

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	
v.)	
)	
STERLING SUFFOLK RACECOURSE LLC,)	
)	
Defendant.)	

CONSENT DECREE

TABLE OF CONTENTS

I. <u>JURISDICTION AND VENUE</u>	4
II. <u>APPLICABILITY</u>	4
III. <u>OBJECTIVES</u>	6
IV. <u>DEFINITIONS</u>	6
V. <u>CIVIL PENALTY</u>	9
VI. <u>COMPLIANCE REQUIREMENTS</u>	10
VII. <u>SUPPLEMENTAL ENVIRONMENTAL PROJECTS</u>	19
VIII. <u>REPORTING REQUIREMENTS</u>	25
IX. <u>APPROVAL OF SUBMISSIONS</u>	27
X. <u>STIPULATED PENALTIES</u>	29
XI. <u>FORCE MAJEURE</u>	34
XII. <u>DISPUTE RESOLUTION</u>	36
XIII. <u>RIGHT OF ENTRY/INFORMATION COLLECTION AND RETENTION</u>	39
XIV. <u>EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS</u>	41
XV. <u>COSTS</u>	43
XVI. <u>NOTICES</u>	43
XVII. <u>EFFECTIVE DATE</u>	46
XVIII. <u>RETENTION OF JURISDICTION</u>	47
XIX. <u>MODIFICATION</u>	47
XX. <u>TERMINATION</u>	48
XXI. <u>PUBLIC PARTICIPATION</u>	49
XXII. <u>SIGNATORIES/SERVICE</u>	50
XXIII. <u>INTEGRATION</u>	50
XXIV. <u>APPENDICES</u>	51

WHEREAS, Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint (“Complaint”) concurrently with this Consent Decree, alleging that Sterling Suffolk Racecourse LLC (“Suffolk Downs” or “Defendant”) has violated Section 301(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendant has violated Section 301 of the Act by discharging pollutants into waters of the United States from Defendant’s racetrack complex in East Boston and Revere, Massachusetts (“Facility”), without authorization by a National Pollutant Discharge Elimination System (“NPDES”) permit or any other provision of the Act;

WHEREAS, Defendant has completed projects and submitted reports pursuant to the Clean Water Act Administrative Order (Docket No. 08-015) issued by EPA on May 2, 2008 (“Administrative Order”), as modified by subsequent communications between EPA and Defendant;

WHEREAS, notice of the commencement of this action has been provided to the Commonwealth of Massachusetts pursuant to Section 309 of the CWA, 33 U.S.C. § 1319(b).

WHEREAS, in compliance with the Administrative Order, Defendant submitted to EPA and the Massachusetts Department of Environmental Protection (“MassDEP”) an application for a Concentrated Animal Feeding Operation (“CAFO”) NPDES permit on September 30, 2008, but such permit has yet to be issued;

WHEREAS, entry of this Consent Decree by the Court will resolve the civil claims of the United States for the violations alleged in the Complaint through the Date of Lodging of this Consent Decree;

WHEREAS, Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint; and

WHEREAS, the United States and Defendant (collectively, the "Parties") recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, with the consent of the Parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355, and over the Parties. Venue properly lies in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395(a). For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to, and are binding upon, the United States and upon Defendant and any successors, assigns or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, or any part thereof, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of this Consent Decree are implemented. At least thirty (30) Days prior to any transfer (or within seven (7) Days after an "Excepted Transfer," as defined herein) of any portion of the Production Area or Non-Production Area, Defendant shall provide a copy of this Consent Decree to the proposed transferee (or, in the case of an Excepted Transfer, the actual transferee) and shall simultaneously provide to EPA and the United States Department of Justice, in accordance with Section XVI (Notices), written notice of the prospective transfer (or, in the case of an Excepted Transfer, the actual transfer), together with a copy of the proposed written agreement (or a copy of the final written agreement for an Excepted Transfer).

Defendant may assert that information required to be provided under this Paragraph is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2. Any attempt to transfer ownership or operation of the Facility, or any part thereof, without complying with this Paragraph constitutes a violation of this Consent Decree. For purposes of this Paragraph, an "Excepted Transfer" is one in which Defendant (a) conveys all, or any portion, of the Production Area and Non-Production Area to an entity affiliated with Defendant and (b) simultaneously leases from that affiliated entity the Areas so conveyed.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees and agents whose duties might reasonably include compliance with any provisions of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree when such work occurs after the Date of Lodging. Defendant shall condition any such contract

upon performance of the work in conformity with the terms of this Consent Decree. Defendant shall require that such contractors provide a copy of this Consent Decree to their subcontractors to the extent the subcontractors are performing work subject to this Consent Decree. Such contractors and subcontractors shall be deemed agents of Defendant for the purposes of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

7. It is the express purpose of the Parties in entering into this Consent Decree to further the objectives set forth in Section 101 of the Act, 33 U.S.C. § 1251, by the expeditious implementation of the remedial measures required by this Consent Decree. In carrying out such measures, Defendant shall use sound engineering practices and sound management, and operation and maintenance practices consistent with, as applicable: (a) EPA's "Managing Manure Nutrients at Concentrated Animal Feeding Operations," EPA-821-B-04-009, December 2004; and (b) EPA's "Developing Your Stormwater Pollution Prevention Plan, A Guide for Industrial Operators," EPA-833-B-09-002, February 2009.

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Act" or "CWA" shall mean the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), as amended, 33 U.S.C. §§ 1251-1387.
- b. "Administrative Order" shall mean the Clean Water Act Administrative Order (Docket No. 08-015) that was issued to Defendant by EPA on May 2, 2008, as modified by letters from EPA to Defendant dated December 17, 2008, November 24, 2009, November 23, 2010, and April 10, 2012.
- c. "Approval by EPA" or "Approved by EPA" shall mean the issuance of a written approval document from EPA approving, approving with conditions, and/or modifying a submission in accordance with Section IX (Approval of Submissions).
- d. "Commonwealth" shall mean the Commonwealth of Massachusetts.
- e. "Complaint" shall mean the complaint filed by the United States in this action.
- f. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.
- g. "Date of Lodging" shall mean the Day this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Massachusetts.
- h. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
- i. "Defendant" shall mean Sterling Suffolk Racecourse LLC.
- j. "Effective Date" shall have the definition provided in Section XVII (Effective Date).

k. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

l. "Facility" shall mean Defendant's approximately 161-acre Suffolk Downs thoroughbred horse racetrack complex in East Boston and Revere, Massachusetts, including two concentric racetracks (a 1-mile dirt track and a 7/8-mile turf track), a grandstand, clubhouse, ancillary buildings, parking areas, stables, horse stalls, feed storage areas, manure storage areas, a mortality shed, animal walkways, and associated areas. The Facility includes the Land Application Area, Non-Production Area, and Production Area.

m. "Green Infrastructure" shall mean the range of stormwater control measures that use natural or engineered systems to direct stormwater to areas where it can be stored, infiltrated, evapotranspired, or reused. Green infrastructure may include, but is not limited to, bioretention and extended detention wetland areas, vegetated swales, pocket wetlands, rain gardens, infiltration planters, green roofs, and porous and permeable pavements.

n. "Land Application Area" shall mean any portion of the area within the infield of Defendant's two concentric racetracks to which manure, litter, or process wastewater from the Production Area is, or may be, applied.

o. "MassDEP" shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

p. "Non-Production Area" shall mean, within the Facility, the areas depicted generally in the plan attached hereto as Figure 2 of the Nutrient & Stormwater Management Plan (Appendix A), including the two concentric racetracks (a 1-mile dirt track and a 7/8-mile turf

track), such areas being where there are “storm water discharges associated with industrial activity,” as this phrase is defined in 40 C.F.R. § 122.26(b)(14).

q. “Nutrient & Stormwater Management Plan” or “NSMP” shall mean the Nutrient & Stormwater Management Plan for the Facility, attached hereto as Appendix A.

r. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or a lower case letter.

s. “Parties” shall mean the United States and Defendant.

t. “Production Area” shall mean, within Defendant’s racetrack complex property, the animal confinement area, the manure storage area, the raw material storage area, the waste containment area, and any area used in the storage, handling, treatment, or disposal of mortalities. The Production Area is depicted generally on the plan attached hereto as Figure 2 of the NSMP (Appendix A).

u. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

v. “SEP” shall mean supplemental environmental project.

w. “United States” shall mean the United States of America.

V. CIVIL PENALTY

9. Within thirty (30) Days after the Effective Date of this Consent Decree, in satisfaction of the claims for civil penalties alleged in the Complaint, Defendant shall pay the sum of \$1,250,000 as a civil penalty, together with interest accruing from the Date of Lodging, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

10. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Consent Decree, by the United States Attorney’s Office for the District of Massachusetts, Financial Litigation Unit, Boston, Massachusetts. The costs of such EFT shall be the responsibility of Defendant. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States of America v. Sterling Suffolk Racecourse LLC*, and shall reference the civil action number and DOJ case number 90-5-1-1-09639, to EPA and the United States Department of Justice in accordance with Section XVI (Notices); by email to acctreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

11. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal income tax.

VI. COMPLIANCE REQUIREMENTS

12. Pollution Prevention Measures (“PPM”) Plan. Beginning on the Effective Date, Defendant shall implement the PPM Plan, which is in Defendant’s NSMP (Appendix A). The PPM Plan is intended to comply with the requirements in 40 C.F.R. § 122.42(e)(1). Until the Effective Date, Defendant shall continue to implement the current Interim Pollution Prevention Measures Plan, which was submitted by Defendant pursuant to the Administrative Order, and which was conditionally approved by EPA.

13. Production Area Roof Runoff Separation (“PARRS”) Plan. Defendant shall implement the PARRS Plan and Operation and Maintenance (“O&M”) requirements for the PARRS Plan, all of which are in the NSMP (Appendix A). Defendant shall implement construction under the PARRS Plan in accordance with the Compliance Measures Construction Schedule (which provides for the implementation of the required remedial measures as expeditiously as possible), attached hereto as Appendix B. All construction under the PARRS Plan shall be completed by June 15, 2012. Upon completion of all construction under the PARRS Plan, Defendant shall implement the O&M requirements for the PARRS Plan. The PARRS Plan and O&M requirements for the PARRS Plan include, but are not limited to, the following components:

a. The PARRS Plan provides for the installation of gutters and downspouts on Production Area buildings and provides for the direction of roof runoff to existing or new drainage infrastructure in order that the roof runoff shall be completely separated from process wastewater (including non-roof runoff) to the maximum extent practicable. The PARRS Plan and O&M requirements for the PARRS Plan include Best Management Practices (“BMPs”) in the design, construction, operation, and maintenance of the separated roof runoff system. Such BMPs in the PARRS Plan include, to the extent feasible, the use of all appropriate currently available Green Infrastructure techniques.

b. The PARRS Plan includes the requirement that Defendant undertake a thorough cleaning of existing drainage infrastructure, including all piping, that will be used for any separated roof runoff, once the process wastewater has been separated from such drainage infrastructure, in order to remove any accumulated contaminated sediments. Such cleaning

procedures include the collection and proper disposal of all dislodged sediments, debris, and process wastewater.

14. Production Area Process Wastewater Management (“PAPWM”) Plan. Defendant shall implement the PAPWM Plan and O&M requirements for PAPWM Plan components, all of which are in the NSMP (Appendix A). Defendant shall implement construction under the PAPWM Plan in accordance with the Compliance Measures Construction Schedule (which provides for the implementation of the required remedial measures as expeditiously as possible), attached hereto as Appendix B. All construction under the PAPWM Plan shall be completed by June 15, 2012. Upon completion of all construction under the PAPWM Plan, Defendant shall implement the O&M requirements for the PAPWM Plan. The PAPWM Plan and O&M requirements for PAPWM Plan components include plans for the design, construction, operation, and maintenance of remedial measures to contain all process wastewater, including the runoff from a 25-year, 24-hour rainfall event. The PAPWM Plan and O&M requirements for PAPWM Plan components include, but are not limited to, the following components:

a. Storage Pond - The PAPWM Plan and O&M requirements for PAPWM Plan components require that a storage pond in the track infield (“Storage Pond”) be designed, constructed, operated, and maintained to store the volume of all process wastewater from the Production Area, including the runoff from a 25-year, 24-hour rainfall event, as well as sufficient capacity for sediments, an operational zone, freeboard volume, and additional volume of water that will be generated by CAFO processes and rain events during times when the Land Application Area and the local sewer system cannot accept wastewater. The PAPWM Plan includes BMPs with respect to the discharge from the Storage Pond’s emergency spillways

whenever rainfall events cause an overflow of process wastewater. Such BMPs in the PAPWM Plan include, to the extent feasible, the use of all appropriate currently available Green Infrastructure techniques.

b. New Sewer Infrastructure - The PAPWM Plan and O&M requirements for PAPWM Plan components require the design, construction, operation, and maintenance of sewer infrastructure (“New Sewer Infrastructure”) to divert from the Production Area to the Storage Pond all process wastewater, including all runoff not directed to the drainage infrastructure utilized pursuant to the PARRS Plan. The PAPWM Plan and O&M requirements for PAPWM Plan components require that, in conjunction with the sewer pumping station described in Paragraph 14(c) below, the New Sewer Infrastructure be designed, constructed, operated, and maintained to be able to convey process wastewater stored in the Storage Pond to either the Land Application Area or to the local sewer system.

c. Sewer Pumping Station - The PAWPM Plan and O&M requirements for PAPWM Plan components require the design, construction, operation, and maintenance of a pumping station to pump process wastewater stored in the Storage Pond to either:

i. the Land Application Area in compliance with the requirements in 40 C.F.R. § 122.42(e)(1); or

ii. the local sanitary sewer system for conveyance to the Massachusetts Water Resources Authority’s (“MWRA”) wastewater treatment facilities.

d. Land Application Area - The PAWPM Plan and O&M requirements for PAPWM Plan components require that any Land Application Area be designed, constructed, operated, and maintained in compliance with the requirements in 40 C.F.R. § 122.42(e)(1).

e. Discharge to Local Sanitary Sewer System for Conveyance to the MWRA - The PAWPM Plan and O&M requirements for PAPWM Plan components require that when process wastewater from the Storage Pond is not being directed to the Land Application Area, such wastewater shall be discharged to a local sanitary sewer system for conveyance to the MWRA, except during periods deemed not appropriate by the MWRA or the local sanitary sewer system. Once the Storage Pond is operational and the PARRS Plan fully implemented, Defendant shall connect all sanitary and washwater facilities located within the Production Area to the local sanitary sewer system and confirm all such connections through dyed-water testing; provided, however, that Defendant may continue to allow the use of the horse washing areas identified in the PPM Plan so long as Defendant maintains such areas in accordance with the PPM Plan.

15. Non-Production Area Stormwater Management ("NPASM") Plan. Defendant shall implement the NPASM Plan and O&M requirements for the NPASM Plan, all of which are in the NSMP (Appendix A). Defendant shall implement construction under the NPASM Plan in accordance with the Compliance Measures Construction Schedule (which provides for the implementation of the required remedial measures as expeditiously as possible), attached hereto as Appendix B. All construction under the NPASM Plan shall be completed by June 15, 2012. Upon completion of all construction under the NPASM Plan, Defendant shall implement the O&M requirements for the NPASM Plan. The NPASM Plan and O&M requirements for the NPASM Plan include BMPs in the design, construction, operation, and maintenance of the Non-Production Area's stormwater management system. Such BMPs in the NPASM Plan include, to the extent feasible, the use of all appropriate currently available Green Infrastructure techniques.

