html?bkmrk=tn](http://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=tn).

45. The Respondents obtained coverage to discharge pollutants as a result of rainfall events exceeding the 25-year, 24-hour storm event under the 2004 CAFO General Permit effective August 5, 2005 and expiring on August 5, 2009.

46. In its review of the Respondent’s June 2005 NMP, TDA noted that, “50 [inches of] annual rainfall would only add [approximately] 949,944 [gallons] to [L]agoon No. 1. Storage is more than adequate.”

47. On September 20, 2005, TDEC conducted a compliance inspection of the Respondents’ Facility, and noted at that time that Lagoon No. 1 appeared to have less than two feet of available freeboard. In a subsequent letter dated September 21, 2005, TDEC advised the Respondents to maintain adequate freeboard to accommodate the runoff from a 25-year/24-hour storm event and the process wastewater generated by the Facility.

48. The 2004 CAFO General Permit expired on August 5, 2009. Upon information and belief, the Respondents did not re-submit a completed NOI prior the expiration date of August 5, 2009, as required under Part IV.F of the 2004 CAFO General Permit.

49. On or about December 16, 2009, the Respondents began pumping from Lagoon No. 1 onto Fields J1 and J2. The Respondents began to see liquid manure moving slowly toward an unnamed tributary to Mud Creek on the northern border of the fields. The Respondents shut down the pumping equipment and turned off the hard hose reel being used to aerial apply the wastewater. The Respondents estimated that approximately 250 to 500 gallons of wastewater were discharged to the unnamed tributary to Mud Creek.

50. On January 12, 2010, TDEC sent a Notice of Violation (NOV) to the Respondents regarding the unauthorized discharge that occurred on December 16, 2009.

51. On February 24, 2011, the Respondents reported that they had discharged approximately 482,260 gallons of process wastewater from Lagoon No. 1 at the Facility. The Respondents pumped down Lagoon No. 1 by approximately two feet and discharged the process wastewater from Lagoon No. 1 through a six-inch aluminum pipe, without spray dispersal, to Field J2, which abuts the northern fork of the unnamed tributary to Mud Creek. The discharge point was within 60 feet of the northern fork of the unnamed tributary to Mud Creek.

52. On February 25, 2011, the Respondents reported that they had discharged approximately 142,560 gallons of process wastewater from Lagoon No. 2 at the Facility. The Respondents pumped down Lagoon No. 2 by approximately 15 inches and discharged the process wastewater from Lagoon No. 2 through a six-inch aluminum pipe, without spray dispersal, to Field J2, which abuts the northern fork of the unnamed tributary to Mud Creek.

53. Although no actual environmental harm was documented associated with the discharge events on February 24 and 25, 2011, the potential for harm was significant due to the nature of the wastewater. A sample analysis of representative wastewater from the Facility was conducted on December 12, 2009, which indicated that the five-day biochemical oxygen demand (BOD<sub>5</sub>) concentration was approximately 60 milligrams per liter (mg/L) and the ammonia nitrogen concentration was 46 mg/L. Both BOD<sub>5</sub> and ammonia nitrogen are oxygen-depleting substances, which can result in decreased dissolved oxygen (DO) in water below the required water quality criterion for DO of 5 mg/L. Decreased DO levels in a waterbody can be acutely and chronically harmful to the health of flora and fauna.

54. On February 25, 2011, TDEC conducted a Compliance Evaluation Inspection at the Facility. During TDEC's Inspection, TDEC personnel observed the Respondent discharging process wastewater onto Field J2, said process wastewater traveling across Field J2, and said process wastewater entering the northern fork of the unnamed tributary to Mud Creek. TDEC personnel documented a dark substance in the northern fork of the unnamed tributary to Mud Creek, and noted severe erosion and degradation within the lagoon slopes and around the Facility.

55. On March 31, 2011, TDEC sent a letter to the Respondents transmitting TDEC's Compliance Evaluation Inspection Report for its February 25, 2011 Inspection, and again notifying the Respondents of their obligation to obtain coverage under a valid NPDES Permit.

