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September 16, 2015

Ms. Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303-8960

Re: Andrew H. Holt and Eleanore F. Holt, d/b/a A&E Livestock
Docket No.: CWA-04-2015-4506

Dear Ms. Bullock:

Thank you for taking the time to discuss this matter with my secretary today. As you two discussed, I have emailed you an executed copy of our answer to the Complaint referenced above. Enclosed herewith is the original and two copies. Please return one of the copies to me, stamped filed. Out of an abundance of caution, we are sending one set overnight, and one set via regular mail.

Thank you for your assistance in this matter.

Yours truly,

John M. Miles

JMM/eh

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

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

ANSWER TO ADMINISTRATIVE COMPLAINT AND TO NOTICE OF PROPOSED PENALTY ASSESSMENT

First Defense

Article I, Section 1 of the United States Constitution states that all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. To the extent the Administrative Complaint relies on regulations promulgated by the Environmental Protection Agency or the Tennessee Department of Environment and Conservation, or other regulatory agency, these regulations have been promulgated by unelected officials and their rules violate Article I, Section 1 of the United States Constitution.

Second Defense

Article III, Section 1 of the United States Constitution provides that all judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. From an examination of the Complaint as styled, not only is the Complainant the investigative and prosecuting body pursuing monetary

penalties against the Respondents, but also they are apparently the judicial body who will determine fate of the Respondents. In other words, they are police, prosecutor and judge, and as such this action violates the separation of powers as established the United States Constitution, and the judicial power assumed by the agency here violates Article III, Section 1 of the United States Constitution.

Third Defense

The 12th Amendment to the United States Constitution provides that suits at common law, where the value and controversy shall exceed Twenty Dollars ($20.00), the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law. To the extent the prosecuting body relies on rules and regulations or laws that would constitute a suit at common law as provided for in the 12th Amendment, this action violates the 12th Amendment.

Fourth Defense

Further, the Respondents defend and allege that the statutes, regulations and rulings relied upon in bringing this Complaint violate the 14th Amendment of the United States Constitution and Article I, Section 8 of the Tennessee Constitution in that it is an effort to take their liberty or property without proper due process of law.

Fifth Defense

The Respondents further defend that there was no "discharge of a pollutant" or "discharge of pollutants" as those terms are defined in 33 USCA § 1362(12).

Sixth Defense

In further affirmative defense, the Respondents aver the defenses of necessity and acts of

God. They aver that there were periods of heavy rain which necessitated the action taken by Andrew H. Holt and that his actions were reasonable, practical and prudent under the circumstances.

Seventh Defense

To the extent the facts support, that the any discharge of a pollutant was actually agricultural storm water discharge, they aver this is accepted under the statutes set forth in the Complaint.

Eighth Defense

The Respondents aver that the conduct is not within the jurisdictional scope of the Clean Water Act which is limited to the navigable waters of the United States and the same were not effective or involved.

Ninth Defense

For further defense and pursuant to Rule 8 of the Federal Rules of Civil Procedure, the Respondents raise the following affirmative defenses: laches; license; estoppel; and the applicable statute of limitations.

Tenth Defense

NOW, for their additional defense, the Respondents set forth numerically below their responses to the numerical allegations in the Complaint.

1. For response to numerical paragraph 1, they admit that the administrative complaint is brought under the authority of the Administrator of the United States Environmental Protection Agency pursuant to the provisions of the clean water act as alleged. They further admit that the Administrator has delegated the authority as set forth in numerical paragraph 1 of

the Complaint.

2. For response to numerical paragraph 2, they state that the language of the Complaint speaks for itself and does seek the assessment of a civil penalty against Andrew H. Holt and Eleanore F. Holt, d/b/a A&E Livestock, in that it sets forth certain language instructing the Respondents of an opportunity to request a hearing; however, they deny that any such hearing is Constitutionally sufficient and, in fact, allege, as set forth in the affirmative defenses above, that the hearing is Constitutionally defective.