16. Monitoring Plan. Defendant shall implement the Monitoring Plan, which is in the NSMP (Appendix A). The Monitoring Plan includes, but is not limited to, the following components:

a. Weekly Visual Monitoring - From the Effective Date until one year after the completion of all construction described in the PARRS, PAPWM and NPASM Plans and any Revised PARRS, Revised PAPWM and Revised NPASM Plans (“Anniversary Date”), while horses are stabled in the Production Area, Defendant shall conduct weekly visual monitoring of all outfalls to surface waters from the Production Area and Non-Production Area, including, but not limited to, the outfalls near sample locations SD-3, SD-4, SD-5, SD-7 (BMP-1), SD-10 and SD-13 (BMP-5), which are depicted in Figure 2 of the NSMP (Appendix A). Upon Approval by EPA, Defendant may suspend monitoring of any outfall that Defendant has capped or otherwise permanently terminated. Defendant shall maintain a monitoring log containing the following information for each outfall required to be monitored: the date and time of the visual observation; a characterization of any precipitation during the observation (using the terms “none,” “light,” “moderate,” or “heavy”); a characterization of the amount of precipitation in the past 24 hours (using the terms as above); a statement of whether or not a discharge was observed; and the name of the person making the observation. Defendant shall maintain the monitoring records at Defendant’s offices until five years after the Anniversary Date and shall make them available for inspection or copying upon request by an authorized representative of EPA or MassDEP.

b. Dry-Weather Monitoring - From the Effective Date through the Anniversary Date, Defendant shall sample once each month all outfalls to surface waters from the Production

Area and Non-Production Area, including, but not limited to, sample locations SD-3, SD-4, SD-5, SD-7 (BMP-1), SD-10, SD-13 (BMP-5), PWP-1, and PWP-2, which are depicted in Figure 2 of the NSMP (Appendix A). In addition, during each dry-weather sample event, Defendant shall sample upstream and downstream locations in Sales Creek, identified as SD-12 and SD-2 (which are depicted in Figure 2 of the NSMP (Appendix A)). Upon Approval by EPA, Defendant may suspend monitoring of any outfall that Defendant has capped or otherwise permanently terminated. For the purpose of this Paragraph, dry weather is defined as any day selected by Defendant in which no greater than 0.1 inch of precipitation has fallen within the 48 hours preceding the sample event. For each of the locations identified as SD-3, SD-4, SD-5, SD-7 (BMP-1), SD-10, SD-13 (BMP-5), PWP-1 and PWP-2, should there be no discharge on the day Defendant selects for dry-weather sampling, Defendant shall indicate "No Discharge" on the monitoring log for such location and shall not submit a sample for testing from that location. All submitted samples shall be analyzed for E. coli, total suspended solids ("TSS"), nitrogen-ammonia, and total phosphorus, except for SD-7 (BMP-1) and SD-13 (BMP-5), where only TSS need be analyzed.

c. Wet-Weather Monitoring - From the Effective Date through the Anniversary Date, Defendant shall sample each sample location listed in Paragraph 16(b), above, during one rainfall event selected by Defendant per month that is expected to result in precipitation of 0.1 inch or greater. Upon Approval by EPA, Defendant may suspend monitoring of any outfall that Defendant has capped or otherwise permanently terminated. For each of the locations identified as SD-3, SD-4, SD-5, SD-7 (BMP-1), SD-10, SD-13 (BMP-5), PWP-1 and PWP-2, should there be no discharge on the day Defendant selects for wet-weather sampling, Defendant shall indicate

“No Discharge” on the monitoring log for such location and shall not submit a sample for testing from that location. All submitted samples shall be analyzed for E. coli, TSS, nitrogen-ammonia, and total phosphorus, except for SD-7 (BMP-1) and SD-13 (BMP-5), where only TSS need be analyzed.

d. Storage Pond Monitoring - From the date the Storage Pond becomes operational through the Anniversary Date, Defendant shall sample all drain outlets into the Storage Pond whenever Defendant performs dry-weather or wet-weather monitoring, as described in Paragraphs 16(b) or 16(c), above, respectively. Should a drain outlet not be discharging on the day Defendant selects for sampling, Defendant shall indicate “No Discharge” on the monitoring log for such outlet and shall not submit a sample for testing from that outlet. All submitted samples shall be analyzed for E. coli, TSS, nitrogen-ammonia, and total phosphorus.

17. Revised Plans Following Issuance of CAFO NPDES Permit. Within thirty (30) Days after EPA and MassDEP issue a final CAFO NPDES permit for the Facility, and within thirty (30) Days after EPA and MassDEP issue any modified or reissued CAFO NPDES permit for the Facility, Defendant shall submit for Approval by EPA plans for the design, construction, operation, and maintenance of any additional remedial measures that would be required in order for Defendant to comply with the final CAFO NPDES permit or any modified or reissued CAFO NPDES permit, and the Act, in the form of, if necessary, a Revised PPM Plan, a Revised PARRS Plan, a Revised PAPWM Plan, and a Revised NPASM Plan. If a Revised PPM Plan, a Revised PARRS Plan, a Revised PAPWM Plan, or a Revised NPASM Plan is not necessary, Defendant shall submit for Approval by EPA a letter explaining why such Revised Plan is not necessary.

Any Revised Plan shall include a schedule that shall provide for the required remedial measures to be performed as expeditiously as possible. Upon Approval by EPA, these Revised Plan(s) shall be incorporated into and become enforceable under this Consent Decree, and Defendant shall implement the requirements of such Revised Plan(s), as Approved by EPA, in accordance with the schedule(s) set forth therein. Defendant shall also submit for Approval by EPA, if necessary, a Revised Monitoring Plan, which shall include any additional monitoring components that are required in order for Defendant to comply with the final CAFO NPDES permit or any modified or reissued CAFO NPDES permit, and the Act. If a Revised Monitoring Plan is not necessary, Defendant shall submit for Approval by EPA a letter explaining why such Revised Plan is not necessary. Upon Approval by EPA, the Revised Monitoring Plan shall be incorporated into and become enforceable under this Consent Decree, and Defendant shall implement the requirements of the revised monitoring requirements as Approved by EPA.

18. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, Commonwealth, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant shall concurrently submit to EPA copies of all applications for permits or approvals (other than applications for building, plumbing, or electrical permits) in accordance with Section XVI (Notices). Defendant may seek relief under the provisions of Section XI (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

19. Defendant shall perform and satisfactorily complete three SEPs in accordance with this Consent Decree and the Scopes of Work in Appendices C, D, and E. The first SEP, known as the Mystic River Watershed Water Quality Monitoring SEP, is designed to monitor the water quality of the Mystic River Watershed on a monthly basis for three specified years. The second SEP, known as the Saugus River Watershed Water Quality Monitoring SEP, is designed to monitor the water quality of the Saugus River watershed four times a year for four years. The third SEP, known as the Belle Isle Marsh Habitat Protection SEP, is designed to allow a fragile salt marsh to recover naturally from Defendant's discharges by providing access to the marsh in an ecologically protective manner. Defendant may employ or work with contractors, consultants or other entities to plan and implement the SEPs; provided, however, Defendant shall be solely responsible for the implementation and satisfactory completion of the SEPs.

20. Defendant has selected the Mystic River Watershed Association ("MyRWA") to implement the Mystic River Watershed Water Quality Monitoring SEP. Within sixty (60) Days after the Effective Date, Defendant will enter into a contract with its selected contractor under which MyRWA agrees to undertake supervision and implementation of this SEP, and Defendant is obligated to ensure implementation and satisfactory completion of this SEP in accordance with the Scope of Work in Appendix C. Said contract shall specify and identify the specific work to be undertaken in accordance with Appendix C. Defendant shall provide a copy of the contract to EPA within ten (10) Days of its execution.

21. Defendant has selected the Saugus River Watershed Council ("SRWC") to implement the Saugus River Watershed Water Quality Monitoring SEP. Within sixty (60) Days

after the Effective Date, Defendant will enter into a contract with its selected contractor under which SRWC agrees to undertake supervision and implementation of this SEP, and Defendant is obligated to ensure implementation and satisfactory completion of this SEP in accordance with the Scope of Work in Appendix D. Said contract shall specify and identify the specific work to be undertaken in accordance with Appendix D. Defendant shall provide a copy of the contract to EPA within ten (10) Days of its execution.

22. Defendant shall implement and satisfactorily complete the Belle Isle Marsh Habitat Protection SEP in accordance with the Scope of Work in Appendix E; provided, however, that if the Massachusetts Department of Conservation and Recreation (“DCR”), or any other permit-granting authority, does not allow Suffolk to complete the Scope of Work described in Appendix E despite Defendant’s reasonable best efforts to obtain the approval of such authority (a “Disapproval Event”), (a) Defendant shall give EPA notice of the Disapproval Event within ten (10) Days of that event, along with a description of Defendant’s understanding of the reasons for the Disapproval Event and an itemization of the costs Defendant has incurred for this SEP through the date of the Disapproval Event (the “Disapproval Notice”), and (b) the provisions of Paragraph 32 shall govern. For purposes of this Paragraph and Paragraph 32, “reasonable best efforts to obtain the approval of such authority” shall not include agreeing to requests by DCR or any other permit-granting authority to (a) perform work in addition to that described in Appendix E, or (b) provide funding beyond that reasonably necessary to complete the Scope of Work described in Appendix E.

23. With regard to the SEPs, Defendant certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Defendant in good faith estimates that the cost to implement the SEPs is at least \$742,000;

b. that, as of the date of executing this Decree, Defendant is not required to perform or develop the SEPs by any federal, state, or local law or regulation, and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEPs are not projects that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Defendant has not received and will not receive credit for the SEPs in any other enforcement action;

e. that Defendant will not receive any reimbursement for any portion of the SEPs from any other person; and

f. that Defendant is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEPs. To the best of Defendant's knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEPs, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this Paragraph, the terms

“open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

24. Defendant shall supply SEP progress reports to EPA as required by Section VIII (Reporting Requirements). Each report shall contain:

a. A summary of the current status of each SEP for which EPA has not notified Defendant that Defendant has satisfactorily completed such SEP in accordance with Paragraph 27 below (a “Remaining SEP”);

b. A description of the activities undertaken to implement each Remaining SEP during the relevant Reporting Period (defined below), with specific reference to any implementation deadlines occurring in the Reporting Period;

c. Copies of any reports generated in implementing each Remaining SEP during the Reporting Period;

d. An explanation of any difficulties or delays in the implementation of each Remaining SEP; and

e. A summary, with copies of supporting documentation, of the costs expended on each Remaining SEP during the Reporting Period.

25. Within sixty (60) Days after the completion of each SEP, Defendant shall submit a SEP Completion Report to the United States, in accordance with Section XVI (Notices). Each SEP Completion Report shall contain the following information:

a. A detailed description of the SEP as implemented;

b. A description of any problems encountered in completing the SEP and the solutions thereto;

c. An itemized list of all SEP costs expended. In itemizing its costs in each SEP Completion Report, Defendant shall clearly identify and provide acceptable documentation for all SEP costs. Where the SEP Completion Report includes costs unrelated to the SEP, those costs must be clearly identified as such. For the purpose of this Paragraph, "acceptable documentation" includes invoices, purchase orders or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made;

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and

e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

26. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's SEP Completion Reports.

27. After receiving the SEP Completion Report for each SEP, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the particular SEP. If Defendant has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section X of this Consent Decree.

28. Disputes concerning the satisfactory performance of the SEPs and the amount of SEP costs may be resolved under Section XII (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

29. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 84.

30. For federal income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing any of the SEPs.

31. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to any SEP under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, United States v. Sterling Suffolk Racecourse LLC, taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act.”

32. If Defendant (a) satisfactorily completes the Belle Isle Marsh Habitat Protection SEP or (b) submits a Disapproval Notice, but in neither event spends \$157,000 or more in Undisputed Costs (defined below) on such SEP, Defendant shall extend the SEPs described in Paragraphs 20 and 21 above by providing additional funding in the amount of half of the difference between \$157,000 and the Undisputed Costs (“Additional Funding”) to the Mystic River Watershed Water Quality Monitoring SEP, and an equal amount of Additional Funding to the Saugus River Watershed Water Quality Monitoring SEP. For purposes of this Paragraph, “Undisputed Costs” means, in the case of clause “a” of the preceding sentence, such SEP costs listed in the SEP Completion Report for the Belle Isle Marsh Habitat Protection SEP, as Approved by EPA, plus any additional SEP costs as determined following Dispute Resolution pursuant to Paragraph 28

above; or, in the case of clause “b” of the preceding sentence, such SEP costs listed in the Disapproval Notice, as Approved by EPA, plus any additional SEP costs as determined following Dispute Resolution pursuant to Paragraph 28 above. Defendant shall give notice to EPA, MyRWA, and SRWC of any Additional Funding within sixty (60) Days of receiving notice under Paragraph 27 of completion of the Belle Isle Marsh Habitat Protection SEP or sixty (60) Days of Approval by EPA of the Disapproval Notice, unless such notice or approval is subject to Dispute Resolution, in which case Defendant shall provide notice to EPA, MyRWA, and SRWC of any Additional Funding within thirty (30) Days after the completion of Dispute Resolution.

VIII. REPORTING REQUIREMENTS

33. Within thirty (30) Days after each Reporting Period (defined below), Defendant shall submit to EPA for review Compliance Reports, with a copy to MassDEP. From the Effective Date through the close of the calendar quarter in which Defendant has fully implemented (apart from continuing operational, maintenance or monitoring requirements) the PARRS, PAPWM and NPASM Plans or the Revised PARRS, Revised PAPWM and Revised NPASM Plans, the Reporting Periods shall be three-month periods ending on March 31st, June 30th, September 30th, and December 31st. Subsequently, until the termination of this Decree in accordance with Section XX (Termination), the Reporting Periods shall be six-month periods ending on June 30th and December 31st. Each Compliance Report shall include, at a minimum, the following items:

- a. A description of the activities undertaken during the Reporting Period directed at achieving compliance with this Consent Decree;
- b. A description of any proposed changes to the remedial measures prescribed in plans Approved by EPA;

c. An identification of all plans, reports, and other submissions required by this Consent Decree that Defendant completed and submitted during the Reporting Period;

d. A listing of all samples collected and corresponding analytical results, organized chronologically by discharge, of sampling conducted in accordance with the monitoring required by Paragraphs 16(b), 16 (c), and 16 (d);

e. A description of the performance of each BMP or group of BMPs, including a description of any maintenance activities performed during the Reporting Period;

f. A description of the activities Defendant plans to undertake during the next Reporting Period in order to achieve compliance with this Consent Decree; and

g. An identification of any noncompliance with the requirements of this Consent Decree. If any noncompliance is reported, the notification shall include the following information:

i. A description of the noncompliance;

ii. A description of any actions taken or proposed by Defendant to comply with any lapsed requirements;

iii. A description of any factors that tend to explain or mitigate the noncompliance; and

iv. For any actions proposed by Defendant to comply with any lapsed requirements, the date by which Defendant will perform such proposed action.

34. Until Defendant satisfactorily completes all SEPs, within thirty (30) Days after each Reporting Period, Defendant shall submit to EPA for review a progress report regarding the performance of the SEPs required by Section VII and Appendices C, D, and E.

35. Whenever any violation of this Consent Decree or any other event affecting Defendant's performance under this Decree, or the operation of the Production Area, Non-Production Area or Land Application Area, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

36. All reports shall be submitted to the persons at EPA designated in Section XVI (Notices).

37. The reporting requirements set forth in this Section do not relieve Defendant of its obligation to submit any other reports or information as required by the Clean Water Act or implementing regulations, or by any other federal, Commonwealth or local law, regulation, permit, or other requirement.

38. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law. With respect to information asserted by Defendant as required to be protected as CBI, such information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B.

IX. APPROVAL OF SUBMISSIONS

39. After review of any plan, schedule, report, or other item that is required to be submitted for Approval by EPA pursuant to this Consent Decree, including but not limited to Plans required by Section VI of this Consent Decree, EPA shall in writing: (a) approve, in whole

or in part, the submission; (b) approve, in whole or in part, the submission upon specified conditions; (c) modify, in whole or in part, the submission to cure any deficiencies; (d) disapprove, in whole or in part, the submission, directing that Defendant modify the submission; or (e) any combination of the above.

40. In the event of approval, approval upon conditions, and/or modification by EPA pursuant to Paragraph 39(a), 39(b), or 39(c), the plan, schedule, report, or other item, or portion thereof, as approved, approved with conditions, and/or modified by EPA shall be enforceable under this Consent Decree, and Defendant shall take all actions required to implement such plan, schedule, report, or other item, or portion thereof, in accordance with the approval, approval with conditions, and/or modification issued by EPA, subject to Defendant's right to dispute the specified conditions or modifications under Section XII (Dispute Resolution).

41. In the event that EPA modifies the submission, or portion thereof, to cure any deficiencies pursuant to Paragraph 39(c), EPA retains its right to seek stipulated penalties for Defendant's submission of a deficient plan, schedule, report, or other item, or portion thereof, which shall constitute an unapprovable submission subject to stipulated penalties, as provided in Section X (Stipulated Penalties).