56. The Respondents submitted a NOI to TDEC and TDA seeking coverage under the 2010 CAFO General Permit on June 1, 2011. Along with their NOI, the Respondents stated that their NMP was in the process of being completed and would be sent to TDEC and TDA no later than June 6, 2011.

57. On April 5, 2012, TDEC sent a NOV to the Respondents for failure to obtain coverage under a valid NPDES Permit. TDEC noted that, as of April 5, 2012, the Respondents had not submitted the required site-specific NMP and/or closure/rehabilitation plan.

58. On June 18, 2012, TDA sent a letter to the Respondents to inform them that additional items were needed before TDA could approve the NMP required to issue the Respondents CAFO Permit.

59. On November 19, 2012, TDEC sent a letter to the Respondents informing them that their application for coverage under a CAFO Permit was incomplete.

60. On April 30, 2013, TDA sent a letter to the Respondents informing them that they did not complete their application and did not have coverage under a valid NPDES permit.

61. On June 3, 2013, the Respondents submitted a NOI for coverage under the 2010 CAFO General Permit to TDEC and TDA.

62. On August 6, 2013, the Respondents reported that they had discharged approximately 237,000 gallons of process wastewater from Lagoon No. 1 at the Facility into the unnamed tributary to Mud Creek. The Respondents pumped down Lagoon No. 1 by approximately 12 inches and discharged the process wastewater from Lagoon No. 2 through a traveling gun, thence to a heavily sodded area, and thence to the unnamed tributary to Mud Creek.

63. Although no actual environmental harm was documented associated with the discharge event on August 6, 2013, the potential for harm was significant due to the nature of the wastewater. As described in Paragraph 53 above, sample analysis of representative wastewater from the Facility was conducted on December 12, 2009, which indicated that the BOD<sub>5</sub> concentration was approximately 60 mg/L and the ammonia nitrogen concentration was 46 mg/L. Both BOD<sub>5</sub> and ammonia nitrogen are oxygen-depleting substances, which can result in decreased DO in water below the required water quality criterion for DO of 5 mg/L. Decreased DO levels in a waterbody can be acutely and chronically harmful to the health of flora and fauna.

64. On August 7, 2013, TDEC sent the Respondents a letter reminding the Respondents of their obligation to obtain a valid NPDES permit.

65. On September 3, 2013, TDEC acknowledged receipt of a NOI from the Respondents.

66. On September 5, 2013, TDA sent a letter to the Respondents informing them that the materials submitted “appear[ed] to be exactly the same set of materials . . . submitted in June 2012,” on which TDA had submitted significant comments to the Respondents on June 18, 2012. TDA stated, “To [our] knowledge [TDA] has not received a direct response to [its June 18, 2012] letter yet, nor have we received a significantly revised [NMP].”

67. On September 10, 2013, the EPA and TDEC conducted a Compliance Inspection of the Facility to evaluate the Facility’s compliance with Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and the Consolidated CAFO Regulations.

68. On September 24, 2013, TDEC sent an email to the Respondents informing them that, because the Facility had a discharge, the Respondents would need to obtain an individual NPDES Permit rather than obtain coverage under the 2010 CAFO General Permit.

69. On May 23, 2014, the EPA sent an Information Request to the Respondents pursuant to Section 308(a) of the CWA, 33 U.S.C. 1318(a), seeking information pertaining to the Respondents’ operation of the Facility from May 15, 2009 through May 29, 2014. The EPA requested a response from the Respondents by June 28, 2014.

70. On June 20, 2014, the Respondents requested an extension of time of respond to the EPA’s May 23, 2014 Information Request. The EPA granted the Respondents an extension through July 11, 2014.

71. On July 14, 2014, the Respondents called the EPA to request another extension of time to respond to the EPA's May 23, 2014 Information Request. The EPA directed the Respondents to submit the request in writing.

72. On August 5, 2014, the Respondents submitted a written request to the EPA requesting an extension of time to respond to the EPA's May 23, 2014 Information Request to September 12, 2014. The EPA granted the request on September 9, 2014.

