

2004, to issue an order requiring compliance and/or assessing administrative penalties against any person who has violated Section 301(a) of the CWA by failing to obtain an NPDES permit or by discharging a pollutant into a water of the United States without an NPDES permit issued pursuant to Section 402 in an amount not to exceed \$ 16,000 per day for each violation, up to a total penalty amount of \$177,500.

4. "Point Source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2 to include "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, [or] concentrated animal feeding operation... from which pollutants are or may be discharged."
5. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 to include "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water."
6. "Waters of the United States" are defined by 40 C.F.R. § 122.2 to include interstate waters and tributaries thereto.
7. The Pennsylvania Department of Environmental Protection ("PADEP") is the agency within the Commonwealth of Pennsylvania which is authorized to administer the federal NPDES Program. The EPA maintains concurrent enforcement authority with authorized state NPDES programs to address violations of the CWA.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

8. Among other things, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the United States except in compliance with a permit issued pursuant to the NPDES program under Section 402 of the CWA, 33 U.S.C. § 1342, and 40 C.F.R. Part 122.
9. The Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
10. At all times relevant to the violations alleged herein, Respondent owned and operated a casino and horse racetrack located at 777 Harrah's Boulevard, Chester, PA 19013-4505 (the "Site").
11. Respondent has conducted active horse racing at the Site since September 2006.

12. Horse racing takes place at the Site every year from April to November.
13. During horse racing season, as many as 130 horses may be present at the Site at any given time during the five (5) racing days per week.
14. On April 27, 2009, EPA performed a CWA compliance inspection of the Site.
15. During the inspection, EPA observed multiple inlets to associated collection systems located below the property boundary at the Site that drains from the Site into the Delaware River.
16. Maps and diagrams provided on behalf of the Respondent demonstrate that the collection system consists of a network of pipes which have outlets to the Delaware River, which is a "water of the United States" as that term is defined by 40 C.F.R. § 122.2.
17. These pipes are "point sources" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
18. During the inspection, EPA observed horse manure, horse manure stains, and horse tracks on the areas adjacent to the inlets.
19. During the inspection, Respondent confirmed that horses have access to areas where inlets and drains are located.
20. On information and belief, horses can and have urinated and defecated at or near the inlets.
21. Horse manure and urine consist of "pollutants" as defined Section 502(6) of the CWA, 33 U.S.C. § 1362(6) and 40 C.F.R. § 122.2.
22. On information and belief, pollutants contained in horse manure and urine were discharged from the Site into the Delaware River.
23. At all times relevant to this action, the Site contained "facilities" or "point sources" which "discharged" "pollutants" to a "water of the United States" within the meaning of 40 C.F.R. § 122.2.
24. At all times relevant to this action, it was unlawful under Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for any person to discharge a pollutant from a point source to waters of the United States without an NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.
25. At all times relevant to this action, Respondent required an NPDES permit for point source discharges from the Site.

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26. On information and belief, Respondent discharged pollutants from the Site to point sources that flowed directly to the Delaware River, which is a water of the United States within the meaning of 40 C.F.R. § 122.2.
27. Since beginning operations, Respondent has failed to obtain an NPDES permit for these discharges.
28. On or about July 28, 2009, EPA issued Respondent an Administrative order, Docket No. CWA-03-2009-0203DN, finding that Respondent was in violation of the CWA by discharging pollutants without an NPDES permit.
29. Following discussions with EPA and the PADEP, on or about July 15, 2010, Respondent applied for an NPDES Individual Permit to cover discharges from the Site.
30. Respondent's NPDES application included an attachment labeled "Facility Description and Summary of Best Management Practices" ("Facility BMPs").
31. PADEP is reviewing the Respondent's NPDES permit application.
32. Respondent's failure to obtain an NPDES permit for discharges into the Delaware River and subsequent discharges into the Delaware River constitute violations of Section 301 of the CWA, 33 U.S.C. § 1311, and subject Respondent to penalties not to exceed \$16,000 per day for each violation, up to a total penalty amount of \$177,500.

III. CONSENT AGREEMENT AND FINAL ORDER

33. In order to resolve the violations described in Section II above, and to provide a legal framework for the payment of a penalty, EPA and Respondent enter into this ORDER ON CONSENT. Respondent consents to issuance of this CAFO and agrees to undertake all actions required by its terms and conditions. Respondent consents to the assessment of the civil penalty herein and consents to issuance of the compliance order described herein.
34. Respondent admits the Findings of Fact, Jurisdictional Allegations and Conclusions of Law set forth in Section II, above, and waives any defenses it might have as to jurisdiction and venue. Respondent agrees not to contest EPA's jurisdiction to issue this CAFO and EPA's jurisdiction to issue Administrative Order for Compliance on Consent, EPA Docket No. CWA- Docket No. CWA-03-2010-0381(AOCC), and not to contest EPA's jurisdiction to enforce the terms of this CAFO and the AOCC.
35. Respondent hereby expressly waives its right to a hearing, pursuant to Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), on any issue of law or fact in this matter and consents to issuance

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of this CAFO without adjudication, and waives its right to appeal this final order pursuant to Section 309(g)(8)(B), 33 U.S.C. § 1319(g)(8)(B).