42. Upon receipt of a written notice of disapproval pursuant to Paragraph 39(d), Defendant shall, within thirty (30) Days or such other time as Defendant and EPA agree in writing, correct the deficiencies and resubmit the plan, schedule, report, or other item, or portion thereof, for approval, subject to Defendant's right to dispute the disapproval under Section XII (Dispute Resolution). Any stipulated penalties applicable to the original submission shall accrue during the 30-Day period or other specified period, but shall not be payable unless the

resubmission is untimely and/or disapproved as provided in Paragraph 39; provided that, if the original submission was disapproved by EPA in whole, stipulated penalties applicable to the original submission shall be due and payable upon demand notwithstanding any subsequent resubmission.

43. Any resubmitted plan, schedule, report, or other item, or portion thereof, shall be subject to review and Approval by EPA, as provided under this Section. If Defendant fails to resubmit a plan, schedule, report, or other item, or portion thereof after a disapproval, or if, upon resubmission, the plan, schedule, report, or other item, or portion thereof, is disapproved or modified by EPA, Defendant shall be deemed to have failed to submit such plan, schedule, report, or other item, or portion thereof, timely and adequately, unless Defendant invokes the dispute resolution procedures set forth in Section XII (Dispute Resolution) and Defendant's position is upheld.

44. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 39(d), Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Defendant of any liability for stipulated penalties under Section X (Stipulated Penalties) for the deficient portions.

X. STIPULATED PENALTIES

45. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree, as specified in this Section, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule Approved by EPA under this Decree,

according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Decree.

46. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late.

47. Reporting Requirements. For every Day that Defendant fails timely to submit a report required by Paragraph 33 or 35 of this Consent Decree or fails to provide the certification required by Paragraph 84, Defendant shall pay a stipulated penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,500	1st through 10th Day
\$3,000	11th through 20th Day
\$5,000	21st Day and beyond.

48. Compliance Measures. For every Day that Defendant fails timely to meet the requirements of Section VI (Compliance Requirements), including but not limited to, submitting an approvable plan, schedule, report, or other item, other than a report required by Paragraphs 33 and 35, or fails to implement remedial requirements in a plan, schedule, report, or other item Approved by EPA, Defendant shall pay a stipulated penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,500	1st through 10th Day
\$4,000	11th through 20th Day
\$7,000	21st Day and beyond.

49. SEP Compliance. In the event that Defendant fails to comply with any of the terms or provisions of this Consent Decree relating to the performance of the SEPs described in

Section VII above, Defendant shall be liable for stipulated penalties according to the provisions set forth below:

a. If Defendant fails to timely provide any information or report required pursuant to Section VII (Supplemental Environmental Projects), Appendix C, D, or E, or Paragraph 34, Defendant shall pay a stipulated penalty for each Day for which it fails to provide such information or report, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 10th Day
\$1,500	11th through 20th Day
\$2,500	21st Day and beyond.

b. If Defendant fails to satisfactorily complete the Mystic River Watershed Water Quality Monitoring SEP by the deadline set for that SEP in Appendix C, or halts or abandons work on that SEP, Defendant shall pay a stipulated penalty of \$100,000 plus the difference between \$495,000 and all amounts paid by Defendant towards that SEP as of the Day the penalty accrues. The penalty under this subparagraph shall accrue as of the Day specified for completing the SEP or the Day performance ceases, whichever is earlier.

c. If Defendant fails to satisfactorily complete the Saugus River Watershed Water Quality Monitoring SEP by the deadline set for that SEP in Appendix D, or halts or abandons work on that SEP, Defendant shall pay a stipulated penalty of \$25,000 plus the difference between \$90,000 and all amounts paid by Defendant towards that SEP as of the Day the penalty accrues. The penalty under this subparagraph shall accrue as of the Day specified for completing the SEP or the Day performance ceases, whichever is earlier.

d. If Defendant fails to satisfactorily complete the Belle Isle Marsh Habitat Protection SEP by the deadline set for that SEP in Appendix E, or halts or abandons work on that SEP, without timely submitting a Disapproval Notice under Paragraph 22 above that later is Approved by EPA, Defendant shall pay a stipulated penalty equal to \$250,000. The penalty under this subparagraph shall accrue as of the Day specified for completing the SEP or the Day performance ceases, whichever is earlier.

e. In the event that EPA disapproves a SEP Completion Report as required by Paragraph 25 above (other than a disapproval on the grounds of incomplete descriptions described in Paragraphs 25(a), (b) or (e) above), Defendant shall pay a stipulated penalty of \$1,500 per Day until an acceptable SEP Completion Report is submitted to EPA.

50. With the exception of those penalties described in Paragraphs 49(b), (c) and (d), stipulated penalties shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

51. Defendant shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

52. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

53. Stipulated penalties shall continue to accrue as provided in Paragraph 50, during any dispute resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owed, together with interest, to the United States within thirty (30) Days of the Effective Date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in Paragraph 53(c), below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

54. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

55. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

56. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CWA, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violations.

XI. FORCE MAJEURE

57. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

58. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA within 72 hours of when Defendant first knew that the event might cause a delay. Within five Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the

delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

59. If EPA agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

60. If EPA does not agree the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify Defendant in writing of its decision.

61. If Defendant elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a

preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 57 and 58, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XII. DISPUTE RESOLUTION

62. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

63. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States Department of Justice and EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute and shall be sent within fifteen (15) Days after Defendant receives notice of the event giving rise to the dispute. If Defendant fails to give such notice, it shall be deemed to have waived any right to invoke dispute resolution regarding such dispute, and the position advanced by the United States shall be considered binding. The period of informal negotiations shall not exceed twenty (20) Days from the date of the applicable Notice of Dispute, unless that period is modified by written agreement.

64. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within twenty-one (21) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

65. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States Department of Justice and EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

66. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph. EPA shall maintain an administrative record of the dispute, which shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this Section.

67. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States Department of Justice and EPA, in accordance with Section XVI (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within fourteen (14) Days of receipt of the United States' Statement of Position pursuant to the

preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

68. The United States shall respond to Defendant's motion within the time period allowed by the Federal Rules of Civil Procedure and the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Federal Rules of Civil Procedure and the Local Rules.

69. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraphs 65 through 68 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules, or any other items requiring Approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based upon the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraphs 65 through 68, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of this Consent Decree.

70. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 53. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. RIGHT OF ENTRY/INFORMATION COLLECTION AND RETENTION

71. The United States, and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

72. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

73. Until five years after the Anniversary Date, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. Defendant may meet its obligations under this Paragraph with respect to a contractor or agent by: (a) requesting that such contractor or agent provide Defendant with copies of all documents, records, or other information required to be preserved under this Paragraph; and (b) receiving and preserving any copies received from any contractor or agent for five years after the Anniversary Date. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

74. Ninety (90) Days prior to the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall provide to the United States Department of Justice and EPA a file index of all documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States made prior to the end of the information-retention period provided in the preceding Paragraph, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide

the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, data, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

75. Defendant may also assert that information required to be provided under this Section is protected as CBI under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

76. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or Commonwealth laws, regulations, or permits.

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

77. This Consent Decree (a) resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date on which the Consent Decree is lodged with the Court and (b) supersedes Defendant's obligations under the Administrative Order, except as expressly stated herein.

78. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree except as expressly stated in Paragraph 77. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or

injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

79. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to Defendant's violations of the Act, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in this or the subsequent proceeding were or should have been brought in the instant case, except with respect to claims specifically resolved pursuant to Paragraph 77 of this Section.

80. This Consent Decree is not a permit, or a modification of any existing permit, under any federal, Commonwealth, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, Commonwealth, and local laws and regulations, and permits, and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or with any other provisions of federal, Commonwealth, or local laws, regulations or permits. Application for construction grants, Commonwealth Revolving Loan Funds, or any other grants or loans, or

other delays caused by inadequate facility planning or plans and specifications on the part of Defendant shall not be cause for extension of any required compliance date in this Consent Decree. Except as expressly provided herein, this Consent Decree shall not be construed to constitute EPA approval of any specific equipment or technology installed by Defendant under the terms of this Consent Decree.

81. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XV. COSTS

82. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of any stipulated penalties due under Section X (Stipulated Penalties) but not paid by Defendant.

XVI. NOTICES

83. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the Department of Justice

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 - Ben Franklin Station

Washington, DC 20044-7611
DJ # 90-5-1-1-09639

As to the United States Attorney

United States Attorney
District of Massachusetts
One Courthouse Way
John Joseph Moakley Courthouse
Boston, MA 02210
Attention: George B. Henderson, II

As to the EPA

Todd Borci
Enforcement Officer
Water Technical Unit
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
Mail Code OES04-4
Boston, MA 02109-3912
borci.todd@epa.gov

Man Chak Ng
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
Mail Code OES04-1
Boston, MA 02109-3912
ng.manchak@epa.gov

Defendant shall provide all submissions and notices required to be submitted to EPA via electronic mail no later than the due date(s) specified in this Consent Decree, in addition to providing a hard copy in accordance with the terms of this Paragraph. Defendant shall provide complete copies to both the EPA Enforcement Officer and EPA Enforcement Counsel of all other submissions and notices required to be made by Defendant to EPA pursuant to this Decree; except that with respect to copies of reports, schedules, plans, and other items required to be

submitted pursuant to Sections VI (Compliance Requirements) and VIII (Reporting Requirements), only copies of the transmittal letters need be provided to the EPA Enforcement Counsel.

As to the MassDEP

Kevin Brander
Section Chief
Wastewater Management Section
DEP/NERO
205B Lowell Street
Wilmington, MA 01887
kevin.brander@state.ma.us

Defendant shall provide complete copies to MassDEP of all submissions and notices required pursuant to this Decree. Copies shall be provided via electronic mail no later than the due date(s) specified in this Consent Decree. If a submission or notice cannot be provided via electronic mail due to its size, an electronic copy shall be provided by CD-ROM or other similar digital format. Defendant need not provide MassDEP with a hard copy of any submission or notice unless such hard copy is requested by MassDEP.

As to Defendant

Paul M. Tuttle, Jr.
Sterling Suffolk Racecourse LLC
111 Waldemar Avenue
Boston, MA 02128

Michael D. Vhay, Esq.
DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, MA 02110-1447
michael.vhay@dlapiper.com

84. All written notices, reports or any other submissions required of Defendant by this Consent Decree shall contain the following certification by a duly authorized representative of Defendant:

I certify under 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, 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 fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

85. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

86. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVII. EFFECTIVE DATE

87. The Effective Date shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant hereby agrees that it shall be bound to perform all duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Decree before entry, or the Court declines to enter the

Consent Decree, then the preceding requirement to perform all duties scheduled to occur before the Effective Date shall terminate.

XVIII. RETENTION OF JURISDICTION

88. The Court shall retain jurisdiction over this case until the termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XII (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

89. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

90. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 69, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

91. Notwithstanding the foregoing, Defendant may submit for Approval by EPA:

- a. Revisions to Figure 2 of the NSMP (Appendix A) that depict reductions in the size of the Production Area. Areas may be excluded from the Production Area (the “Excluded PA Areas”) so long as (i) animals are not stabled or confined in the Excluded Area, (ii) manure is not stored in the Excluded PA Area, (iii) raw materials, including feed and bedding, are not

stored in the Excluded PA Area, (iv) wastes are not contained in the Excluded PA Area, and (v) no mortalities are stored, handled, treated or disposed of in the Excluded PA Area. Upon Approval by EPA of the revisions to Figure 2 of the NSMP (Appendix A), the Excluded PA Area shall no longer be part of the Production Area, and the PARRS, PAPWM, Revised PARRS or Revised PAPWM Plans shall be deemed not to apply to the Excluded PA Area.

b. Revisions to Figure 2 of the NSMP (Appendix A) that depict reductions in the size of the Non-Production Area. Areas may be excluded from the Non-Production Area (the “Excluded NPA Area”) so long as such areas no longer have “storm water discharges associated with industrial activity,” as this phrase is defined in 40 C.F.R. § 122.26(b)(14). Upon Approval by EPA of the revisions to Figure 2 of the NSMP (Appendix A), the Excluded NPA Area shall no longer be a part of the Non-Production Area, and the NPASM or Revised NPASM Plans shall be deemed not to apply to the Excluded NPA Area.

c. Revisions to the scope of work (including, but not limited to, the completion deadlines) described in Appendices C, D and E to this Decree, so long as Defendant certifies to EPA at the time of any such revision, in accordance with Paragraph 84, that the estimated total cost of completing all of the SEPs identified in this Decree equals or exceeds the estimate set forth in Paragraph 23(a) above.

Any revisions in accordance with subparagraphs (a)-(c) above shall not be deemed to be a material change to this Decree.

XX. TERMINATION

92. After Defendant has (a) completed all of the requirements of Section VI (Compliance Requirements) and Section VIII (Reporting Requirements), and has thereafter maintained

continuous compliance with this Consent Decree, (b) paid the civil penalty and all accrued stipulated penalties and all accrued interest thereon, as required by Sections V (Civil Penalty) and X (Stipulated Penalties), and (c) completed all of the requirements of Section VII (Supplemental Environmental Projects) and Appendices C, D, and E, Defendant may serve upon the United States Department of Justice and EPA a Request for Termination of this Consent Decree, stating that Defendant has satisfied those requirements, together with all applicable supporting documentation.

93. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that this Decree may be terminated, the Parties shall file with the Court a joint stipulation terminating the Decree.

94. If the United States does not agree that the Decree may be terminated, Defendant may invoke dispute resolution under Section XII (Dispute Resolution). However, Defendant shall not seek dispute resolution of any dispute regarding termination until sixty (60) Days after service of its Request for Termination.

XXI. PUBLIC PARTICIPATION

95. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. Defendant consents to entry of this Consent Decree without further notice and

agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XXII. SIGNATORIES/SERVICE

96. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

97. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIII. INTEGRATION

98. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than submissions that are submitted and Approved by EPA pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXIV. APPENDICES

99. The following appendices are attached to and part of this Consent Decree:

- a. "Appendix A" is the Nutrient & Stormwater Management Plan.
- b. "Appendix B" is the Compliance Measures Construction Schedule.
- c. "Appendix C" is Mystic River Watershed Water Quality Monitoring SEP

Scope of Work.

- d. "Appendix D" is the Saugus River Watershed Water Quality Monitoring SEP

Scope of Work.

- e. "Appendix E" is the Belle Isle Marsh Habitat Protection SEP Scope of Work.

Dated and entered this _____ day of _____, 2012.

UNITED STATES DISTRICT JUDGE
District of Massachusetts

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America v. Sterling Suffolk Racecourse LLC*.

For Plaintiff UNITED STATES OF AMERICA

Date

IGNACIA S. MORENO
Assistant Attorney General
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Date

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America v. Sterling Suffolk Racecourse LLC*.

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date _____ CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Date _____ PAMELA J. MAZAKAS
Acting Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
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Date _____ MARK POLLINS
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Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
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Washington, D.C. 20004

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America v. Sterling Suffolk Racecourse LLC*.

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date

SUSAN STUDLIEN
Director
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U.S. Environmental Protection Agency, Region 1
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Boston, Massachusetts 02109-3912

Date

MAN CHAK NG
Senior Enforcement Counsel
Office of Environmental Stewardship
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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America v. Sterling Suffolk Racecourse LLC*.