73. After receiving no timely response to its May 23, 2014 Information Request, the EPA determined that the Respondents were in violation of Section 308(a) of the CWA, 33 U.S.C. 1318(a), for failing to provide the information requested in the May 23, 2014 Information Request. Therefore, the EPA issued the Respondents an Administrative Order, Docket No. CWA-04-2014-4769, requiring the Respondents to provide the requested information by October 8, 2014.

74. The Respondents provided their response to the EPA's May 23, 2014 Information Request on September 22, 2014.

75. The Respondents allege that, in or around December 2014, all swine were removed from the Facility and the Facility has ceased operation as a CAFO.<sup>3</sup>

76. On April 21, 2015, the EPA sent the Respondents a NOV alleging three unauthorized discharges of process wastewater from the Facility.<sup>4</sup>

77. Therefore, the Respondents violated Sections 301(a) of the CWA, 33 U.S.C. § 1311 by discharging process wastewater from the Facility without authorization by an NPDES Permit.

#### IV. PROPOSED PENALTY

78. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the EPA to assess a penalty of up to \$16,000 per violation up to a maximum amount of \$177,500, for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), occurring between January 12, 2009 through December 6, 2013. See Civil Monetary Penalty Inflation Adjustment Rule, 78 Fed. Reg. 66,643 (Nov. 6, 2013).

79. Based on the foregoing Allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Complainant proposes that a penalty of not more than \$177,500 be assessed against the Respondents.

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<sup>3</sup> A TDEC Inspection of the Facility conducted on February 23, 2015 confirmed that, at that time, no swine were present at the Facility.

<sup>4</sup> Although the EPA has evidence of more than three unauthorized discharge events from the Facility, only the events occurring on February 24, 2011, February 25, 2011, and August 6, 2013 are within the applicable five-year statute of limitations, as defined at 28 U.S.C. § 2462.

80. This penalty, as assessed, has taken into account the statutory penalty factors, as identified at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), including the nature, circumstances, extent and gravity of the violations, and the Respondents' ability to pay, prior compliance history, degree of culpability, accrued economic benefit or savings, and such other matters as justice may require.

#### V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

81. The rules of procedure governing this civil administrative litigation are set forth in the *Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, published at 64 Fed. Reg. 40,176 (July 23, 1999).

82. Please be advised that 40 C.F.R. Part 22 prohibits any *ex parte* discussion of the merits of a case with, among others, the Administrator, Judicial Officer, Regional Administrator, Regional Judicial Officer or Administrative Law Judge after the Complaint has been issued. 40 C.F.R. § 22.08.

#### VI. ANSWERING THE COMPLAINT

83. Where the Respondents intend to contest any material fact upon which this Complaint is based, to contend that the proposed penalty is inappropriate, or to contend that the Respondents are entitled to judgment as a matter of law, the Respondents must file with the Regional Hearing Clerk of the EPA, Region 4, both an original and one copy of a written Answer to the Complaint. Such Answer must be filed within thirty (30) calendar days after service of the Complaint at the address below:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

The Respondents shall also serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

84. A copy of the Answer and all other documents that the Respondents file in this action should be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

Suzanne K. Armor  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

85. The Respondents' Answer must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint with regard to which the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where the Respondents lack knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts that the Respondents dispute (and thus intends to place at issue in the proceeding); and (3) whether the Respondents request a hearing. 40 C.F.R. § 22.15(b).

86. The Respondents' failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude the Respondents, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

87. If the Respondents fail in their Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d).

88. If the Respondents fail to file a timely (i.e., in accordance with the thirty (30) day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, the Respondents may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by the Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of the Respondents' right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by the Respondents for a failure to timely file an Answer to the Complaint, a Default Order may be issued pursuant to 40 C.F.R. § 22.17(c).

89. Any penalty assessed in the Default Order shall become due and payable by the Respondents without further proceedings thirty (30) calendar days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, the EPA may then seek to enforce such final Default Order against the Respondents, and to collect the assessed penalty amount, in federal court.

