



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

September 10, 2010

Via Electronic and U.S. Mail

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

Re: Sterling Suffolk Racecourse LLC Sampling Requirements

Dear Mr. Vhay:

Region 1 of the Environmental Protection Agency has received Sterling Suffolk Racecourse LLC's August 17, 2010, written request to rescind certain sampling required under an information request issued by the Region on June 29, 2010, pursuant to Section 308(a) of the Clean Water Act. The Region has carefully considered Suffolk Downs' request and has decided to reduce but not eliminate the sampling requirements.

The Region's Section 308 request requires Suffolk Downs to test discharges from Outfalls SD-3, SD-4, SD-5 and SD-10 for freshwater whole effluent toxicity ("WET"), and to conduct a priority pollutant analysis for discharges from Outfalls SD-4 and SD-5. As grounds for its request to eliminate these sampling requirements, Suffolk Downs cites concerns raised by the Region at an August 3, 2010, meeting over whether NPDES authorization of a continuous discharge of treated effluent from the facility would be allowed under applicable CAFO regulations. The company indicates that it is prepared to conduct the sampling "if there is a reasonable likelihood that on-site treatment and discharge could be permitted under NPDES, but not if the chances of getting such a permit are between slim and none."

The Region is not in a position to estimate the likelihood of any particular permitting outcome at this time. This is because the permit is still in the relatively early stages of development, and the Region has not definitively ruled out any of the alternatives that have been under active consideration. Suffolk Downs should be aware, however, that the Region in making its information request did not presume the occurrence of any particular permitting scenario. The request, rather, is based on the permit writer's need to fully and accurately characterize the pollutants in, and toxicity of, the facility's discharge. These data will assist the Region in determining the baseline character of existing discharges and will help track the efficacy of future NPDES pollutant controls. This is particularly important given the paucity of historical monitoring data from the facility.

Additionally, in the event a continuous discharge is authorized from the facility, the data will be readily available to develop appropriate technology and water quality-based effluent limitations.

The Region, nevertheless, has decided to limit toxicity testing and priority pollutant analysis requirements to Outfalls SD-5 and SD-10 at this time because sampling at these two outfalls is expected to be representative of other outfalls at the site and should provide EPA with adequate information with which to make a determination on appropriate permit limits and monitoring. Accordingly, the Region hereby revises Sections 2 and 3 of its existing Section 308 request to: (1) require freshwater WET tests for discharges from Outfalls SD-5 and SD-10; (2) require priority pollutant analysis for discharges from Outfalls SD-5 and SD-10; and (3) and extends the schedule for conducting the tests required in Sections 2 and 3 to October 31, 2010.

Please do not hesitate to contact me at (617) 918-1095 if you have any questions.

Sincerely,



Samir Bukhari
Region 1, Office of Regional Counsel

cc: Dave Webster, EPA Region 1
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