For Defendant STERLING SUFFOLK RACECOURSE LLC

Date

WILLIAM J. MULROW
Sterling Suffolk Racecourse LLC
111 Waldemar Avenue
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Date

MICHAEL D. VHAY, ESQ.
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33 Arch Street, 26th Floor
Boston, MA 02110-1447

APPENDIX A

**Sterling Suffolk Racecourse LLC
Nutrient & Stormwater Management Plan**

Nutrient & Stormwater Management Plan
Suffolk Downs Racecourse
111 Waldemare Avenue
East Boston, Massachusetts

Prepared for:
Sterling Suffolk Racecourse LLC

August 2012

Table of Contents

1.0	Introduction.....	1
2.0	Site Description.....	1
3.0	Pollution Prevention Measures Plan.....	2
3.1	Manure/Bedding Management Practices.....	2
3.2	Wash Water Management Practices.....	3
3.3	Mortality Handling Management Practices.....	3
3.4	Other Management Practices.....	3
3.4.1	Year-round Practices.....	3
3.4.2	Other In-season Practices.....	4
3.4.3	Post Season Cleanup Procedures.....	4
4.0	Production Area Process Wastewater Management Plan.....	4
4.1	Process Wastewater System Design.....	5
4.1.1	Holding Pond Storage Capacity.....	6
4.1.2	Holding Pond Operational Analysis.....	6
4.1.3	Effluent Discharge.....	7
4.2	Land Application Preparation.....	7
5.0	Production Area Roof Runoff Separation Plan.....	8
6.0	Non-Production Area Stormwater Management Plan.....	9
7.0	Operation, Inspection, and Maintenance Plan.....	10
7.1	Process Wastewater System.....	10
7.1.1	Process Wastewater Holding Pond.....	10
7.1.2	Pump Station.....	10
7.2	Clean Water Diversion System.....	11
7.3	Non-Production Area Stormwater System.....	11
7.3.1	Sediment Forebay.....	11
7.3.2	Sand Filter.....	12
7.3.3	Infiltration Islands.....	12
7.4	Other Inspections.....	12
8.0	Compliance Officer.....	13
9.0	Monitoring Requirements.....	13
9.1	Weekly Visual Monitoring.....	13
9.2	Dry-Weather Sampling.....	14
9.3	Wet-Weather Sampling.....	14

10.0	Emergency Planning	14
11.0	Record Keeping Requirements	15
12.0	Reporting Requirements	15
13.0	Certification	16

List of Attachments

- Attachment A Figures & Plan Sheets
- Attachment B Stormwater Management System Analysis
- Attachment C Forms

1.0 Introduction

This Nutrient & Stormwater Management Plan (NSMP) describes the Best Management Practices (BMPs) for the protection of water quality at Suffolk Downs Racecourse's (the Facility) Production Area and Non-Production Area. This NSMP is intended to meet the requirements of 40 CFR 122.429(e) as well as the effluent limitations resulting from use of the best available technology economically achievable (BAT) as described in 40 CFR 412.13. Modifications to this NSMP will be made in accordance with 40 CFR 122.42(e)(6).

2.0 Site Description

The Facility is primarily used as a thoroughbred horse racetrack. It is located on approximately 161 acres of land located in East Boston and Revere, Massachusetts (Figure 1). Approximately 110 acres are used for the racetrack, buildings ancillary to the racetrack, stables, parking and related uses. The Facility has an enclosed grandstand and clubhouse covering approximately 130,000 square feet. The Facility also has a one-mile dirt racetrack and a 7/8 mile turf racetrack. Figure 2 depicts the Facility's Production Area and Non-Production Area covered by this NSMP.

The Production Area includes the portion of the Facility that is used for caring for horses as well as the process wastewater holding pond. The approximately 14 acre portion of the Production Area used for caring for horses includes stables, a manure storage area, horse-exercising equipment, and an area for temporary holding of mortalities (the Stable Area). The portion of the Production Area associated with the process wastewater holding pond (the Holding Pond) is approximately 1.2 acres and is located within the racetrack infield. The Stable Area includes 32 stable buildings with approximately 1,200 horse stalls and 70 crushed-stone pads for washing of horses and disposal of wash water (the Washing Areas). Existing grades and/or berms prevent process wastewater from exiting the Production Area and keep off-site stormwater from entering the Production Area. During the 2009 season, the Facility generated approximately 19,170 tons of manure/bedding waste.

Sales Creek flows southeasterly through the site passing through twin 96-inch culverts under the racetrack to an open channel traversing the racetrack infield where it flows under the back straight via twin 96-inch drains and discharges to an open channel between the track and Bennington Street immediately east of the site. Sales Creek is protected from tidal flows originating in Belle Isle Inlet by the Bennington Street tide gates and a pumping station. During lower tides Sales Creek flows directly to Belle Isle Inlet via culverts under Bennington Street. During higher tides flow in Sales Creek is pumped to the Inlet by the Bennington Street pump station which is owned and operated by the Massachusetts Department of Conservation and Recreation.

The portion of Sales Creek that passes through the site was constructed as a drainage ditch around the time of filling of the site. Vegetated wetlands fringe Sales Creek and become more extensive east of the site between the eastern track maintenance road and the MBTA's Blue Line track. Sales Creek is part of the Rumney Marshes Area of Critical Environmental Concern (ACEC).

3.0 Pollution Prevention Measures Plan

Listed below are the best management practices to be implemented within the Production Area.

3.1 Manure/Bedding Management Practices

These practices shall be followed for the management of manure and bedding within the Production Area at all times beginning when any horse is stabled at the Facility, and continuing until the Facility has completed its annual post-season cleanup:

1. Horses shall be stabled only within the Stable Area.
2. Temporary manure dumpsters shall be located in the vicinity of the stables and the grain/bedding distribution area.
3. All temporary manure dumpsters shall include weighted flip-top covers.
4. All temporary manure dumpsters shall be labeled in English and Spanish stating that manure dropped on the ground must be cleaned up and placed in the dumpsters.
5. Areas outside of the stables shall be raked and swept clean of manure and bedding material on a regular basis.
6. All manure, bedding materials cleaned from any stable area, and feed/bedding material cleaned from the grain/bedding distribution area, shall be placed in the temporary manure dumpsters.
7. All containers used during transport of manure/bedding materials to the temporary dumpsters shall be covered with an impervious material during transport.
8. Temporary manure dumpsters shall be inspected daily for punctures and leaks. If punctures or leaks are observed, (a) the dumpster shall be immediately removed from service for repair and (b) a serviceable dumpster shall be provided.
9. An adequate number of temporary manure dumpsters shall be provided to prevent uncontained stockpiling of manure/waste feed and bedding materials.
10. Temporary manure dumpsters shall be emptied into manure trailers daily.
11. A manure trailer shall be constantly available to receive material from the temporary manure dumpsters.
12. All manure trailers shall be covered while on site, while not actively being filled, as well as during transport.
13. All manure trailers shall be transported to a composting facility at a frequency that ensures that trailer capacity is not exceeded.
14. Adequate solid waste dumpsters shall be provided throughout the Production Area for the disposal of general solid waste.
15. Manure, bedding and feed materials shall not be disposed in the solid waste dumpsters.

16. No solid waste other than manure, bedding or feed materials shall be disposed in the temporary manure dumpsters or the manure trailers.
17. Manure/bedding materials shall be tested annually for nitrogen and phosphorous content. Manure testing shall be conducted in accordance with University of Massachusetts, Cornell University, or other guidance if recognized by the University of Massachusetts. The results shall be provided to the composting facility.

3.2 Wash Water Management Practices

1. Horse washing shall be conducted only in the Facility's designated Washing Areas.
2. Wash water (e.g., buckets of soapy water) shall be disposed only in the Washing Areas.
3. Only track-supplied hoses may be used at the Facility. Leaking hoses may not be used, and shall be replaced immediately
4. Hoses may be used only for the following purposes: (a) filling water buckets for horses, (b) washing horses in the Washing Areas, (c) cooling horses in the Washing Areas, and (d) sprinkling shed-rows or walking machine areas for purposes of controlling dust.
5. Hoses may be used outside of Washing Areas only for purposes of controlling dust in shed-rows or walking machine areas, and shall be disconnected immediately after use.

3.3 Mortality Handling Management Practices

1. Mortality shed shall be maintained to prevent any stormwater contact with mortalities.
2. All mortalities must be placed immediately within the mortality shed.
3. Mortalities shall be removed within 48 hours by a contractor who possesses all required permits and/or licenses applicable for the disposition of animal mortalities. Contractor shall dispose mortalities in accordance with all applicable disposal regulations.

3.4 Other Management Practices

3.4.1 Year-round Practices

1. Chemical, hazardous, toxic or veterinary medical materials shall be used and disposed in accordance with manufacturer's directions and applicable regulations.
2. Horses shall not be allowed to enter the waters of the United States, including but not limited to Sales Creek or adjacent wetlands.
3. Except for those associated with veterinary services or track operations, vehicles may not be parked in the Production Area except during short-term deliveries. Unauthorized vehicles parked within the Production Area will be towed. Vehicles may not be washed or undergo maintenance within the Production Area.

3.4.2 Other In-season Practices

These practices shall be followed during any period when horses are stabled at the Facility until the completion of post-season cleanup:

1. Each owner's stall-allotment contract shall contain a notice setting forth the track's anti-pollution policies and requirements.
2. On a daily basis during the first 30 days of the racing season, and weekly thereafter, the track shall announce over the public address system that the track has implemented anti-pollution policies and requirements, and direct all owners to review and adhere to them.
3. The track shall publish and enforce pollution prevention rules, including specific daily instructions for owners, stable workers, and track personnel.
 - a. The rules shall be in English and Spanish.
 - b. The rules shall include the following enforcement policies:
 - i. A written warning for the first offense.
 - ii. A written warning and mandatory retraining for any second offense.
 - iii. A \$500 fine and mandatory retraining for any third offense.
 - iv. For any fourth offense, an order to leave the Facility and not return.
 - c. The rules shall be presented at mandatory training sessions, to be given quarterly for new track personnel, owners, and stable personnel.
4. The track shall make compliance with the rules a condition of each owner's annual stall-rental contract.

3.4.3 Post Season Cleanup Procedures

These procedures shall be followed for post-season cleanup of the Production Area:

1. Stables shall be cleaned of manure and bedding materials.
2. Manure and/or bedding materials located on pervious surfaces shall be raked and placed in temporary manure dumpsters.
3. Paved areas shall be swept. Areas that cannot be swept using a street sweeper shall be swept by hand.
4. All manure dumpsters shall be emptied and the covers shall be closed.
5. Stables and stall doors shall be closed.

4.0 Production Area Process Wastewater Management Plan

The Facility's process wastewater system includes dedicated process wastewater drains, a holding pond within the track infield, and a pump station and associated force main. The drains

convey process wastewater from the Stable Area to the holding pond, which in turn is pumped to the Boston Water and Sewer Commission's (BWSC) sanitary sewer system within Walley Street. The process wastewater system is depicted on the plans included in Attachment A.

The process wastewater system is designed to eliminate discharges of process wastewater to surface waters for all storms smaller than the 25-year 24-hour design storm which represents the application of best available technology economically achievable (BAT). The holding pond is capable of containing the expected volume of runoff from a 50-year 24-hour storm event, which exceeds the 25-year 24-hour effluent limitations set forth in 40 CFR §412.13(b). Runoff from the Stable Area is directed to the holding pond for flow equalization, and pumped to the BWSC's sanitary sewer. To protect the pumping system accumulated trash and debris must be removed from the pond in accordance with the operation and maintenance plan described in Section 7.1 below. Existing grades and/or berms prevent process wastewater from exiting the Production Area and keep off-site stormwater from entering the Production Area.

4.1 Process Wastewater System Design

The process wastewater system associated with the Stable Area directs process wastewater through a dedicated sewer system to the holding pond located in the track infield, immediately north of Sales Creek. The perimeter of the Stable Area is graded to prevent runoff from discharging to non-Production Area locations, and vice versa. Refer to Sheet C-101 through Sheet C-105 for details of the process wastewater system.

The process wastewater system's piping is designed to convey anticipated volume from the 10-year storm event when flowing full. Flows exceeding the 10-year storm event may result in pipe surcharges, but all surcharges will be contained within the pipe network or immediate surface areas with no discharge outside of the Production Area. In order to reduce the amount of process wastewater generated at the site gutters have been installed on buildings within the Stable Area and have been designed to convey flows from the 25-year storm event without spilling into the process wastewater system. See Section 5 for additional details.

The holding pond includes an impermeable clay liner that limits discharge of process wastewater to groundwater. Underdrains installed below the holding pond prevent damage to the liner that could otherwise result from a potential temporary rise in the groundwater level. The holding pond includes two spillways to manage discharges from storm events exceeding the capacity of the holding pond. The spillways are reinforced with riprap and are directed to existing drainage swales.

A depth marker is located in the holding pond with indicators of the maximum depth of sediment accumulation and the minimum capacity necessary to contain the maximum runoff and direct precipitation from the 25-year storm event.

Process wastewater contained within the holding pond is pumped to the BWSC sewer system via a duplex wastewater pumping station. Flows from the pond enter the station through an intake structure. The intake structure is located within the pond and has multiple intakes outfitted with

oil/debris control hoods. The multiple intakes ensure adequate flow to the pump station while the hoods prevent trash and other debris from fouling pumps as well as provide spill control.

The pump station is a wet well/dry well configuration with two 160 gallons per minute (gpm) variable frequency drive pumps located in a dry well adjacent to a wet well. The wet well houses floats and system controls while the dry well houses pumps and related valves. The pumps have been sized to provide maximum operational flexibility with each pump discharging to independent 3" force mains. Independent force mains are required to manage friction losses over the desired wide range of operational discharges. Pump station controls have been designed to provide for discharges ranging from 80 gpm to 320 gpm based on holding pond elevation. Lower discharge rates are intended to maintain pond volumes during normal rain events while higher discharge rates are intended to evacuate the pond in advance and following large events. At peak flow, the pump station is capable of evacuating the entire holding pond volume in just under five days.

4.1.1 Holding Pond Storage Capacity

All process wastewater is collected, conveyed, and stored in the holding pond. The holding pond is designed to contain the anticipated run-off volume from the stable area as well as direct precipitation to the holding pond, from the 50-year 24-hour storm event with no discharge to Sales Creek or groundwater. The holding pond has a storage capacity of approximately 307,000 cubic feet (cf), excluding the volume associated with one foot of freeboard (51,000 cf) and six inches of accumulated sediment/operational storage (17,000 cf).

- *Total Storage Volume = 307,000 cubic feet*
- *25-Year 24-Hour Storm Event Volume = 261,000 cubic feet*

The hydrologic model and analysis of the holding pond is provided in Attachment B.

4.1.2 Holding Pond Operational Analysis

Although the holding pond is sized to hold the volume of runoff generated from the Production Area, it is useful to determine if operational limitations may reduce the actual capacity of the system. To assess this, a month's operation has been evaluated to determine how the system will act under typical conditions.

The average normal monthly precipitation for Boston Logan International Airport is 3.5 inches according to the National Oceanic and Atmospheric Administration (NOAA), based upon data from 1971 – 2000. However, not all rainfall ends up as runoff, but rather gets absorbed, evaporates or otherwise gets contained in local depressions within a catchment area. To estimate a "Runoff Reduction Rate," the system's performance during a 2-year 24-hour storm event was used to approximate typical conditions. Model analysis indicates that 76% of total rainfall during a 2-year event ends up as runoff, yielding a 24% Runoff Reduction Rate. This provides a conservative estimate since larger storm events yield higher percentages of runoff and a 2-year event is a far larger event than an average monthly event.

Monthly Runoff Volume = Precipitation Average x Reduction Rate x Area x Conversion Factors

Runoff Volume = (3.5 inches / month) x (0.76 "runoff/ "rainfall) x (15.2 Acres) x (43,560 ft / acre) x (1 ft / 12 in)

- **Monthly Runoff Volume = 147,000 cubic feet / month**

The Production Area is anticipated to produce approximately 147,000 cubic feet of runoff volume per month. This compares favorably with the 307,000 cubic feet of total storage volume provided by the holding pond and indicates that based on the average monthly runoff, the holding pond could contain approximately 60-days of runoff.

Given the connection to public sewer, solid organic stable waste can be discharged directly, eliminating the need to provide a significant settling volume. The proposed sediment storage/operational volume will be used primarily for the control of debris and floatables. A comparison to annual manure loading provides a conservative method for evaluating the suitability of the proposed sediment storage/operational volume.

During the 2009 season, the Facility transferred approximately 19,170 tons of manure to a composting facility, estimated conservatively to be at least 99 percent of the manure generated at the Facility. A conservative assumption is that the remaining approximately 193 tons/year of manure will enter the stormwater management system. Using an estimated annual stormwater manure loading rate of 193 tons/year and an industry standard stable waste density of 30 lbs/cf, the ponds can be expected to receive approximately 12,900 cf/yr of stable waste. The current total sediment storage volume provided in the pond is approximately 17,000 cf, more than 130% the expected annual volume.

4.1.3 Effluent Discharge

As discussed earlier, process wastewater stored in the holding pond is pumped to the BWSC sewer system. Flows from the BWSC sewer system flow by gravity to the Massachusetts Water Resources Authority's (MWRA) Constitution Beach combined sewer overflow (CSO) facility and eventually to the Deer Island Treatment Facility. The MWRA, through its Sewer Use Discharge Permit, has reserved the right to suspend discharges from Suffolk Downs during periods of high precipitation in an effort to reduce or prevent CSO activations within the MWRA system. The large holding pond volume and robust pumping system will be adequate to bridge gaps in service for all but the most extreme storm events.

4.2 Land Application Preparation

In the future, process wastewater may be applied to the track infield. In order to prepare for the possible land application of process wastewater the following activities will occur during the first growing season following the completion of the construction of the process wastewater system, the production area roof runoff separation system, and other clean water diversion components.

