



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 29, 2010

Michael D. Vhay, Esq.
DLA Piper LLP
33 Arch Street, 26th Floor
Boston, MA 02110-1447

RE. Request Pursuant to Section 308 of the Clean Water Act for Additional Sampling Parameters for Discharges from Sterling Suffolk Racecourse

Dear Mr. Vhay:

As agreed to during a joint meeting between representatives of the U.S. Environmental Protection Agency (EPA) and Sterling Suffolk Racecourse (Suffolk) on May 6, 2010, EPA has reviewed the proposed expanded sampling plan contained in an email dated May 12, 2010, submitted by Kenneth Deshais for Suffolk.

Section 308 of the Clean Water Act (the "Act"), 33 U.S.C. § 1318, authorizes EPA to require owners and operators of point sources to provide such information as EPA may reasonably require in order to carry out the objectives of the Act, including but not limited to developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance. EPA has determined that additional sampling will assist EPA in developing appropriate effluent limitations and conditions for the draft NPDES permit for your facility. Please note that the expanded sampling requirements set forth below are in addition to the sampling separately required under Sections IV. 3 and IV.4 of the May 2, 2008 EPA-issued Order for Compliance, EPA Docket No. 08-15.

1. Within seven days of receipt of this letter and continuing until EPA issues Suffolk a final issuance National Pollutant Discharge Elimination System (NPDES) permit or one year, which ever is sooner, Suffolk shall sample:

a. Outfalls SD-3, SD-5, SD-6 and SD-7 during each rainfall event that is expected to result in precipitation of 0.5 inches or greater for the additional parameters identified below.

b. Outfalls SD-5 and SD-10 during dry weather once each month for the additional parameters identified below. For the purposes of this requirement, dry weather is defined as a day in which no greater than 0.1-inch of rain has fallen within 48 hours preceding the sample event. No sampling is required if there is no observed flow during these conditions for the entire month.

Outfalls SD-3, SD-5, SD-6, SD-7 and SD-10

PARAMETER	SAMPLE TYPE
pH	Grab
Nitrogen, Total Kjeldahl	Grab
Nitrogen, Nitrate/Nitrite	Grab
Total Phosphorous	Grab
Total Aluminum	Grab
Total Copper	Grab

Each discharge must be analyzed in accordance with approved EPA methods for water analysis listed in 40 CFR Part 136. Results of analysis must be prepared and submitted to EPA consistent with the sampling result requirements contained in the May 2, 2008 Order at Sections IV.5 and VI.4.

2. Once during the calendar year quarter ending September 30, 2010, Suffolk shall perform freshwater whole effluent toxicity (WET) tests for discharges from Outfalls SD-3, SD-4, SD-5, and SD-10. The grab samples shall be obtained during a dry weather episode. For the purposes of this requirement, dry weather is defined as a day in which no greater than 0.1-inch of rain has fallen within 48 hours preceding the sample event. No sampling is required if there is no observed flow during these conditions for the entire quarter. The tests must be performed in accordance with the enclosed Freshwater Acute Toxicity Test Procedure and Protocol. Suffolk shall test the daphnid, Ceriodaphnia dubia, and the fathead minnow, Pimephales promelas. Results, including the laboratory report, must be submitted by the last day of the month following completion of the test.

Outfalls SD-3, SD-4, SD-5 and SD-10

PARAMETER	SAMPLE TYPE
LC ₅₀ , %	Grab

If toxicity test(s) using receiving water as the diluent show the receiving water to be toxic or unreliable, Suffolk shall follow procedures outlined in Section IV (Dilution Water) of the attached Protocol in order to obtain permission to use an alternate dilution water. In lieu of individual approvals for alternate dilution water required in the Protocol, EPA-New England has developed a Self-Implementing Alternative Dilution Water Guidance document which may be used to obtain automatic approval of an alternate dilution water, including the appropriate species for use with that water. If this guidance document is revoked and upon notice from EPA, Suffolk shall revert to obtaining approval as outlined in the Protocol. This guidance is found in

Attachment G of NPDES Program Instructions for Discharge Monitoring Report Forms (DMRs), which may also be found online at

<http://www.epa.gov/region1/enforcementandassistance/dmr2009.pdf>.

For each WET test, Suffolk shall report on the Discharge Status Report (required by the May 2, 2008 Order) concentrations of the Acute LC₅₀, Hardness, Alkalinity, pH, Specific Conductance, Total Solids, Total Dissolved Solids, Ammonia, Total Organic Carbon, Total Residual Chlorine, Dissolved Oxygen, Total Cadmium, Total Chromium, Total Lead, Total Copper, Total Zinc, Total Nickel, Total Aluminum, Total Magnesium, and Total Calcium found in the 100 percent effluent sample. Metals shall be reported as total recoverable concentrations. Suffolk should note that all chemical parameter results must still be reported in the appropriate toxicity report. Suffolk shall document, with the WET test results, the outfall sampling location and dilution water sampling location by providing either the USGS coordinates and/or a map of these locations. If the WET test results demonstrate toxicity, EPA may require that Suffolk conduct additional testing.

3. Once during the calendar year quarter ending September 30, 2010, Suffolk shall analyze grab samples for all NPDES Priority Pollutants (PPs). Currently, the PPs include 126 toxic chemicals, which can be found at 40 C.F.R. Part 423, Appendix A. All samples shall be tested using NPDES approved EPA analytical methods found in 40 CFR §136. Alternative methods can be used if approved by EPA in writing and are in accordance with the procedures in 40 CFR § 136. Grab samples shall be taken at Outfalls SD-4 and SD-5 during dry weather. For the purposes of this requirement, dry weather is defined as a day in which no greater than 0.1-inch of rain has fallen within 48 hours preceding the sample event. Suffolk shall report the analytical results in ug/l for each PP by attaching the report and the laboratory report to the Discharge Status Report (required by the May 2, 2008 Order) for the month immediately following the date of the sampling event.

Outfalls SD-4 and SD-5

PARAMETER	SAMPLE TYPE
Priority Pollutants (ug/l)	Grab

Suffolk may assert a business confidentiality claim with respect to part or all of the information submitted to EPA in the manner described at 40 CFR Part 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means, of the procedures set forth in 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Suffolk. Please note that effluent information may not be regarded as confidential.

If you have questions or need additional information, please contact Ms. Austine Frawley, 617/918-1065, email Frawley.Austine@epa.gov, or Mr. George Papadopoulos, 617/918-1579, email Papadopoulos.George@epa.gov.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'S. Perkins', written in a cursive style.

Stephen S. Perkins, Director
Office of Ecosystem Protection

enclosure

cc: Samir Bukhari, ORC
Todd Borci, OES 04-4
Man Chak Ng, OES 04-1
Peter Kautsky, DOJ
David Webster, OEP 06-4