3. They admit that the allegations of numerical paragraph 3 are a correct restatement of the provisions of Section 101(a) of the Clean Water Act, 33 USC § 1251(a).

4. For response to numerical paragraph 4, the Respondents admit that is a correct restatement of the statute cited therein.

5. For response to numerical paragraph 5, the Respondents admit that is a correct restatement of the statute cited.

6. For response to numerical paragraph 6, the Respondents admit that the term pollutant is correctly restated from the statute cited therein.

7. For response to numerical paragraph 7, they admit that the statue cited states that a concentrated animal feeding operation or CAFO is a point source as defined in said statute.

8. For response to numerical paragraph 8, they admit that under the statutory language a concentrated animal feeding operation or CAFO means an animal feeding operation that is defined as a large CAFO or medium CAFO as defined in said statute.

9. For response to numerical paragraph 9, they admit that is a correct restatement of the provisions of 40 CFR § 122.23(b)(1).

10. For response to numerical paragraph 10, they admit that the provisions therein are a correct restatement of provisions from 40 CFR § 122.23(b)(6).

11. For response to numerical paragraph 11, they admit that the statements therein are a correct restatement of provisions from Section 402 of the Clean Water Act, 33 USC § 1342.

12. For response to numerical paragraph 12, they admit that the EPA has granted the State of Tennessee, through its Department of Environment and Conservation, the authority to issue NPDES permits pursuant to the statute so referenced in numerical paragraph 12.

13. The Respondents admit that the provisions in numerical paragraph 13 are a correct restatement of provisions from Section 402(a) of the Clean Water Act, 33 USC § 1342.

14. Subject to and in reliance on our defenses set forth above, we nevertheless admit that pursuant to Section 402 of the CWA, 33 USC § 1342, the EPA has promulgated regulations for permits required on the dates as set forth in numerical paragraph 14.

15. For response to numerical paragraph 15, they admit that the language therein is a correct restatement of provisions from 40 CFR § 122.23(e).

16. For response to numerical paragraph 16, the Respondents admit the provisions cited from 40 CFR § 122.23(d)(1) prohibit discharge by a CAFO unless the discharge is authorized by an NPDES permit.

17. For response to numerical paragraph 17, the Respondents admit that the language therein is a correct restatement of provisions from 40 CFR §122.23(b)(8).

18. For response to numerical paragraph 18, they admit that a permit was issued as alleged in accordance with the Tennessee statute as alleged, which was effective August 7, 2004; however, at this time, they do not have sufficient knowledge or information to admit or deny that

the permits so issued in fact expired on August 5, 2009, and therefore must deny that aspect of the allegation at this time.

19. The Respondents admit the allegations of numerical paragraph 19.

20. The allegations of numerical paragraph 20 are admitted.

21. For answer to numerical paragraph 21, the Respondents state that they do not have sufficient knowledge or information to admit or deny those allegations at this time, and must therefore deny them.

22. In response to the allegations of numerical paragraph 22, the Respondents state they do not have sufficient knowledge or information to admit or deny those allegations at this time and must therefore deny them.

23. The allegations of numerical paragraph 23 are admitted.

24. The allegations of numerical paragraph 24 are admitted.

25. In answer to the allegations of numerical paragraph 25, the Respondents admit that Andrew H. Holt operated the Concentrated Animal Feeding Operation known as A&E Livestock and located at 357 Woodruff Road, Dresden, Weakley County, Tennessee. They admit that A&E Livestock is owned by the Respondents, Andrew H. Holt and Eleanore F. Holt; however, they deny that Eleanore F. Holt was ever actively involved in the day to day management, operations or decision making of the business.

26. The allegations of numerical paragraph 26 are admitted.

27. The allegations set forth in numerical paragraph 27 are admitted.

28. The allegations of numerical paragraph 28 are denied.

29. The allegations of numerical paragraph 29, including the footnote thereto, are

admitted.

