UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

JAN 17 2012

CERTIFIED MAIL–RETURN RECEIPT REQUESTED (7005 1820 0003 7453 9059)
CERTIFIED MAIL–RETURN RECEIPT REQUESTED (7005 1820 0003 7453 9066)

Ms. Traci Wolf, CEO
Downs at Albuquerque, Inc.
P.O. Box 8510
Albuquerque, NM 87198

Mr. Dan Mourning, General Manager
EXPO New Mexico
P.O. Box 8546
Albuquerque, NM 87198

Re: Administrative Order Docket Number: CWA-06-2012-1761
NPDES Facility Number: NMU001778

Dear Ms. Wolf and Mr. Mourning:

Enclosed is an Administrative Order (AO) issued to Downs at Albuquerque, Inc. and EXPO New Mexico, for violation of the Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.). Violations were identified through our review of an inspection of your facility conducted by the New Mexico Environment Department on November 15, 2011. The violations were discussed with you at the time of the inspection. The violations alleged include, but are not limited to, the following:

- Discharge of manure pollutants in storm water runoff to waters of the U.S. without permit authorization; and

- failure to submit a Notice of Intent for coverage under the Concentrated Animal Feeding Operation General Permit.

This AO does not assess a monetary penalty; however, it does require compliance with applicable federal regulations. The AO contains compliance actions that require your immediate attention. The AO also contains other compliance deadlines. The Environmental Protection Agency is committed to ensuring compliance with the requirements of the National Pollutant Discharge Elimination System (NPDES) program, and my staff will assist you in any way possible. Please reference AO Docket Number CWA-06-2012-1761 and NPDES Facility Number NMU001778 on your response.

Please also find enclosed an "Information Sheet" relating to the Small Business Regulatory Enforcement Fairness Act and a "Notice of Registrant's Duty to Disclose" relating to the disclosure of environmental legal proceedings to the Securities and Exchange Commission.

If you have any questions, please contact Dr. Abu Senkayi, of my staff, at (214) 665-8403.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosures

cc: Mr. James P. Bearzi
Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	Docket No. CWA-06-2012-1761
	§	
	§	
Downs at Albuquerque, Inc. and	§	
EXPO New Mexico	§	
	§	**FINDINGS OF VIOLATION**
Respondents	§	**AND**
	§	**ORDER FOR COMPLIANCE**
Facility No. NMU001778	§	

Statutory Authority

The following findings are made, and Order issued, under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(a). The Administrator of EPA delegated the authority to issue this Order to the Regional Administrator of EPA, Region 6, who further delegated this authority to the Director of the Compliance Assurance and Enforcement Division.

Findings

1. The Downs at Albuquerque, Inc. is a company doing business in the State of New Mexico and EXPO New Mexico is a political subdivision of the State of New Mexico("Respondents"), and as such, Respondents are "persons," as that term is defined at Section 502(5) of the Act, 33 U.S. C. § 1362(5), and 40 C.F.R. § 122.2. EXPO New Mexico is responsible for operating a year-round service and events facility and for putting on the annual state fair. The Downs at Albuquerque, Inc. is a tenant of EXPO New Mexico and it operates a

race track and casino on the EXPO New Mexico fairgrounds. The Downs at Albuquerque, Inc. has leased approximately 93 of the EXPO New Mexico's 236 acres since 1985.

2. At all times relevant to this Order, the Respondents owned or operated the Downs at Albuquerque, Inc., located on the EXPO New Mexico fairgrounds, in the middle of the city of Albuquerque, New Mexico ("facility"), and were, therefore, "owners or operators" within the meaning of 40 C.F.R. § 122.2.

3. On November 15, 2011, the New Mexico Environmental Department ("NMED") conducted an on-site inspection of the facility on behalf of EPA Region 6.

4. The Downs at Albuquerque, Inc.'s facility is an "animal feeding operation" as defined in 40 C.F.R. § 122.23(b) because:

i. Animals are stabled or confined, and fed or maintained at the facility for a total of 45 days or more in any 12 month period; and

ii. crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

5. The facility stables, maintains, or confines more than 500 horses for a total of forty-five (45) days or more in any twelve (12)-month period. According to the information provided by facility representatives, the facility is designed to accommodate 1,374 horses and is operated at almost full capacity during the racing season, which is from August through mid-November (about 100 days). Therefore, the facility is a Large Concentrated Animal Feeding Operation ("CAFO") as defined at 40 C.F.R. § 122.23(b)(4)(vi) because it stables or confines more than 500 horses for at least forty-five (45) days in any twelve (12)-month period. One of the larger activities at this facility is the Arabian horse show event that brings in 900 horses. This event

lasts for about one and a half weeks. The Arabian horse show is normally held outside of the racing season. The 2011 event was held from July 23 through July 30, 2011.

6. A CAFO is a "point source" as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).

7. Agricultural waste (including animal manure) is included in the definition of "pollutants" set out in Section 502(6) of the Act, 33 U. S. C. § 1362(6) and 40 C.F.R. § 122.2.

8. The facility had a "discharge" of "pollutants" to the receiving waters of the Rio Grande River, a "water of the United States" within the meaning of 40 C.F.R. § 122.2. Since there is no properly designed storm water runoff containment structure at this facility, storm water runoff, generated during significant rainfall events (more than 0.5 inches), discharges to a water of the United States. The discharge occurs via the EXPO New Mexico small Municipal Separate Storm Sewer System ("sMS4) to the Albuquerque large MS4; thence to the Rio Grande River in Segment 20.6.4.105 NMAC of the Rio Grande Basin. As indicated in Table 1, below, there were eighteen (18) significant rainfall events between 2007 and 2011, during which a discharge to a water of the United States occurred.