- Grab samples of process wastewater shall be taken from the process wastewater holding pond on a monthly basis and analyzed for nitrogen and phosphorous.
- Soil samples from within the potential land application area shall be taken and analyzed for standard nutrient availability. The collection and analysis of samples shall be performed in accordance with the University of Massachusetts and/or Cornell University guidance or standard industry practice if recognized by the University of Massachusetts.

Based upon the results of the process wastewater and soil nutrient analysis a target crop will be selected for growth in the land application area. Following crop selection, a Land Application Plan shall be developed in compliance with 40 CFR §122.42(e)(1) and will include:

- a description of future sampling protocols
- irrigation rates
- operation, maintenance, and inspection procedures.

The Land Application Plan shall be submitted to the appropriate regulatory authorities for approval and inclusion in this Nutrient & Stormwater Management Plan. Land application will not be conducted until approval of the Land Application Plan is received from the appropriate regulatory authorities.

5.0 Production Area Roof Runoff Separation Plan

Roof runoff from buildings within the Stable Area may be discharged directly to the drainage system provided there is no contact with manure, waste feed or bedding materials prior to discharge. The proposed clean water diversion system collects clean roof runoff and diverts it to a dedicated drain system for eventual discharge to surface waters via existing drain outfalls. Separation of clean roof runoff reduces the volume of process wastewater generated within the production area by more than 40%. The clean water diversion system includes standard gutters on all Stable Area buildings where installation is practicable. The gutters flow to piped downspouts and connect to dedicated drainage infrastructure. Drainage and process wastewater systems are shown on the attached plans. The clean water diversion system is depicted on the plans included in Attachment A.

The dedicated drainage infrastructure is sized to convey runoff volumes for the 25-year 24-hour storm event without discharge to at-grade portions of the Stable Area. Refer to Sheet C-101 through Sheet C-105 for details of the roof runoff separation plan.

Prior to the initiation of the use of the clean water diversion system, portions of the existing drain system used as a component of the clean water diversion system were cleaned of accumulated sediments. The dislodged sediments and debris were disposed of in accordance with applicable regulations. These drains included:

- the 18-inch drain within the northern drive aisle that discharges at SD-10
- the eastern portion of the 10-inch drain within the center drive aisle and the drain west of Washburn Avenue that discharges to SD-3

6.0 Non-Production Area Stormwater Management Plan

The Non-Production Area stormwater management systems include four sand filters, a sediment forebay, and three infiltration islands. Refer to Sheet C-101 through Sheet C-105 for details of the Non-Production Area stormwater BMPs (Attachment A).

Sand Filters. Stormwater from the racetrack proper flows towards the inside of the track and enters an open concrete drainage swale. The concrete drainage swale discharges through pipes to sand filters that include an 18-inch sediment forebay and an overflow structure (or the stormwater pond located within the southern portion of the track infield). The sand filters discharge to existing discharge points used by the track's previous drainage system.

Design information for each of the proposed sand filters is provided below.

Sand Filter Location	Contributing Area (acres)	Runoff Curve No.	Treatment Volume (inches)	Required Sand Filter Capacity (cf)	Forebay Volume (cf)	Sand Filter Volume (cf)
BMP-2	2.41	70	1.0	6,142	1,314	6,205
BMP-3	1.63	70	1.0	4,138	900	4,250
BMP-4	1.03	70	1.0	2,613	576	2,720
BMP-5	1.27	70	1.0	3,223	702	3,315

Sediment Forebay. A sediment forebay located west of Sale Creek within the track maintenance area receives stormwater flows from the racetrack's northwestern entrance. It also receives flows from a portion of the paved maintenance area, a parking area west of the maintenance area, and the racetrack surfacing materials stockpile area. The forebay includes four stone check dams.

Forebay Location	Contributing Impervious Area (acres)	Forebay Sizing Requirement (in/imperv. acre)	Required Forebay Volume (cf)	Forebay Volume (cf)
BMP-1	6.05	0.1	2,196	7,560

Infiltration Islands. Three infiltration islands receive flow from the northern drive aisle adjacent to Winthrop Avenue. The infiltration islands include a drop inlet surrounded by stone infiltration media approximately 42 inches in width and 34 inches in depth. When infiltration capacity is exceeded, flow will enter the drop inlet and be directed to the clean water diversion system.

Infiltration Island Location	Contributing Area (acres)	Infiltration Island Storage Volume (cf)	Rainfall Volume Treated (inches)
BMP-6	0.5	182	0.1
BMP-7	0.6	182	0.1
BMP-8	0.5	182	0.1

7.0 Operation, Inspection, and Maintenance Plan

7.1 Process Wastewater System

7.1.1 Process Wastewater Holding Pond

In addition to the inspection and maintenance requirements listed below inspection and maintenance logs shall be kept. Inspection and maintenance logs are provided in Attachment C. Inspections shall occur weekly.

- Inspect holding pond for evidence of subsidence, erosion, cracking or tree growth on the embankment, damage to the emergency spillway, the emergence of invasive or damaging species, and obstructions within the diversion swales. The inspection shall note the pond's elevation as indicated by the depth marker within the pond.
- Sediment within the pond shall be removed prior to the depth of sediment reaching the "maximum sediment depth" indicator on the depth marker.
- After sediment removal or after an inspection indicates maintenance is required, any maintenance shall be initiated as soon as possible and before the next anticipated rain event of 0.25 inches or greater, or whenever practicable to maintain the continued effectiveness of the pond.
- At least twice during the growing season, once in spring and once in fall, the side slopes shall be mowed to a height no greater than six inches and no less than three inches.

7.1.2 Pump Station

In addition to the inspection and maintenance requirements listed below an inspection/ maintenance log shall be kept. Inspection and maintenance logs are included in Attachment C. Inspection shall be performed on a monthly basis.

- Inspect wet wells for build-up of solids and grease, suction port for blockage, check valves to ensure proper closure of valve, and floats for proper operation.
- Inspect and exercise the electrical control panel, including the light and alarm systems.

- Note and record hours from hour meters on each motor.
- Perform maintenance as recommended by the manufacturer.

7.2 Clean Water Diversion System

In addition to the inspection and maintenance requirements listed below an inspection/maintenance log shall be kept. Inspection and maintenance logs are included in Attachment C.

- The clean water diversion swale associated with the holding pond shall be inspected in accordance with the requirements set forth in Section 7.1.1.
- The perimeter of the Stable Area shall be inspected weekly during dry weather and during rain events (anticipated to be greater than 0.25 inches) in order to verify that process wastewater is not exiting the Production Area and off-site stormwater is not entering the Production Area.
- Gutters and downspouts shall be inspected weekly during dry weather and during rain events (anticipated to be greater than 0.25 inches) for indications of damage such as cracks or dents that would allow clean water to break out of the clean water diversion system or indications of blockage resulting in overflow of the gutters.

7.3 Non-Production Area Stormwater System

In addition to the inspection and maintenance requirements listed below an inspection/maintenance log shall be kept. Inspection and maintenance logs are included in Attachment C.

7.3.1 Sediment Forebay

- For the first three months following construction, the sediment forebay shall be inspected after storm events resulting in 0.25 inches or greater of precipitation, but no less than once per month, to confirm the functionality of the sediment forebay. Required maintenance shall be initiated as soon as possible and before the next anticipated rain event of 0.25 inches or greater, or whenever practicable to maintain the continued effectiveness of the sediment forebay.
- Following the first three months of inspections, the sediment forebay shall be inspected once per month to confirm the functionality of the sediment forebay. Trapped sediments must be removed before sediment deposits reach 50 percent of the check dam height. Required maintenance shall be initiated as soon as possible and before the next anticipated rain event of 0.25 inches or greater, or whenever practicable to maintain the continued effectiveness of the sediment forebay.

- All sediments shall be handled and disposed in accordance with local, state, and federal guidelines and regulations.

7.3.2 Sand Filter

- For the first three months following construction, the sand filters shall be inspected after storm events resulting in 0.25 inches or greater of precipitation, but no less than once per month, to confirm the functionality of the sand filters. Required maintenance shall be initiated as soon as possible and before the next anticipated rain event of 0.25 inches or greater, or whenever practicable to maintain the continued effectiveness of the sand filters.
- Following the first three months of inspections, the sand filters shall be inspected once per month and shall be cleaned as needed. Required maintenance shall be initiated as soon as possible and before the next anticipated rain event of 0.25 inches or greater, or whenever practicable to maintain the continued effectiveness of the sand filters.
- Trapped sediments within the forebay must be removed before sediment deposits reach 50 percent of the check dam height.
- All sediments will be handled and disposed in accordance with local, state, and federal guidelines and regulations.

7.3.3 Infiltration Islands

- For the first three months following construction, the infiltration islands will be inspected after storm events resulting in 0.25 inches or greater of precipitation, but no less than once per month, to confirm the functionality of the infiltration islands. Required maintenance shall be initiated as soon as possible and before the next anticipated rain event of 0.25 inches or greater, or whenever practicable to maintain the continued effectiveness of the infiltration islands.
- Following the first three months of inspections, the infiltration islands shall be inspected once per month and shall be cleaned as needed. Required maintenance shall be initiated as soon as possible and before the next anticipated rain event of 0.25 inches or greater, or whenever practicable to maintain the continued effectiveness of the infiltration islands.
- All sediments will be handled and disposed in accordance with local, state, and federal guidelines and regulations.

7.4 Other Inspections

- While horses are present at the Facility and until post-season cleanup is complete, inspect above ground water lines for leaks on a daily basis. The dates when required maintenance

tasks were undertaken and the person who completed the maintenance shall be recorded on the General Maintenance Log included in Attachment C.

8.0 Compliance Officer

The track shall designate at least one environmental compliance officer. The officer(s) shall have these duties:

1. Monitor compliance with all environmental requirements and policies applicable to the Production Area, including inspections of stables, grain/bedding storage facilities, trailer parking areas, and mortality holding area.
2. Monitor compliance with track's requirements for handling manure and bedding. Issue immediate directions to personnel who fail to comply with such requirements, and fine/penalize personnel as required.
3. Monitor stormwater outfalls and record results as required under the Monitoring Plan. During visual monitoring, if a discharge is observed, officer(s) shall attempt to identify the source, address if possible, and note identification and correction efforts in the monitoring log.
4. Issue fines/penalties as required for non-compliance with horse washing rules.
5. Take dry- and wet-weather samples from designated outfalls. Coordinate testing with lab. Control custody of samples as required.
6. Review the track's pollution prevention rules. Recommend improvements as warranted.
7. Coordinate and provide annual training on the track's pollution prevention rules.
8. Provide remedial training on the track's pollution prevention rules.
9. Review the track's written mortality records weekly. Assure that records are complete. Should records show that a mortality has not been removed within 24 hours, investigate cause of non-compliance and take remedial measures (including fines and penalties, if necessary).

9.0 Monitoring Requirements

9.1 Weekly Visual Monitoring

Weekly visual monitoring of all outfalls to surface waters from the Production Area and Non-Production Area, including the outfalls near sample locations SD-3, SD-4, SD-5, SD-7 (BMP-1), SD-10 and SD-13 (BMP-5), which are depicted in Figure 2, shall be conducted. A monitoring log shall be maintained containing the following information for each outfall required to be monitored: the date and time of the visual observation; a characterization of any precipitation during the observation (using the terms "none," "light," "moderate," or "heavy"); a characterization of the amount of precipitation in the past 24 hours (using the terms as above); a

statement of whether or not a discharge was observed; and the name of the person making the observation. Monitoring records shall be maintained at the Facility's offices and shall be available for inspection or copying upon request by an authorized representative of EPA or MassDEP.

9.2 Dry-Weather Sampling

All outfalls to surface waters from the Production Area and Non-Production Area, including, but not limited to, sample locations SD-3, SD-4, SD-5, SD-7 (BMP-1), SD-10, SD-13 (BMP-5), PWP-1, and PWP-2, which are depicted in Figure 2, shall be sampled once each month. In addition, during each dry-weather sample event, upstream and downstream locations in Sales Creek, identified as SD-12 and SD-2 (which are depicted in Figure 2), shall be sampled. For the purpose of this Section, "dry weather" is defined as any day in which no greater than 0.1 inch of precipitation has fallen within the 48 hours preceding the sample event. For each of the locations identified as SD-3, SD-4, SD-5, SD-7 (BMP-1), SD-10, SD-13 (BMP-5), PWP-1 and PWP-2, should there be no discharge on the day selected for dry-weather sampling, "No Discharge" shall be indicated on the monitoring log for such location and no sample for testing from that location shall be submitted. All submitted samples shall be analyzed for E. coli, total suspended solids ("TSS"), nitrogen-ammonia, and total phosphorus, except for SD-7 (BMP-1) and SD-13 (BMP-5), where only TSS need be analyzed.

9.3 Wet-Weather Sampling

Each sample location listed in Section 9.2 above shall be sampled during one rainfall event per month that is expected to result in precipitation of 0.1 inch or greater. For each of the locations identified as SD-3, SD-4, SD-5, SD-7 (BMP-1), SD-10, SD-13 (BMP-5), PWP-1 and PWP-2, should there be no discharge on the day selected for wet-weather sampling, "No Discharge" shall be indicated on the monitoring log for such location and no sample for testing from that location shall be submitted. All submitted samples shall be analyzed for E. coli, TSS, nitrogen-ammonia, and total phosphorus, except for SD-7 (BMP-1) and SD-13 (BMP-5), where only TSS need be analyzed.

10.0 Emergency Planning

In case of an emergency spill, leak, or failure of the process wastewater system, the Facility shall implement the following:

1. If there is a discharge of process wastewater, make all reasonable efforts to stop the discharge and prevent the discharge from reaching surface waters.
2. If necessary, contact local emergency agencies.
3. Contact EPA as soon as possible, and no later than 24 hours after the start of the emergency, with a detailed description of the volume released, any affected surface

waters, any obvious damage (employee injury, fish kill, or property damage), and the current status of the containment efforts.

4. A written report must also be provided to EPA not later than 5 days after the start of the emergency, that includes a description of the discharge and its cause; the period of the discharge, including exact dates and times, and if the discharge has not been contained or stopped, the anticipated time it is expected to continue to discharge; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the discharge.

11.0 Record Keeping Requirements

Record keeping forms are included in Attachment C. The Facility shall maintain the following records for 5 years and make them available for inspection or copying upon request by an authorized representative of EPA or MassDEP:

1. A copy of this NSMP.
2. Results of weekly and monthly visual monitoring.
3. Laboratory analysis of dry and wet weather sampling.
4. Documentation indicating the dates and amounts of manure removed from the Facility and the entity receiving the manure.
5. Results of the manure nutrient testing.
6. Documentation indicating when the results of manure nutrient testing were provided to the composting facility.
7. The date and number of dumpsters repaired on a given day.
8. The dates and results of all inspections and maintenance/corrective activities performed.
9. The date and number of mortalities, and invoices indicating the number, date, and entity receiving mortalities.
10. Dates when mandatory training sessions were performed and number of attendees.
11. A record of enforcement actions initiated.
12. Records of the date, time, and estimated volume of any overflow.
13. Records of process wastewater testing.
14. Records of the date, time, and estimated volume of any overflow.

12.0 Reporting Requirements

An annual report must be submitted to the EPA and MassDEP which includes:

1. The maximum number of horses stabled or confined and fed or maintained at the Facility at any one time, and the number of horses stabled or confined and fed or maintained at the Facility for a total of 45 days or more during the previous 12 months.

2. Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months.
3. Estimated amount of total manure, litter, and process wastewater transferred to other person(s) by the CAFO in the previous 12 months.
4. Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume.
5. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

13.0 Certification

I certify under 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, 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 fine and imprisonment for knowing violations.