30. The allegations of numerical paragraph 30 are admitted.

31. The allegations of numerical paragraph 31 are admitted.

32. The allegations of numerical paragraph 32 are admitted.

33. The allegations of numerical paragraph 33 are admitted.

34. In response to the statements of numerical paragraph 34, they admit to the truth of those statements except as to the use of the term "tributary". The Respondents do not have sufficient knowledge or information at this time to admit that the use of the word tributary is accurate or factual and must therefore deny that part of the allegation at this time.

35. In response to the allegations in numerical paragraph 35, they do not have sufficient knowledge or information to admit that the use of the word tributary or tributary flows is factually accurate in this case and must therefore deny that aspect of the allegations of numerical paragraph 35 at this time. They admit that Mud Creek flows into the Obion River which then flows into the Mississippi River. For further response, if the use of the phrase "traditionally navigable water of the United States" refers only to the Mississippi River, the Respondents admit this allegation; however, if the intent is to include the description of Mud Creek or the Obion River as a traditionally navigable water of the United States, they deny that at this time.

36. In response to numerical paragraph 36, they admit that the classifications as described are the same as provided in the referenced regulation.

37. For response to numerical paragraph 37, they admit that Tennessee Comp Rules & Regs 0400-40-03-.03(3)(a) provides that waters classified for fish and aquatic life shall have

dissolved oxygen content of not less than 5.0 milligrams per liter; however, there are exceptions to that requirement which are not set forth in numerical paragraph 37.

38. The allegations of numerical paragraph 38 are admitted, except as noted above, the Respondent, Eleanore F. Holt, had no knowledge or participation of or in the daily operations or business activities.

39. The allegations of numerical paragraph 39 are denied.

40. The allegations of numerical paragraph 40 are admitted with the exception of the reference to the rate of application as stated therein and the inclusion of Eleanore F. Holt as a participant in the alleged activity. The Respondents would correct that to state that the rate of application can be varied depending on the crop or cover crop that it is applied to and that only Andrew H. Holt was actively involved in the operation of the business.

41. The allegations of numerical paragraph 41 are denied.

42. In response to the allegations of numerical paragraph 42, the Respondents state that, at this juncture, they cannot contemplate pumping equipment that would not be man-made. For further response, they deny that they discharged processed waste water from lagoons into the waters of the United States.

43. The allegations in numerical paragraph 43 are admitted.

44. Based upon the current information published at the website referenced, the allegations in numerical paragraph 44 are admitted. Otherwise, the Respondents state they are without sufficient knowledge or information to admit or deny.

45. For response to numerical paragraph 45, the Respondents deny that they have sufficient knowledge or information to admit the allegation referring to an expiration date on the

obtained coverage of August 5, 2009, and must therefore deny that portion of the allegations. Otherwise, the statements contained in numerical paragraph 45 are admitted.

46. In response to the statements contained in numerical paragraph 46, the Respondents are unsure as to what information the division or agency is relying on. Therefore, they deny that they have sufficient knowledge or information to admit or deny those statements and must therefore deny them at this time.

47. For response to the allegations in numerical paragraph 47, the Respondents deny that they have sufficient knowledge or information to admit or deny those allegations at this time and must therefore deny them at this time.

48. The allegations of numerical paragraph 48 are denied. For further explanation, while it may have been provided that the permit was scheduled to expire August 5, 2009, it is not clear that in fact that happened.

49. The allegations of numerical paragraph 49 are admitted, with the exception of the use of the phrase "unnamed tributary", and that only the Respondent, Andrew H. Holt, took any action on that date. The Respondents state that the liquid manure was observed moving slowly toward a wet weather conveyance. On information and belief, the Respondents, in communicating the events as related in numerical paragraph 49 to the Tennessee Department of Environment and Conservation, described the liquid manure as moving slowly toward a wet weather conveyance or ditch, but did not use the term unnamed tributary. Therefore, the Respondents are unable to admit or deny whether the same would constitute an unnamed tributary based on the information they have and must deny that aspect of the information or allegations of numerical paragraph 49.