Table 1 Rainfall Data for the Albuquerque International Airport

Date	Rainfall (Inches)	Date	Rainfall (Inches)
05/01/2007	0.68	07/03/2009	0.51
05/16/2007	0.71	09/16/2009	0.66
07/21/2007	0.77	09/17/2009	0.59
08/04/2007	0.88	10/20/2009	0.57
09/20/2007	0.66		
		06/28/2010	0.69
06/29/2008	0.50	07/25/2010	0.98
07/18/2008	0.54	07/31/2010	0.50
07/22/2008	1.18	09/22/2010	1.77
		12/16/2010	0.96

9. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States except with the authorization of, and in compliance with, an National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

10. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point

sources to waters of the United States. Any such discharge is subject to such specific terms and conditions as are prescribed in the applicable permit.

11. Pursuant to Section 402 of the Act, EPA issued NPDES General Permit and Reporting Requirements for Discharges from Concentrated Animal Feeding Operations (58 Fed. Reg. 7610) ("general permit"), which became effective on March 10, 1993, and expired on March 10, 1998. EPA issued a new CAFO general permit in 2009, which became effective on September 3, 2009. The notice of the new CAFO general permit was published in the Federal Register on August 4, 2009 (Volume 74, Number 148, page 38615).

12. Because Respondents own and operate the facility, and the facility is a CAFO within the meaning of 40 C.F.R. Part 122, Respondents are required by Section 402(p) of the Act and 40 C.F.R. Part 122 to make application for permit coverage for the facility, and to comply with each applicable permit condition in operation of the facility.

13. A review of the EPA database in which NPDES permit applications are recorded indicates that Respondents have not applied for and/or obtained NPDES permit coverage from an individual permit or by filing a Notice of Intent to be covered by a general permit for discharge of pollutants from the facility to waters of the United States.

14. The Respondents, therefore, are in violation of Section 301(a) of the Act for discharging pollutants from a point source to waters of the United States, without a permit.

ORDER

Based on the foregoing Findings and pursuant to the authority of Section 309 of the Act, 33 U.S.C. § 1319(a), EPA hereby orders the Respondents to take the following action:

A. Respondents must immediately take all necessary measures to prevent any discharge of pollutants (including animal waste or industrial storm water) to waters of the United States from any part of the facility. These measures include, but are not limited to: 1) designing, constructing, operating and maintaining storm water containment structures with adequate capacity to contain all process-generated wastewater plus runoff from a 25-year, 24-hour storm event; and 2) developing and implementing a site-specific pollution prevention plan to minimize discharges of manure pollutants to waters of the U.S. Respondents must also seek permit coverage under the EPA Region 6 NPDES CAFO general permit even though the discharges from this facility are intermittent, sporadic, and even occasional. These intermittent or sporadic discharges are nonetheless unauthorized "discharges" under the Act and are prohibited unless authorized under the terms of the NPDES CAFO general permit.

B. Within thirty (30) days of the effective date of this Order, Respondents shall initiate a weekly visual inspection program to determine if any discharges are occurring. Respondent shall notify EPA of any discharges of pollutants from the facility by telephone within twenty-four (24) hours of the discharge, and in writing within five (5) days of the discharge. This notification must include: a description of the discharge, the cause of the discharge, the duration of the discharge, an estimated volume of the discharge, action(s) taken to prevent recurrence of a discharge, and the size of any precipitation event during the discharge. If any discharge is

observed, a sample of this discharge shall be taken and the sample shall be analyzed for fecal coliform, nitrogen, and phosphorous pursuant to 40 C.F.R. Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants." This visual inspection program shall be on-going until the facility applies for and obtains coverage under the NPDES CAFO general permit.

C. Any information or correspondence submitted by the Respondents to EPA under this Order shall be forwarded to Ms. Nancy Williams at the following address:

Ms. Nancy Williams
Water Enforcement Branch (6EN-WC)
EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Any written report sent to EPA in accordance with this Order will include the following statement:

> I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.

D. In order to Show Cause why Respondents have not complied with the Act and its regulations, and why EPA should not take further enforcement action against Respondents for the violations cited, Respondents should arrange a meeting with EPA within forty-five (45) days of the effective date of this Order. The meeting will be held at the Region 6 offices, 1445 Ross

Ave., Dallas, Texas. Respondents shall submit to EPA all information or materials considered relevant to this meeting at least ten (10) days prior to the meeting.

E. To arrange a meeting, or to ask questions or comment on this matter, please contact Dr. Abu Senkayi, of my staff, at (214) 665-8403.

General Provisions

Issuance of this Order shall not be deemed an election by EPA to forego any administrative or judicial, civil, or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate. Failure to comply with this Order or the Act can result in further administrative action, or a civil judicial action initiated by the United States Department of Justice. This Order is not an NPDES permit, and compliance with the terms and conditions of this Order does not relieve the Respondents of their obligations to apply for and comply with any applicable permit, and comply with any applicable federal, state or local law or regulation.

The effective date of this Order is the date it is received by the Respondents.

1·17·12
Date

John Blevins
Director
Compliance Assurance and
Enforcement Division