



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

VIA ELECTRONIC FILING

March 29, 2016

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3334
Washington, DC 20004

RE: Sterling Suffolk Racecourse, LLC
NPDES Permit appeal No. 15-12; NPDES Permit No. MA0040282

Dear Ms. Durr:

Please find a Third Joint Status Report and Motion to Further Continue the Stay of the Proceedings, and accompanying Certificate of Service, in connection with NPDES Appeal No. 15-12.

Sincerely,

George Utting
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Enclosures

Cc: Michael D. Vhay, Esq.
Valerie A. Moore, Esq.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In the Matter of:)	
)	
Sterling Suffolk)	
Racecourse, LLC)	NPDES Appeal No. 15-12
)	
NPDES Permit No. MA0040282)	
)	
_____)	

**SECOND JOINT STATUS REPORT AND MOTION TO FURTHER CONTINUE
THE STAY OF THE PROCEEDINGS**

Region 1 of the United States Environmental Protection Agency (“Region”) and Sterling Suffolk Racecourse, LLC (“Suffolk”) are providing a joint status report on their ongoing efforts to settle this matter and respectfully request that the Environmental Appeals Board (“Board”) further extend the stay of proceedings in this matter in order to allow the parties an additional 120 days to complete settlement negotiations. The grounds for this motion are discussed below.

1. Background

On November 4, 2015, Suffolk filed a Petition for Review with the Board requesting review of certain conditions of a National Pollutant Discharge Elimination System (“NPDES”) permit issued by the Region authorizing discharges from Suffolk Downs, a horseracing facility located in Revere and East Boston, MA, into a receiving water named Sales Creek and adjacent wetlands.

On November 16, 2015, the Board granted the parties' request to stay proceedings in order to allow the parties to pursue settlement discussions. See *Order Granting Joint Motion to Stay Proceedings* (November 16, 2015).

On December 18, 2015 the parties filed a Joint Status Report and Motion to Continue the Current Stay of the Proceedings, in which the parties described the status of the settlement negotiations requested additional time to review data and for further exchanges of information. The Board extended the stay until March 15, 2016 and directed the parties to file a status report, including a discussion of next steps, by February 16, 2016. See *Order Granting Joint Motion to Continue the Current Stay of Proceedings* (December 18, 2015).

On February 12, 2016 the parties filed a Joint Status Report and Motion to Further Continue the Stay of Proceedings, in which the parties reported on the progress of the settlement negotiations and requested additional time to complete these negotiations. The Board extended the stay until April 29, 2016 and directed the parties to file a status report, including a discussion of next steps, by March 29, 2016. See *Second Order Granting Joint Motion to Continue the Current Stay of Proceedings* (February 19, 2016).

II. Status Report and Grounds for Extending the Stay

Suffolk and the Region have reached an agreement in principle on all of the issues raised in Suffolk's appeal, as well as a number of other issues that Suffolk has raised with EPA.

The parties have agreed on the following course of action to effectuate the settlement:

1. The settlement will be implemented through a permit modification.
2. Prior to publication of the draft permit modification, Suffolk will be provided with an opportunity to review the modification to ensure that it accurately reflects the terms of the settlement, which have been clearly detailed in written correspondence between the parties.
3. Upon the parties concurring that the draft permit modification accurately reflects the settlement terms, the parties will file a joint motion to dismiss the Petition in its entirety.
4. At that time, the Region will commence permit modification proceedings by releasing the draft permit for public notice and comment.

The Region estimates that it will require 60 days to draft the permit modification and fact sheet, and complete internal technical and legal reviews. The draft permit modification and associated documentation will need to be reviewed by the Massachusetts Department of Environmental Protection (“MassDEP”), which in the Region’s experience typically requires two weeks to complete this task. Once the permit modification is drafted and agencies’ reviews complete, Suffolk will require two weeks to review it and provide its concurrence. The Region will then need to prepare the draft permit modification package for public notice and comment, an administrative task that typically requires one week.

In light of the foregoing, the parties estimate that they will require a 120-day stay of the proceedings. The duration of the stay will allow for the steps necessary to implement the settlement to occur in a deliberate, but still expeditious, fashion, while also providing the parties with a limited margin to account for any unforeseen delays, and

account for absences of staff over the holidays, without having to seek a further extension from the Board.

The parties propose to file status reports with the Board at the following intervals or upon the following events:

1. Thirty days, at which time the Region will report on the progress of drafting the permit modification documents and whether the Region expects to meet the projected 60-day timeline for completion of that task;
2. Sixty days, at which time the Region will indicate whether the draft permit documents have been submitted to MassDEP for their internal review and, if not, the date upon which such a transmittal will occur;
3. Ninety days, or the date upon which the draft permit modification is transmitted to Suffolk for its review and concurrence, whichever is sooner.
4. The date upon which concurrence by Suffolk is received, at which point the parties would also jointly move to have the matter dismissed with prejudice.

III. Requested Relief

For these reasons, and to conserve administrative and judicial resources, the parties respectfully request that the Board issue an order (1) extending the stay of the proceedings for an additional 120 days and (2) directing the Region and/or parties to file status reports consistent with the parties' proposed schedule.

Dated: March 29, 2016

Respectfully submitted,

U.S. EPA – Region 1

Sterling Suffolk Racecourse, LLC

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Third Joint Status Report and Motion to Further Continue the Stay of the Proceedings, in connection with Sterling Suffolk Racecourse, LLC, NPDES Appeal No. 15-12, was sent to the following persons in the manner indicated:

By Electronic Filing:

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3334
Washington, DC 20004

By electronic mail, by agreement between the parties:

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Dated: March 29, 2016

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