50. For response to the allegations of numerical paragraph 50, they admit that on or about January 12, 2010, TDEC, through its representatives, sent a notice of violation to Respondents regarding the events as reported that had occurred on December 16, 2009.

51. With the exception of the use of the phrase "unnamed tributary", the allegations in numerical paragraph 51 are admitted. At this time, the Respondents are without sufficient knowledge or information as to whether or not the structure being referred to would actually constitute an unnamed tributary to Mud Creek, and must therefore deny that portion of these allegations at this time.

52. In response to the allegations in numerical paragraph 52, and to clarify and for better understanding of our response to the allegations of numerical paragraph 51, the Respondents point out that the events of February 24, 2011, and February 25, 2011, were actually a continuing course of conduct which began on February 24, 2011, and continued overnight into February 25, 2011, as reported to the Department by Andrew H. Holt at that time. Importantly, all of the conduct occurred within one 24 hour period, albeit not the same calendar day. With that clarification, and with the same exception to the use of the term unnamed tributary, the remaining allegations in numerical paragraph 52 are admitted. Once again, the Respondents are without sufficient knowledge or information to admit or deny that the use of the phrase "unnamed tributary" is accurate or appropriate under these facts and circumstances and must therefore deny the use of that term as being accurate at this time.

53. In response to the allegations of numerical paragraph 53, the Respondents admit that no actual environmental harm was documented. They deny that the discharge constituted events, but rather was one event that occurred within a 24 hour period, beginning on the 24th of

February, 2011, and continuing until sometime February 25, 2011. They deny that the potential of harm was significant. As to the remaining allegations in numerical paragraph 53, the Respondents deny they have sufficient knowledge or information to admit or deny them and must therefore deny them at this time.

54. In response to the allegations of numerical paragraph 54, the Respondents admit that TDEC conducted a compliance evaluation inspection at the facility on or about February 25, 2011. They are without sufficient knowledge or information as to what TDEC personnel observed or may have observed. Therefore, the Respondents must deny that aspect of these allegations. For further response, in terms of whatever TDEC personnel documented or noted, their report would speak for itself. As the Respondents are without sufficient knowledge or information at this time with regard to what TDEC documented or noted, they must deny those allegations at this time. With regard to paragraph 54, we will supplement this answer upon obtaining further information.

55. In response to numerical paragraph 55, they deny they have sufficient knowledge or information to admit or deny those allegations at this time and must therefore deny them.

56. The allegations of numerical paragraph 56 are admitted.

57. The allegations of numerical paragraph 57 are admitted.

58. The allegations of numerical paragraph 58 are admitted.

59. The allegations of numerical paragraph 59 are admitted.

60. The allegations of numerical paragraph 60 are admitted.

61. The allegations of numerical paragraph 61 are admitted.

62. For response to numerical paragraph 62, it is admitted that on or about August 6,

2013, the Respondent, Andrew H. Holt, reported that he had discharge approximately 237,000 gallons of process wastewater from Lagoon 1 pumping down Lagoon 1 by approximately 12 inches. It is admitted that this discharge was applied by a traveling gun over a heavily sodded area. The remaining allegations in numerical paragraph 62 are denied.

63. For response to numerical paragraph 63, it is admitted that no actual environmental harm was documented associated with the discharge event of August 6, 2013. It is denied that the potential for harm was significant. The Respondents deny that they have sufficient knowledge or information to admit or deny the remaining allegations in numerical paragraph 63, and therefore deny them at this time.

64. The allegations of numerical paragraph 64 are admitted.

65. The Respondents do not have sufficient knowledge or information to admit or deny the allegations of numerical paragraph 65 and must therefore deny those allegations at this time.