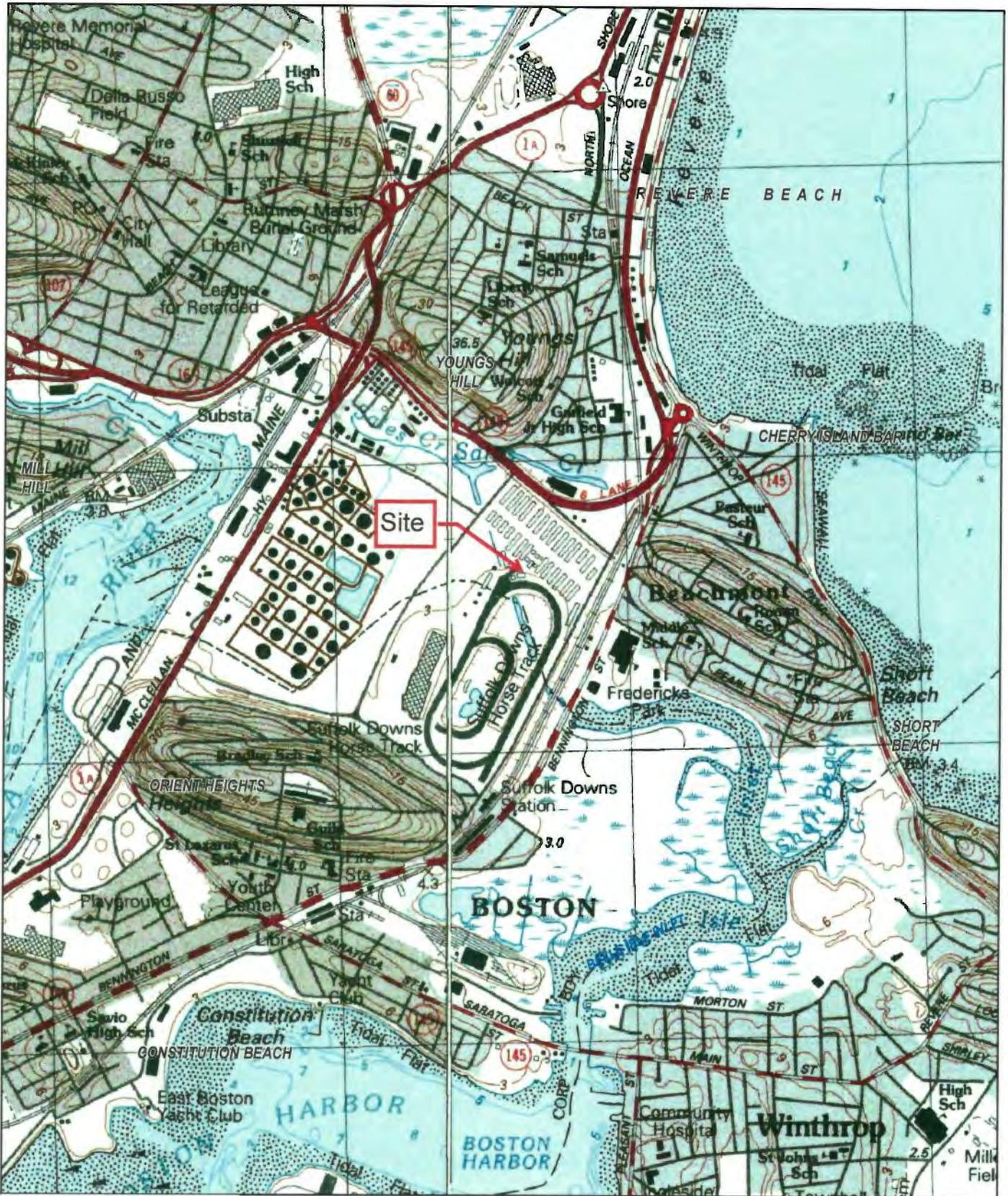
Signature

Printed Name

Title

Date

Attachment A
Figures & Plan Sheets



One Grant Street
 Framingham, MA 01701-9005
 508.903.2000
 www.tetrattech.com

1 inch = 1,500 feet



Suffolk Downs Racecourse
 East Boston/Revere, Massachusetts

Notes:
 Base Map:
 MassGIS

Figure 1

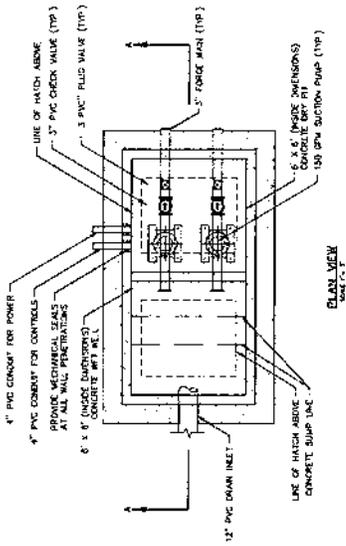
Locus Map

PROCESS WATER PUMP SCHEDULE

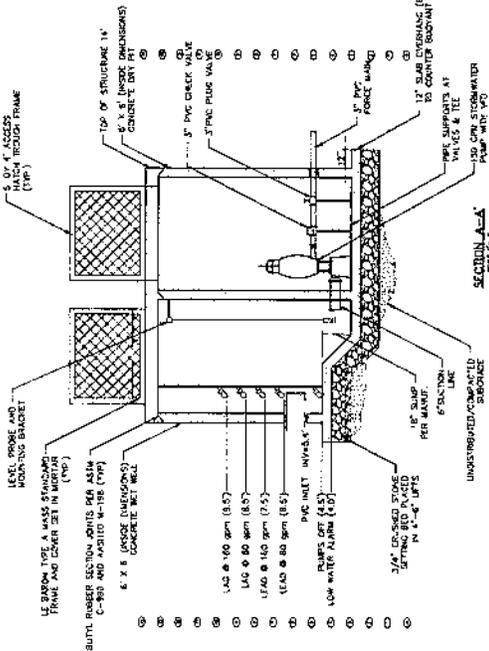
TAG NO	REQD NO	TYPE	RAISED POINT		CONC. TYPE	TYPE SEAL	MOTOR	PHASE	ENCL	REMARKS
			MIN. HEAD	MAX. HP						
PW-1	1	SECTION	150	33	3"	DIRECT INDOOR	603	3	NEW A/C	PUMPS SHALL BE MANUFACTURED BY: KAYES PUMPS, PHONE (870) 338-4370. KAYES PUMPS, PHONE (781) 635-6375

PUMP STATION NOTES

- CONTRACTOR IS TO CONSIDER LOCATIONS OF ELECTRIC AND TELEPHONE SERVICE, AND TO COORDINATE WITH OWNER AND THE ELECTRICAL ENGINEER.
- THE CONTRACTOR SHALL CONSULT THE ELECTRICAL PLANS AND THE MECHANICAL PLANS FOR THE LOCATION OF ALL ELECTRICAL CONTROLS AND SIGNALING SYSTEMS.
- PUMP PERFORMANCES TO BE LOCATED 16" MIN. FROM VERTICAL JOINTS IN WET WELL.
- PROVIDE WALL SIZES FOR ALL OPENINGS IN WET WELL SEAL WITH RUBBER BOOT CONNECTIONS.
- MAKE ALL PENETRATIONS IN WET WELL GAS TIGHT.
- ALL 16" MIN. DISTANCE ELBOWS, BOLTS, LIFTING CHAINS, FLYWHEELS AND OTHER METRIC METALLIC PARTS WITHIN THE CAST IRON.
- CONCRETE STRUCTURE SHALL BE CAPABLE OF WITHSTANDING AN INVERT LOAD THE EQUIVALENT OF THE WEIGHT OF THE CONCRETE STRUCTURE PLUS THE WEIGHT OF THE WATER.
- EACH TANK SHALL BE ASSURED IN SUCH A MANNER THAT IT SHALL BE STRENGTHENED AND PROTECTED AND SURFACES SHALL BE GUARANTEED WATER-TIGHT AND SEALED WITH THE MANUFACTURER'S RECOMMENDED SEAL AND CEMENT.
- THE SUBGRADE ON WHICH EACH TANK SHALL BE MADE SHALL BE PROPERLY PREPARED AND COMPACTED TO THE RELATION OF ANY GRAVITY OR CENTRIFUGAL FORCE SHALL BE AT LEAST 10% OF THE MAXIMUM DRY DENSITY.
- THE BASE AND ALL TANK SHALL BE MADE OF CONCRETE. THE BASE SHALL BE PROPERLY PREPARED AND COMPACTED TO THE RELATION OF ANY GRAVITY OR CENTRIFUGAL FORCE SHALL BE AT LEAST 10% OF THE MAXIMUM DRY DENSITY.



PLAN VIEW
SCALE: 1/4\"/>



SECTION A-A
SCALE: 1/4\"/>

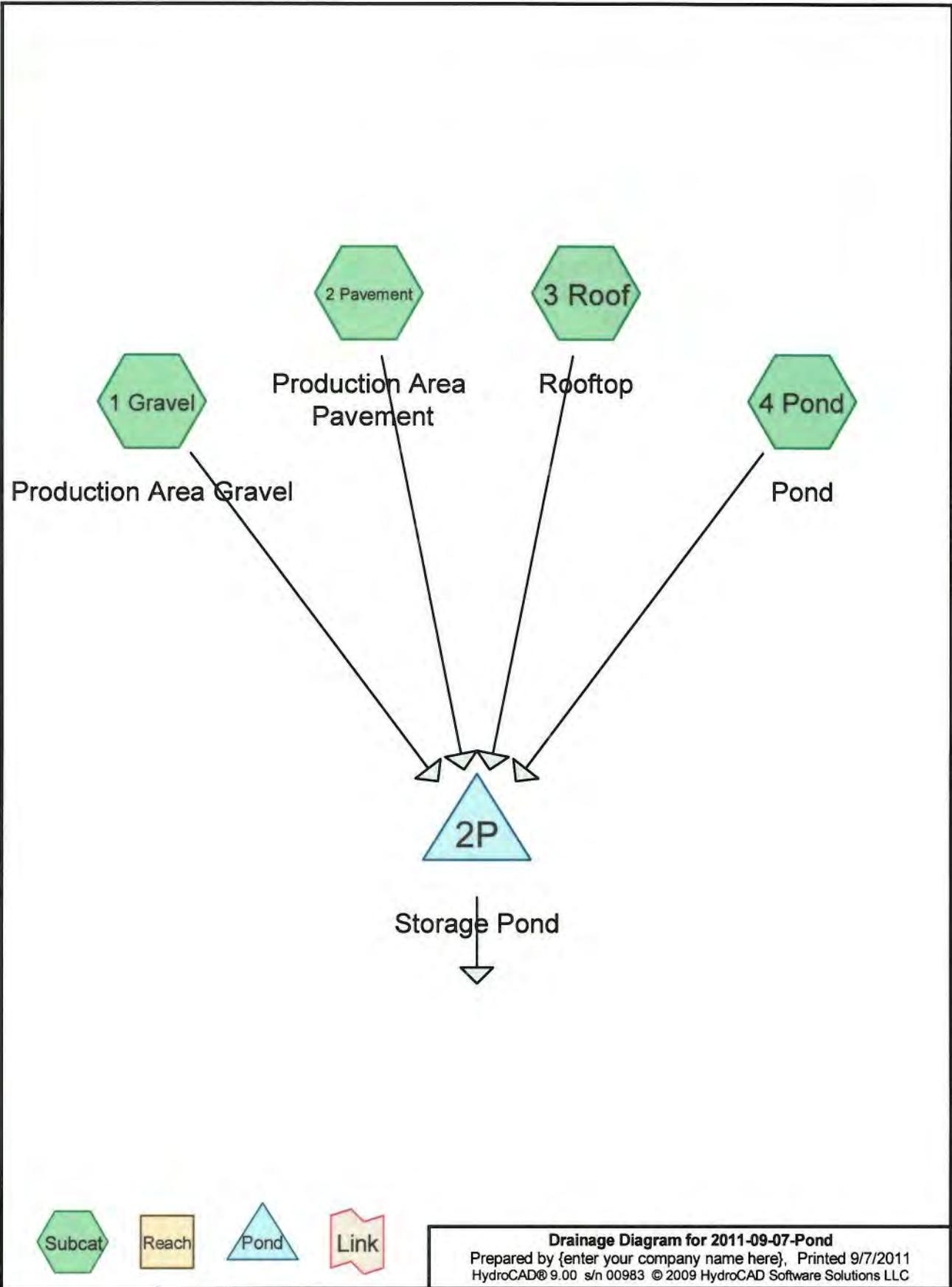
NO.	DATE	DESCRIPTION

Process Wastewater
 Pump Station Details



Shelton Smith Engineers LLC
 10000 N. 10th Street, Suite 100
 Phoenix, AZ 85020
 Phone: 602-998-2000 Fax: 602-998-2001

Attachment B
Stormwater Management System Analysis



Drainage Diagram for 2011-09-07-Pond
 Prepared by {enter your company name here}, Printed 9/7/2011
 HydroCAD® 9.00 s/n 00983 © 2009 HydroCAD Software Solutions LLC

2011-09-07-Pond

Prepared by {enter your company name here}
HydroCAD® 9.00 s/n 00983 © 2009 HydroCAD Software Solutions LLC

Printed 9/7/2011
Page 2

Area Listing (selected nodes)

Area (acres)	CN	Description (subcatchment-numbers)
8.362	89	Dirt roads, HSG D (1 Gravel)
5.298	98	Paved parking, HSG D (2 Pavement)
0.404	98	Roofs, HSG D (3 Roof)
1.197	98	Water Surface, HSG D (4 Pond)
15.261		TOTAL AREA

2011-09-07-Pond

Prepared by {enter your company name here}
HydroCAD® 9.00 s/n 00983 © 2009 HydroCAD Software Solutions LLC

Printed 9/7/2011
Page 3

Soil Listing (selected nodes)

Area (acres)	Soil Group	Subcatchment Numbers
0.000	HSG A	
0.000	HSG B	
0.000	HSG C	
15.261	HSG D	1 Gravel, 2 Pavement, 3 Roof, 4 Pond
0.000	Other	
15.261		TOTAL AREA

Time span=0.00-200.00 hrs, dt=0.01 hrs, 20001 points

Runoff by SCS TR-20 method, UH=SCS

Reach routing by Stor-Ind+Trans method - Pond routing by Stor-Ind method

Subcatchment 1 Gravel: Production Area Runoff Area=364,259 sf 0.00% Impervious Runoff Depth=4.25"
Tc=5.0 min CN=89 Runoff=41.70 cfs 2.963 af

Subcatchment 2 Pavement: Production Area Runoff Area=230,785 sf 100.00% Impervious Runoff Depth=5.26"
Tc=5.0 min CN=98 Runoff=29.56 cfs 2.323 af

Subcatchment 3 Roof: Rooftop Runoff Area=17,600 sf 100.00% Impervious Runoff Depth=5.26"
Tc=0.0 min CN=98 Runoff=2.65 cfs 0.177 af

Subcatchment 4 Pond: Pond Runoff Area=52,134 sf 100.00% Impervious Runoff Depth=5.26"
Tc=5.0 min CN=98 Runoff=6.68 cfs 0.525 af

Pond 2P: Storage Pond Peak Elev=11.83' Storage=260,865 cf Inflow=79.48 cfs 5.989 af
Outflow=0.00 cfs 0.000 af

Total Runoff Area = 15.261 ac Runoff Volume = 5.989 af Average Runoff Depth = 4.71"
54.79% Pervious = 8.362 ac 45.21% Impervious = 6.899 ac

Summary for Subcatchment 1 Gravel: Production Area Gravel

Runoff = 41.70 cfs @ 12.07 hrs, Volume= 2.963 af, Depth= 4.25"

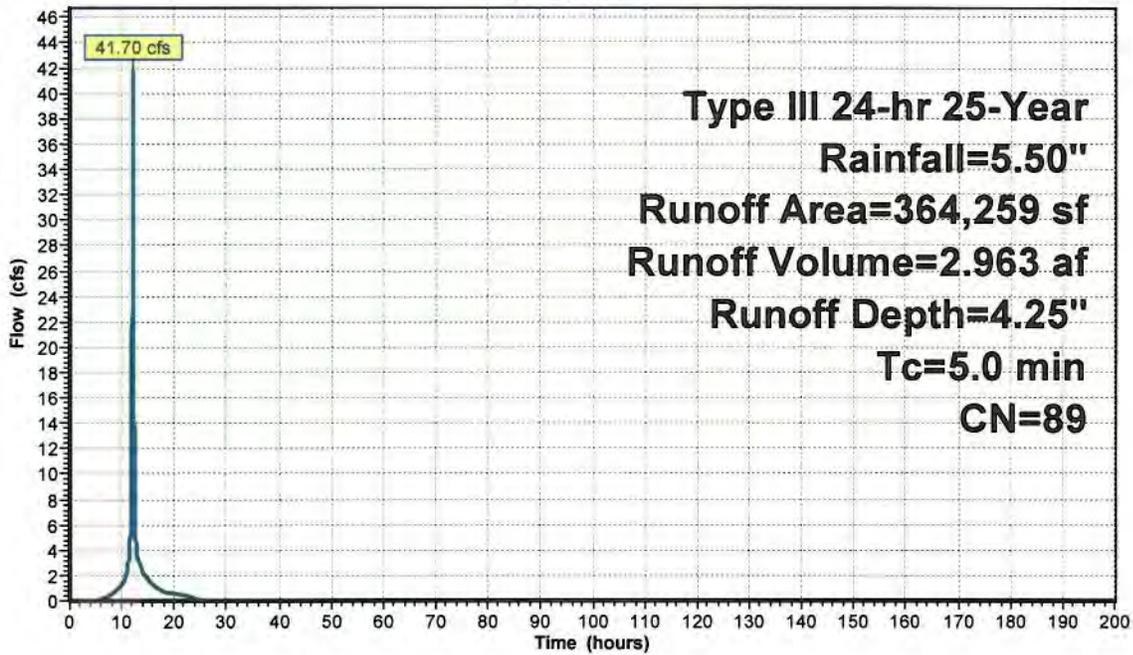
Runoff by SCS TR-20 method, UH=SCS, Time Span= 0.00-200.00 hrs, dt= 0.01 hrs
 Type III 24-hr 25-Year Rainfall=5.50"