## VII. OPPORTUNITY TO REQUEST A HEARING

90. In their Answer, the Respondents may request a hearing upon the issues raised by the Complaint and Answer. 40 C.F.R. § 22.15(c). If the Respondents do not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

91. Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 - 559, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

92. If the Respondents fail to request a hearing in their Answer, such failure may operate to preclude the Respondents from obtaining judicial review of an adverse EPA order. See 16 U.S.C. § 2615(a)(3).

93. Should the Respondents request a hearing on this proposed penalty assessment, members of the public, to whom the EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the CWA, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should the Respondents not request a hearing, the EPA may issue a Final Order Assessing Administrative Penalties, and only members of the public who submitted timely comments during the public notice period will have an additional thirty (30) days to petition the EPA to set aside such Final Order and to hold a hearing thereon. The EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by the EPA in the issuance of the Final Order Assessing Administrative Penalties.

94. Neither assessment nor payment of an administrative penalty pursuant to the CWA shall affect the Respondents' continuing obligation to comply with the CWA, any other federal or state laws, and with any separate Compliance Order issued under Section 309(a) of the CWA, 33 U.S.C. § 1319(a), for the violations alleged herein.

#### VIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

95. The decision issued by the Presiding Officer after a hearing constitutes an initial decision. Likewise, a Default Order issued by the Presiding Officer constitutes an initial decision. The Respondents have the right to appeal an adverse initial decision to the Environmental Appeals Board (EAB). Such an appeal must be made in accordance with 40 C.F.R. § 22.30(a)(1) within thirty (30) days after the initial decision is served. Note that the forty-five (45) day period provided in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to nor extend the thirty (30) days prescribed in 40 C.F.R. § 22.30(a)(1) for filing an appeal.

96. If the Respondents fail to appeal an adverse initial decision to the EAB in accordance with 40 C.F.R. § 22.30 and that initial decision thereby becomes a final order pursuant to 40 C.F.R. § 22.27(c), the Respondents will have waived their rights to judicial review. 40 C.F.R. § 22.27(d).

#### IX. INFORMAL SETTLEMENT CONFERENCE

97. Whether or not the Respondents requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the CWA. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, the Respondents may comment on the charges made in this Complaint, and the Respondent may also provide whatever additional information that they believe is relevant to the disposition of this matter, including: (1) actions the Respondents have taken to correct any or all of the violations herein alleged; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect

the proposed penalty would have on the Respondents' ability to continue in business; and/or (4) any other special facts or circumstances the Respondents wish to raise. 40 C.F.R. § 22.18.

98. Any request for an informal conference or any questions that the Respondents may have regarding this Complaint should be directed to:

Suzanne K. Armor  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9701

99. The parties may engage in settlement discussions irrespective of whether the Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). The Respondents' requesting a formal hearing in their Answer does not prevent them from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

100. A request for an informal settlement conference does not affect the Respondents' obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15.

101. Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, the Respondents waive their rights to contest the allegations in the Complaint and waive their right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

102. The Respondents' entering into a settlement through the signing of such Consent Agreement and Final Order, and their complying with the terms and conditions set forth in the such Consent Agreement and Final Order, terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. The Respondents' entering into a settlement does not extinguish, waive, satisfy, or otherwise affect their obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

ISSUED THIS 11 DAY OF August, 2015:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the date noted below, the original of the foregoing *Administrative Complaint and Notice of Proposed Penalty Assessment*, Docket No. CWA-04-2015-4506 delivered by hand to the Regional Hearing Clerk, Region 4, United States Environmental Protection Agency, and that a true and correct copy was sent to the following persons, in the manner specified, on the date below:

Copy by Certified Mail/Return Receipt Requested:

The Honorable Andrew H. Holt and  
Mrs. Eleanore F. Holt  
d/b/a A & E Livestock  
461 Jewell Store Road  
Dresden, Tennessee 38225

Ms. Tisha Calabrese-Benton, Director  
Division of Water Resources  
Tennessee Department of Environment  
and Conservation  
312 Rosa L. Parks Avenue  
William R. Snodgrass Tennessee Tower  
Nashville, Tennessee 37243

Dated: \_\_\_\_\_

8/13/15



Mary Mattox  
Environmental Protection Specialist  
NPDES Permitting and Enforcement Branch  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960