66. It is admitted that on September 5, 2013, TDA sent a letter to Andrew H. Holt (not all Respondents) informing him that the materials submitted appeared to be the same materials submitted from June 2012. That letter also had language stating that TDA had not received a direct response to its June 18, 2012, letter nor had they received a significantly revised NMP. Any other allegations in numerical paragraph 66 are denied.

67. The allegations of numerical paragraph 67 are admitted.

68. For response to numerical paragraph 68, it is admitted that on or about September 24, 2014, a representative from TDEC sent an email to Andrew H. Holt informing him the because the Facility had a discharge he would need to obtain an individual NPDES permit rather

than to obtain coverage under the 2010 CAFO general permit. It is denied that the email was sent to Eleanore F. Holt or A&E Livestock.

69. For response to the allegations in numerical paragraph 69, the Respondents admit the allegations set forth in numerical paragraph 69 except as to the requested response date of June 28, 2014, and that it is believed that only Andrew H. Holt received the request. They are without sufficient knowledge or information to admit or deny whether or not EPA had requested a response by June 28, 2014, and therefore deny that at this time.

70. For response to numerical paragraph 70, it is admitted that Andrew H. Holt requested an extension of time to respond to the EPA's information request and that the extension was granted. The Respondents are without sufficient knowledge or information to admit the exact date the request was made or the date to which the extension was granted and therefore must deny those specifics at this time.

71. For response to numerical paragraph 71, it is admitted that Andrew H. Holt called the EPA to request an extension as alleged and that EPA directed him to submit the request in writing.

72. For response to numerical paragraph 72, it is admitted that on August 5, 2014, Andrew H. Holt submitted a written request to the EPA requesting an extension of time to respond to their information request. It is admitted that on September 9, 2014, the EPA granted a request of extension to September 12, 2014.

73. In response to numerical paragraph 73, it is admitted that, apparently due to the delayed response, EPA determined that the Respondents were in violation of the referenced sections of the Clean Water Act under 33 USC 1318(a). It is further admitted that EPA issued to

Andrew H. Holt an administrative order under the referenced docket number requiring Andrew H. Holt to provide the requested information by October 8, 2014. All other allegations of numerical paragraph 73 are denied.

74. The allegations of numerical paragraph 74 are admitted.

75. For response to numerical paragraph 75, it is admitted that on or around December of 2014, all swine were removed from the Facility and the Facility ceased any operation as a CAFO.

76. The Respondents deny they have sufficient knowledge or information to admit or deny the allegations of numerical paragraph 76 and must therefore deny them at this time.

77. The allegations of numerical paragraph 77 are denied.

The language contained under the headings IV. Proposed Penalty, VII. Opportunity to Request a Hearing, VIII. Exhaustion of Administrative Remedies, IX. Informal Settlement Conference appears not to require any response from the Respondents. Nevertheless, in the interest of completeness, the Respondents will address those provisions numerically.

78. The provisions of 33 USC § 1319(g)(1) provide for two classes of penalties. It is unclear to the Respondents which class is being sought here, although clearly the monetary adjustment rule referenced may make some adjustments to those set forth in the statute. Therefore, for these reasons, the Respondents can neither admit nor deny these allegations and must deny them at this time.

79. Paragraph 79 states a proposed penalty and, though it appears to require no response, the Respondents respectfully request that the tribunal examine all the facts and circumstances, including the fact that Andrew H. Holt self-reported these incidents that are

alleged to be violations, that Eleanore F. Holt had no involvement in the operation, that an act of God was involved which necessitates some action, and the fact that no actual environmental harm took place in assessing any penalty.

80. The Respondents are unaware that an actual penalty has been assessed as claimed in numerical paragraph 80, though a penalty is obviously being requested from the tribunal as the language of numerical paragraph 78 states. Therefore, the Respondents are without sufficient knowledge or information to admit or deny this allegation at this time and must therefore deny that any penalty has actually been assessed and otherwise deny the allegations in numerical paragraph 80.