Area (sf)	CN	Description
364,259	89	Dirt roads, HSG D
364,259		100.00% Pervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
5.0					Direct Entry,

Subcatchment 1 Gravel: Production Area Gravel

Hydrograph



— Runoff

Summary for Subcatchment 2 Pavement: Production Area Pavement

Runoff = 29.56 cfs @ 12.07 hrs, Volume= 2.323 af, Depth= 5.26"

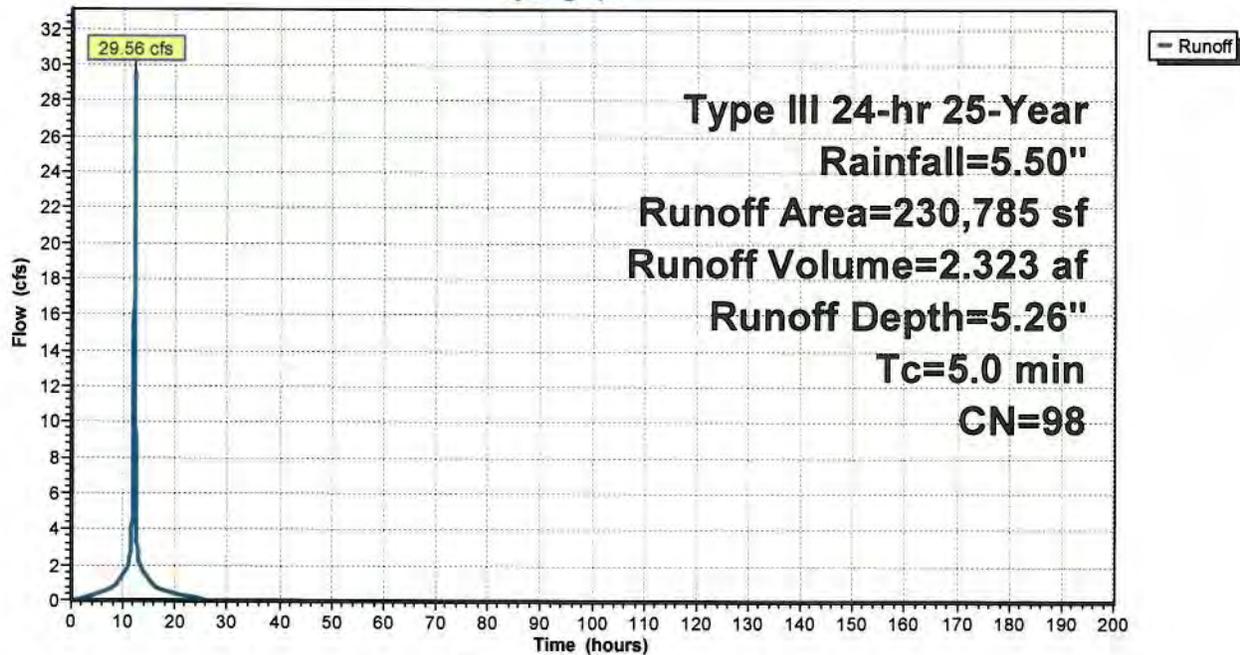
Runoff by SCS TR-20 method, UH=SCS, Time Span= 0.00-200.00 hrs, dt= 0.01 hrs
 Type III 24-hr 25-Year Rainfall=5.50"

Area (sf)	CN	Description
230,785	98	Paved parking, HSG D
230,785		100.00% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
5.0					Direct Entry,

Subcatchment 2 Pavement: Production Area Pavement

Hydrograph



Summary for Subcatchment 3 Roof: Rooftop

[46] Hint: Tc=0 (Instant runoff peak depends on dt)

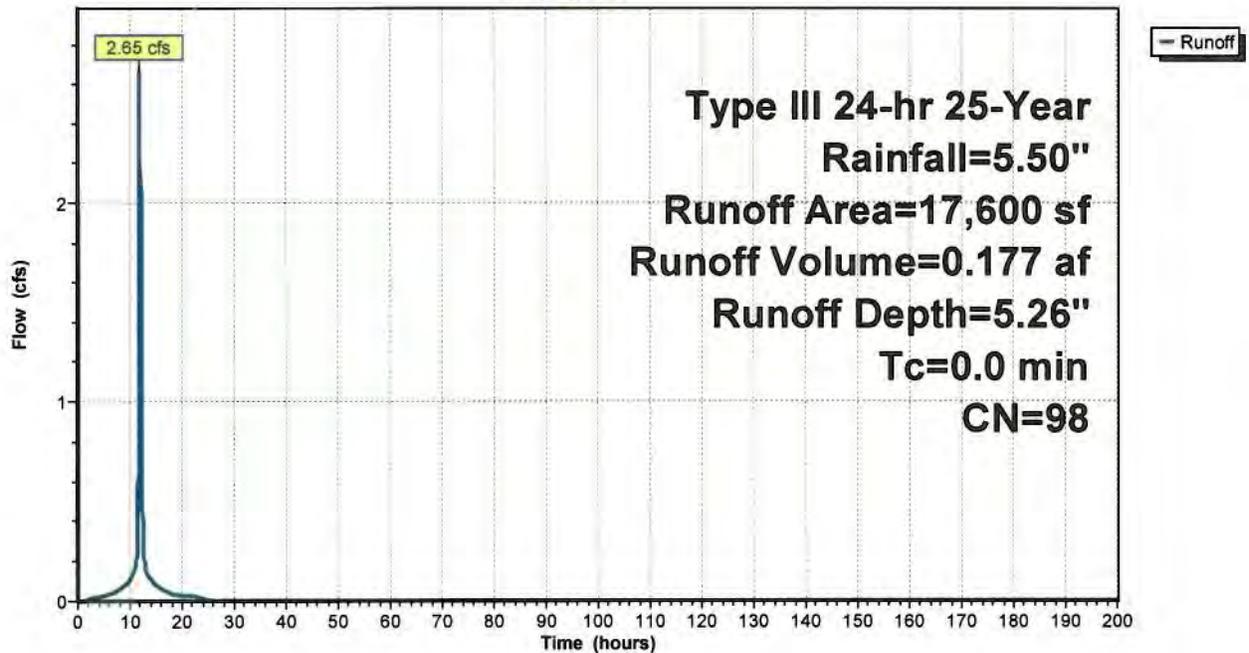
Runoff = 2.65 cfs @ 12.00 hrs, Volume= 0.177 af, Depth= 5.26"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 0.00-200.00 hrs, dt= 0.01 hrs
 Type III 24-hr 25-Year Rainfall=5.50"

Area (sf)	CN	Description
17,600	98	Roofs, HSG D
17,600		100.00% Impervious Area

Subcatchment 3 Roof: Rooftop

Hydrograph



Summary for Subcatchment 4 Pond: Pond

Runoff = 6.68 cfs @ 12.07 hrs, Volume= 0.525 af, Depth= 5.26"

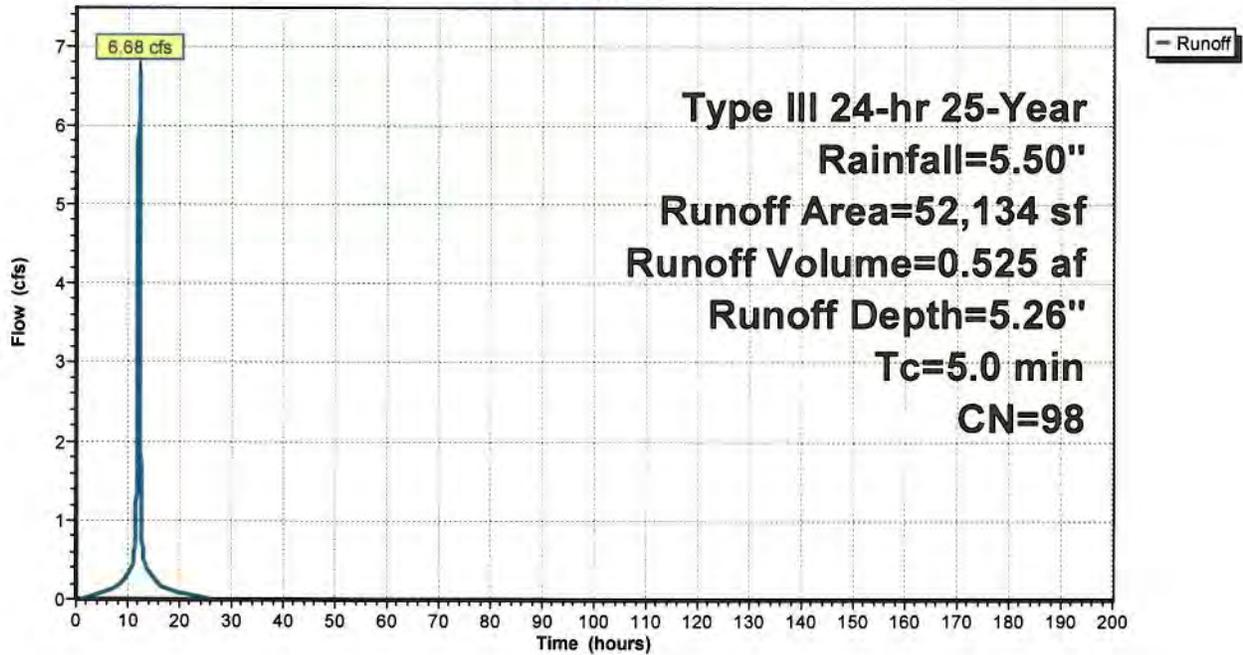
Runoff by SCS TR-20 method, UH=SCS, Time Span= 0.00-200.00 hrs, dt= 0.01 hrs
 Type III 24-hr 25-Year Rainfall=5.50"

Area (sf)	CN	Description
52,134	98	Water Surface, HSG D
52,134		100.00% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
5.0					Direct Entry,

Subcatchment 4 Pond: Pond

Hydrograph



Summary for Pond 2P: Storage Pond

Inflow Area = 15.261 ac, 45.21% Impervious, Inflow Depth = 4.71" for 25-Year event
 Inflow = 79.48 cfs @ 12.07 hrs, Volume= 5.989 af
 Outflow = 0.00 cfs @ 0.00 hrs, Volume= 0.000 af, Atten= 100%, Lag= 0.0 min
 Primary = 0.00 cfs @ 0.00 hrs, Volume= 0.000 af

Routing by Stor-Ind method, Time Span= 0.00-200.00 hrs, dt= 0.01 hrs
 Peak Elev= 11.83' @ 24.29 hrs Surf.Area= 49,057 sf Storage= 260,865 cf

Plug-Flow detention time= (not calculated: initial storage exceeds outflow)
 Center-of-Mass det. time= (not calculated: no outflow)

Volume	Invert	Avail.Storage	Storage Description
#1	5.50'	307,203 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

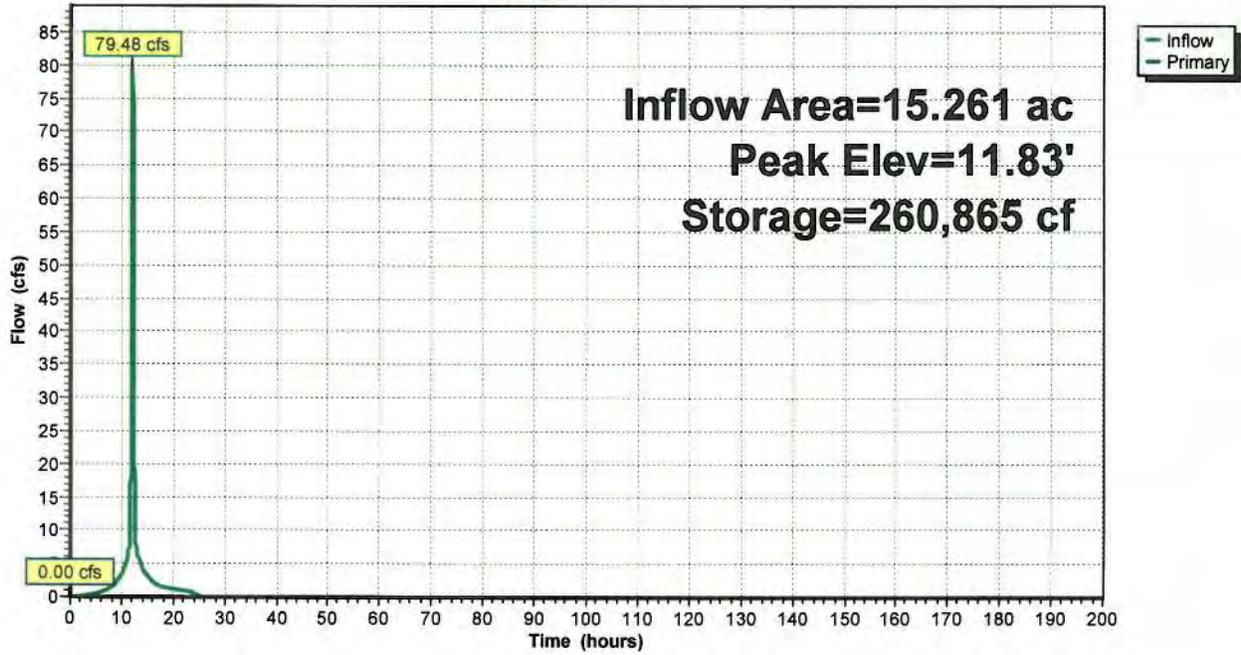
Elevation (feet)	Surf.Area (sq-ft)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
5.50	33,765	0	0
6.00	34,890	17,164	17,164
7.00	37,183	36,037	53,200
8.00	39,532	38,358	91,558
9.00	41,939	40,736	132,293
10.00	44,403	43,171	175,464
11.00	46,923	45,663	221,127
12.00	49,500	48,212	269,339
12.75	51,471	37,864	307,203

Device	Routing	Invert	Outlet Devices
#1	Primary	12.75'	15.0' long x 10.0' breadth Broad-Crested Rectangular Weir Head (feet) 0.20 0.40 0.60 0.80 1.00 1.20 1.40 1.60 Coef. (English) 2.49 2.56 2.70 2.69 2.68 2.69 2.67 2.64

Primary OutFlow Max=0.00 cfs @ 0.00 hrs HW=5.50' (Free Discharge)
 ↑1=Broad-Crested Rectangular Weir (Controls 0.00 cfs)