36. Each party to this action shall pay its own costs and attorney fees.
37. The provisions of this CAFO shall be binding upon the Respondent, and its officers, principals, directors, successors and assigns.
38. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
39. Pursuant to Section 309(g)(4) of the Act, 33 U.S.C. § 1319 (g)(4), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, EPA has consulted with the Commonwealth of Pennsylvania regarding this action, and will mail a copy of this document to the appropriate Pennsylvania official.
40. Based on the foregoing FINDINGS, and having taken into account the factors listed in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), including but not limited to, the nature, circumstances, extent and gravity of the violation, the Respondent's knowledge, culpability and history of violations, the economic benefit to Respondent, the ability of Respondent to pay the penalty, Respondent's compliance with AOCC, and other such matters as justice may require, the administrative record; and under the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS:
41. Within thirty (30) days of the effective date of this ORDER, Respondents shall pay a civil penalty of \$39,000.00 for the violations cited herein. This does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Penalty payment shall be made according to the following specifications.
 - a. The payment shall reference Respondent's name, address and docket number, be made in U.S. dollars by money order, cashier's or certified check made payable to the "Treasurer, United States of America", wire transfer, or ACH, and delivered as follows:
 - i. If by money order, cashier's or certified check sent by U.S. postal service mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000
Contact: 314 418 4087

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- ii. If by money order, cashier's or certified check sent by private commercial overnight delivery service:

U.S. EPA
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: 314-418-4807

- iii. If by wire transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Attn: "D 68010727 Environmental Protection Agency"

- iv. If by ACH (also known as REX or remittance express):

PNC Bank
ABA: 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington DC 20074
Finance Center Contact: Jesse White: 301-887-6548

- b. A copy of the check or money order or other proof of payment submitted in fulfillment of the penalty payment requirements of this order shall be sent to the following:

U.S. Environmental Protection Agency
Regional Hearing Clerk (3RC00)
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and

Mr. Douglas Frankenthaler (3RC20)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

- c. A transmittal message identifying the case name and docket number identified above shall accompany the remittance and copies of the check or transfer instrument.
42. Failure to pay the penalty assessed by this ORDER after its effective date subjects the Respondent to a collection action under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). The validity, amount and appropriateness of the penalty are not subject to review in a collection proceeding. *See* 15 U.S.C. § 2615(a)(4)(A). Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest on unpaid penalties, and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on this civil penalty if it is not paid within fifteen days of the date due. Interest will be assessed at the rate of the United States Treasury tax and loan rate. 40 C.F.R. § 13.11. In addition, a quarterly nonpayment penalty charge may be assessed on any delinquent debt pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In addition, EPA will assess a \$15.00 administrative handling charge for the administrative handling charge for administrative costs for the first 30 day period after the payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains due.
43. All notifications and approvals required by this CAFO, shall be made to:

Mr. Douglas Frankenthaler (3RC20)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Telephone: (215) 814-2472

44. All submissions provided pursuant to this Order shall be signed by Respondents and shall include the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

IV. GENERAL PROVISIONS

45. This CAFO shall not relieve Respondents of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA.
46. Violations of the terms of this ORDER may subject Respondents to an administrative penalty of not more than \$16,000 for each day of violation up to a maximum penalty of \$177,500, and/or civil action in a United States district court with penalties up to \$37,500 per day of violation as authorized in and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.
47. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 301 *et seq.*, the regulations promulgated there under, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
48. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.
49. The penalty described above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
50. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA, including but not limited to Respondents' intent to comply with the AOCC. EPA reserves the right to institute a new and/or separate action should Respondents fail to comply with the terms of this CAFO or the AOCC. That right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
51. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

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52. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

V. EFFECTIVE DATE

53. This ORDER will be issued after a forty (40) day comment period, execution by an authorized representative of the EPA and filing with the regional hearing clerk. It will become final and effective 30 days after issuance.

FOR RESPONDENT, CHESTER DOWNS AND MARINA, LLC D/B/A HARRAH'S
CHESTER CASINO & RACETRACK:

By: Ron Brauman
Name: Ron Brauman
Title: Sup/Gen

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Jon Capacasa
Jon Capacasa, Director
Water Protection Division

SO ORDERED in *Chester Downs and Marina, LLC d/b/a Harrah's Chester Casino & Racetrack*, Dkt. No. CWA-03-2010-0383, pursuant to 33 U.S.C. § 1319(g) and 40 C.F.R. Part 22, this 17th day of November, 2010.

Shawn M. Garvin
Shawn M. Garvin
Regional Administrator
U.S. Environmental Protection Agency, Region III

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the **Regional Hearing Clerk**, EPA Region III, the original Consent Agreement and Final Order, Docket No. CWA-03-2010-0383 and Administrative Order for Compliance on Consent, Docket No. CWA-03-2010-0381, and that copies of these document were sent to the following individual in the manner described below by first class, certified mail, return receipt requested:

Michael A. Magazzu, Esq.
Corporate Counsel
Harrah's Eastern Division
Park Place & Boardwalk
Atlantic City, NJ 08401



Douglas Frankenthaler
Assistant Regional Counsel
US EPA Region III

Date: 11/18/10