81. The Respondents appreciate the reference to the rules and acknowledge that those rules are established to govern these procedures.

82. The Respondents appreciate the admonishment of numerical paragraph 82 and assume that these admonishments apply bilaterally, although the EPA is apparently the adjudicatory body and the prosecuting body in this case. Otherwise, the statements in numerical paragraph 82 are recognized and admitted as a correct statement of the law.

83. The provisions of numerical paragraph 83 are acknowledged to be correct.

84. The Respondents agree to provide a copy of their answer to the Honorable Suzanne K. Armor, Associate Regional Counsel.

85. The Respondents appreciate the fact that the Department has set forth these provisions regarding pleading practice and guidelines for answering the Complaint. The Respondents aver they have endeavored to do so and otherwise admit the language contained in numerical paragraph 85.

86. The Respondents admit that the provisions set forth in numerical paragraph 86 are a correct restatement of the law.

87. The Respondents admit that the language contained in numerical paragraph 87 is a correct restatement of the law.

88. For response to numerical paragraph 88, they state they have made efforts on September 15, 2015, to contact counsel for the Department and Associate Counsel to determine if an extension could be granted, but these efforts were unsuccessful. They have made every effort to and believe they have fully responded within the required thirty (30) day period. Otherwise, they admit that the provisions set forth in numerical paragraph 88 are a correct restatement of the law.

89. The Respondents appreciate the admonishing language of numerical paragraph 89 and admit that it is a correct statement of the law.

90. The language of numerical paragraph 90 is admitted and **the Respondents hereby do request a hearing as provided by law**, along with any and all other notice or other opportunities to be heard they may have under applicable law.

91. They admit that the language in numerical paragraph 91 is a correct restatement of the law.

92. The Respondents admit that the statements contained in numerical paragraph 92 are a correct restatement of the law.

93. They admit that the provisions set forth in numerical paragraph 93, generally stated, are a correct restatement of the law.

94. They admit that the language of numerical paragraph 94 is a correct general

restatement of certain provisions from the law.

95. They admit that the language contained in numerical paragraph 95 is a correct restatement of the law.

96. They admit the language contained in numerical paragraph 96 is a correct restatement of the law.

97. They admit that the reference to potential informal settlement conference is an available tool provided under the law and admit that the language of numerical paragraph 97 is a correct restatement of the law.

98. They acknowledge the language in numerical paragraph 98 and will direct any such request to the Honorable Suzanne K. Armor.

99. The language in numerical paragraph 99 is admitted.

100. The language in numerical paragraph 100 is admitted.

101. The statements and provisions regarding the law set forth in numerical paragraph 101 are admitted.

102. The provisions of numerical paragraph 102 are admitted.

103. Any allegation in the Complaint not heretofore admitted or denied is now expressly denied.

NOW, having fully responded to the Complaint the Respondents respectfully pray that they be allowed a hearing on this matter.

The Respondents demand a jury to try the issues.

The Respondents pray that they be allowed to amend this Answer from time to time as more information is learned through the discovery process, or otherwise.

The Respondents pray that the tribunal consider all appropriate factors and weigh all equities in assessing any administrative penalty including, but not limited to, the weather conditions, the relative participation of the Respondents in any activity found to be a violation, the fact that no environmental harm has taken place or has been measured or measureable, and that the CAFO is no longer in operation.

The Respondents further pray that the Complaint against them be dismissed, and that they have such other, further and general relief as the justice of their cause may entitle them to.

Respectfully Submitted,

John M. Miles, BPR# 013345
Attorney for Respondents
511 S. Third St.
P.O. Box 8
Union City, TN 38281
(731) 885-1234

Certificate of Service

I hereby certify that I have served a copy of the foregoing upon the Honorable Mary Mattox, Environmental Protection Specialist, Water Protection Division, US Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, and the Honorable Suzanne K. Armor, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960, via U.S. Mail, postage prepaid, this the 16 day of September, 2015.

John M. Miles