Pond 2P: Storage Pond

Hydrograph



Attachment C

Forms

Sterling Suffolk Racecourse LLC
 111 Waldemar Avenue
 East Boston, MA

Weekly Visual Monitoring Log

Monitoring Date: _____ Name of Observer: _____

Monitoring Location	Time of Observation	Precip. During Monitoring	Amount of Precip. for Past 24 Hours	Discharge of Water Observed	Comments
SD-3	<input type="checkbox"/> None	<input type="checkbox"/> Moderate	<input type="checkbox"/> None	<input type="checkbox"/> Moderate	<input type="checkbox"/> Yes
	<input type="checkbox"/> Light	<input type="checkbox"/> Heavy	<input type="checkbox"/> Light	<input type="checkbox"/> Heavy	<input type="checkbox"/> No
SD-4	<input type="checkbox"/> None	<input type="checkbox"/> Moderate	<input type="checkbox"/> None	<input type="checkbox"/> Moderate	<input type="checkbox"/> Yes
	<input type="checkbox"/> Light	<input type="checkbox"/> Heavy	<input type="checkbox"/> Light	<input type="checkbox"/> Heavy	<input type="checkbox"/> No
SD-5	<input type="checkbox"/> None	<input type="checkbox"/> Moderate	<input type="checkbox"/> None	<input type="checkbox"/> Moderate	<input type="checkbox"/> Yes
	<input type="checkbox"/> Light	<input type="checkbox"/> Heavy	<input type="checkbox"/> Light	<input type="checkbox"/> Heavy	<input type="checkbox"/> No
SD-7	<input type="checkbox"/> None	<input type="checkbox"/> Moderate	<input type="checkbox"/> None	<input type="checkbox"/> Moderate	<input type="checkbox"/> Yes
	<input type="checkbox"/> Light	<input type="checkbox"/> Heavy	<input type="checkbox"/> Light	<input type="checkbox"/> Heavy	<input type="checkbox"/> No
SD-10	<input type="checkbox"/> None	<input type="checkbox"/> Moderate	<input type="checkbox"/> None	<input type="checkbox"/> Moderate	<input type="checkbox"/> Yes
	<input type="checkbox"/> Light	<input type="checkbox"/> Heavy	<input type="checkbox"/> Light	<input type="checkbox"/> Heavy	<input type="checkbox"/> No
SD-13	<input type="checkbox"/> None	<input type="checkbox"/> Moderate	<input type="checkbox"/> None	<input type="checkbox"/> Moderate	<input type="checkbox"/> Yes
	<input type="checkbox"/> Light	<input type="checkbox"/> Heavy	<input type="checkbox"/> Light	<input type="checkbox"/> Heavy	<input type="checkbox"/> No

Sterling Suffolk Racecourse LLC
 111 Waldemar Avenue
 East Boston, MA

Inspection Schedule

Inspections Performed By:

Component	Frequency	Date	Results	Comments
Process Wastewater Holding Pond	Weekly		Cleaning/Repair Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No Pond Elevation _____	
Pump Station	Monthly		Maintenance Required? <input type="checkbox"/> Yes <input type="checkbox"/> No	Pump 1 hours _____ Pump 2 hours _____
Stable Area Perimeter	Weekly and during rain events anticipated to be >0.25 inches		Berms/Diversion in place and functioning? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Stable Gutters and Downspouts	Weekly and during rain events anticipated to be >0.25 inches		Damage or overflow observed? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Sediment Forebay ¹	Monthly		Trapped sediments ≥ 50% of check dam height? <input type="checkbox"/> Yes <input type="checkbox"/> No Other damage observed? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Sand Filters ¹	Monthly		Forebay sediments ≥ 50% of check dam height? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Infiltration Islands ¹	Monthly		Cleaning required? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Note: In addition to the frequencies listed in the above table, initial inspections as identified in Section 7.3 must also be documented.

APPENDIX B

**Sterling Suffolk Racecourse LLC
Compliance Measures Construction Schedule**

<u>Action</u>	<u>Deadline</u>
Implementation of PPM Plan	Effective Date
Submission to EPA of PARRS, PAPWM and NPASM Plans	September 30, 2011
Obtain final permits for construction of facilities described in PARRS, PAPWM and NPASM Plans (the "CWA Facilities")	October 31, 2011
Commence construction of CWA Facilities	December 15, 2011
Submit complete applications for all permits necessary for operation of all CWA Facilities	May 15, 2012
Complete construction of CWA Facilities	June 15, 2012
Commence operation of CWA Facilities	Within seven days of completion of construction and receipt of all final, non-appealable permits necessary for operation of CWA Facilities

APPENDIX C

Sterling Suffolk Racecourse LLC Mystic River Watershed Water Quality Monitoring SEP Scope of Work

1. The Mystic River Watershed Water Quality Monitoring Supplemental Environmental Project (“SEP”) is designed to monitor general water quality in the Mystic River watershed, as well as to identify individual sources of pollution. This SEP has two principal programs. First, the “Baseline Monitoring” program will use individuals trained in water sample collection to collect water quality samples from 15 static locations throughout the Mystic River watershed every month. Second, the “Hot-Spot Monitoring” program seeks to identify specific sources of contamination. Targeting of the locations for the Hot-Spot sampling will be based in part on data obtained from the Baseline Monitoring, and can also result from citizen complaints or observations. Such sampling will be collected typically from pipes and stormwater outfalls.

2. Sterling Suffolk Racecourse LLC (“Suffolk”) has selected the Mystic River Watershed Association (“MyRWA”) to implement this SEP. Within 60 days after the Effective Date of the Consent Decree, Suffolk will enter into a contract with its selected contractor, under which MyRWA will agree to supervise and implement this SEP, whose commencement shall begin no later than February 1, 2013 or 60 days after the Effective Date, whichever occurs later. As set forth below, Suffolk shall expend \$495,000 in completing this SEP in accordance with the requirements of paragraphs 1, 2, and 3 of this Appendix, which shall be applied to the costs of supervision, monitoring, analysis, and public dissemination of results of the following programs:

a. Baseline Monitoring: Monthly water quality samples from 15 static locations, approved by EPA, shall be collected and analyzed for a number of parameters, including, at a minimum, bacteria, total suspended solids, nutrients (nitrate-nitrite and total phosphorus), conductivity, dissolved oxygen, temperature, color, and odor. Sample collection and analyses shall be done in accordance with an EPA approved Quality Assurance Project Plan (“QAPP”) or any revisions to the QAPP approved by EPA prior to completion of the SEP. The goal of the Baseline Monitoring program is to establish and maintain a high quality baseline of water quality data for the watershed, make possible an evaluation of changes in water quality to identify and address water pollution problems, as well as raise public awareness of water quality in the watershed. Suffolk shall provide annual funding for completing the Baseline Monitoring program described herein for each of three years. Suffolk shall provide such funding no later than February 1 of each funding year. Suffolk shall provide the first such funding no later than February 1, 2013 or 60 days after the Effective Date, whichever occurs later.

b. Hot-Spot Monitoring: Water quality samples, as part of more intensive sub-watershed studies, shall be collected and analyzed in accordance with the QAPP or any revisions to the QAPP approved by EPA prior to completion of the SEP. A Hot-Spot Monitoring sample event consists of the collection of one or more water quality samples. Approximately six to ten Hot-Spot Monitoring sample events shall be conducted each year. Samples may be collected along the entire length of a tributary, or from suspicious stormwater outfall pipes that discharge to the watershed’s rivers and streams. These samples may be analyzed for bacteria, dissolved oxygen, total suspended solids, surfactants, total phosphorus, and ammonia. Additional

analytical parameters may be added as field conditions or investigation requirements warrant. The goal of the Hot-Spot Monitoring program is to identify individual sources of sewage or other pollutants by documenting water quality conditions in tributaries to the Mystic River, monitoring stormwater outfall pipes, and comparing water quality in dry and wet weather. Suffolk shall provide annual funding for completing the Hot-Spot Monitoring program described herein for each of three years. Suffolk shall provide the first such funding no later than February 1, 2013 or 60 days after the Effective Date, whichever occurs later. Suffolk shall provide the subsequent funding no later than the anniversary of the first Hot-Spot Monitoring funding.

c. Dissemination of Results: Data from each sample event shall be reported in accordance with the applicable QAPP. Data from each sample event also shall be incorporated into a spreadsheet and accompanied by a map of the sample locations. The spreadsheet and map from each sample event shall be posted on an internet site, where the data shall be accessible for free by the general public, within 60 days of the completion of the sample event. In addition, such data from each sample event, in the form of the spreadsheet and map, shall be provided to EPA by electronic mail within 60 days of the completion of the sample event.

3. Satisfactory Completion

a. Minimum Baseline Monitoring; Excess Funds: Samples shall be collected and analyzed on a monthly basis for three years, for a minimum of 36 sample events. Should unusual circumstances such as frozen conditions or severe flooding preclude the collection of Baseline Monitoring samples during a particular month, monthly monitoring shall be continued until a minimum of 36 sample events have been conducted. The annual cost for the Baseline Monitoring program is estimated at \$145,000. Should actual costs for 36 Baseline Monitoring sample events be lower, or should Suffolk provide MyRWA with additional SEP funding, Suffolk will require MyRWA to use the excess funds for additional Baseline Monitoring events, additional Hot-Spot Monitoring events, or some combination of the two, until MyRWA has expended Suffolk's funding toward the SEP.

b. Hot-Spot Monitoring; Excess Funds: Samples shall be collected and analyzed during approximately six to ten events over the course of a year, for three years (for an approximate total of 18 to 30 events). Should unusual circumstances such as frozen conditions or severe flooding preclude the collection of Hot-Spot Monitoring samples at a given time, monitoring shall be continued until a minimum of 18 sample events have been conducted. The annual cost for the Hot-Spot Monitoring program is estimated at \$20,000. Should actual costs for the Hot-Spot Monitoring sample events be lower, Suffolk shall require MyRWA to use the excess funds for additional Hot-Spot Monitoring events, Baseline Monitoring events, or some combination of the two, until MyRWA has expended Suffolk's funding toward the SEP.

c. Additional Funds: In the event that Suffolk notifies MyRWA that Suffolk will provide funding in excess of \$495,000 towards the SEP, Suffolk will require MyRWA to use such funding for additional Monitoring events until MyRWA has expended such funding.

d. Deadline for Completing SEP: Suffolk shall complete the SEP by no later than November 30, 2018. Should Suffolk provide funding in excess of \$495,000 toward the SEP, the

deadline for completing the SEP shall be extended by three months for every \$25,000 of additional funding that Suffolk provides for additional Monitoring.

APPENDIX D

Sterling Suffolk Racecourse LLC Saugus River Watershed Water Quality Monitoring SEP Scope of Work

1. The Saugus River Watershed Water Quality Monitoring Supplemental Environmental Project (“SEP”) is designed to monitor general water quality in the Saugus River watershed, as well as to identify individual sources of pollution. This SEP has two principal components. First, an EPA-approved Quality Assurance Project Plan (“QAPP”) shall be developed that will guide individuals in the proper sampling of actual or potential sources of pollution. Second, a “Water Quality Monitoring” program will be implemented that will use individuals trained in water sample collection to collect water quality samples from 12-20 static locations at least four times per year throughout the Saugus River watershed.

2. Sterling Suffolk Racecourse LLC (“Suffolk”) has selected the Saugus River Watershed Council (“SRWC”) to implement this SEP. Within 60 days after the Effective Date of the Consent Decree, Suffolk will enter into a contract with its selected contractor, under which SRWC will agree to supervise and implement this SEP, whose commencement shall begin no later than 60 days after the Effective Date and run for four years. Suffolk shall expend a total of \$90,000 in completing this SEP in accordance with the requirements of paragraphs 1, 2, and 3 of this Appendix, which shall be applied to the costs of supervision, monitoring, analysis, and public dissemination of results of the following efforts:

a. Development of QAPP: In the SEP’s first year, Suffolk shall expend \$10,000 for drafting and implementing the QAPP. Once approved by EPA, the QAPP will be used for training individuals to implement the Water Quality Monitoring Program below. Suffolk shall provide such funding no later than 60 days after the Effective Date.

b. Water Quality Monitoring: In the SEP’s first year, Suffolk shall provide \$20,000 for completion of the Water Quality Monitoring program. Suffolk shall provide such funding no later than fourteen (14) days after EPA approves the QAPP. Suffolk shall provide subsequent annual \$20,000 funding on each anniversary of the first Water Quality Monitoring funding. Water quality samples from 12-20 static locations, to be identified in the QAPP, shall be collected and analyzed at least four times per year for a number of parameters, including, at a minimum, bacteria, total suspended solids, nutrients (including nitrate and phosphorus), conductivity, dissolved oxygen, temperature, color, and odor. Sample collection and analyses shall be done in accordance with the QAPP or any revisions to the QAPP approved by EPA prior to completion of the SEP. The goal of the Water Quality Monitoring program is to inform and support ongoing efforts to address chronic water quality problems in the Saugus River watershed, as well as raise public awareness of water quality in the watershed.

c. Dissemination of Results: Data from each sample event shall be reported in accordance with the applicable QAPP. Data from each sample event also shall be incorporated into a spreadsheet and accompanied by a map of the sample locations. The spreadsheet and map from each sample event shall be posted on an internet site, where the data shall be accessible for free by the general public, within 60 days of the completion of the sample event. In addition,

such data from each sample event, in the form of the spreadsheet and map, shall be provided to EPA by electronic mail within 60 days of the completion of the sample event.

3. Satisfactory Completion

a. Minimum Water Quality Monitoring: At least four (4) sample events, with samples collected and analyzed from at least twelve (12) monitoring locations during each event, shall be conducted each year for four years. By the end of the four year monitoring program, a minimum of sixteen (16) sample events shall be conducted.

b. Excess Funds: The estimated cost of developing the QAPP is \$10,000. The estimated annual cost of the Water Quality Monitoring program for each of four (4) years is \$20,000. Should total actual costs for developing the QAPP and performing the sixteen (16) Water Quality Monitoring sample events be lower than \$90,000, or should Suffolk provide SRWC with additional SEP funding, Suffolk will require SRWC to use the excess funds for additional Water Quality Monitoring events until SRWC has expended Suffolk's funding toward the SEP.

c. Additional Funds: In the event that Suffolk notifies SRWC that Suffolk will provide funding in excess of \$90,000 towards the SEP, Suffolk will require SRWC to use such funding for additional Monitoring events until SRWC has expended such funding.

d. Deadline for Completing SEP: Suffolk shall complete the SEP by no later than November 30, 2018. Should Suffolk provide funding in excess of \$90,000 toward the SEP, the deadline for completing the SEP shall be extended by three months for every \$5,000 of additional funding that Suffolk provides for additional Monitoring.

APPENDIX E

Sterling Suffolk Racecourse LLC Belle Isle Marsh Habitat Protection SEP Scope of Work

1. The Belle Isle Marsh Habitat Protection Supplemental Environmental Project (“SEP”) is designed to provide safe and appropriate access to a portion of Belle Isle Marsh without causing harm to sensitive wetland vegetation or destabilization of the marsh’s riparian buffer. A boardwalk and observation point shall be installed that will provide visitors with access to the marsh from an existing pathway out and over a portion of the marsh, with appropriate interpretive signage. As current access is limited and continued access through the marsh risks damaging the fragile marsh ecosystem, the boardwalk will provide access to the marsh in an ecologically protective manner that will help the marsh to recover naturally after the cessation of discharges by Sterling Suffolk Racecourse LLC (“Suffolk”).

2. Suffolk shall begin implementing this SEP no later than 60 days after the effective date of the Consent Decree. In consultation with the Massachusetts Department of Conservation and Recreation (“DCR”), Suffolk shall design, obtain permits for and construct the following, at an estimated cost of \$157,000:

a. Habitat Protection Boardwalk: Suffolk shall construct an approximately 200-foot-long, handicap-accessible boardwalk with an attached terminal observation deck. Suffolk shall also construct a pathway connecting the new boardwalk with an existing trail in the upland area of the marsh. The boardwalk and observation deck shall be approximately 6 feet wide and extend into and over a portion of the Belle Isle Marsh. Suffolk shall install the boardwalk and observation deck where access to the marsh interior is limited, and where any other manner of access to the marsh would result in the destruction of critical waterfowl nesting and breeding habitat, harm to sensitive marsh vegetation, and destabilization of the marsh’s riparian buffer.

b. Signage: In order to maximize the benefit of the Habitat Protection Boardwalk, Suffolk shall install interpretive signage. The signage shall (a) discuss the value and importance of the marsh ecosystem and (b) direct visitors to use only the new boardwalk or existing designated access pathways in the marsh so as not to disturb the sensitive marsh ecosystem.

3. Within 30 days of the effective date of the Consent Decree, Suffolk shall execute an agreement with DCR that sets forth, at a minimum:

- a. DCR’s approval of the SEP;
- b. DCR’s agreement to cooperate reasonably with Suffolk in implementing the SEP;
- c. Suffolk’s responsibilities for designing all components of the SEP;
- d. Agreed procedures for obtaining DCR’s approval of the SEP’s final designs;

e. The parties' responsibilities for obtaining all necessary permits to build all components of the SEP (including, but not limited to, DCR's approval of all permit applications);

f. The parties' responsibilities during Suffolk's construction of the SEP;

g. Suffolk's responsibilities for obtaining any and all post-construction approvals of the newly constructed SEP facilities; and

h. DCR's agreement to take ownership of all components of the SEP within a reasonable time after completion of construction.

4. Satisfactory Completion: Suffolk shall complete all requirements of the SEP by no later than December 31, 2014.